



**Wheeling Jesuit University**  
**Policy Regarding Sexual Misconduct, Retaliation, and Intimidation**

*If you believe you are the victim of Sexual Misconduct, you are encouraged to immediately seek medical attention and/or assistance from law enforcement.*

*Emergency resources are available from the following:*

**WJU Public Safety**

Call 304-243-2486 or x2486 from any campus phone  
Location: Swint Hall, Suite 209, 316 Washington Ave.

**Ohio Valley Medical Center**

2000 Eoff Street  
Wheeling WV 26003  
Call: 304-234-8888

**Wheeling Police Department**

Emergency: 911  
Phone: 304-234-3661  
Location: 1500 Chapline St., Wheeling, WV 26003

**Wheeling Hospital**

1 Medical Park  
Wheeling, WV 26003  
Call: 304-243-3000

*Confidential counseling services are available from the following:*

**WJU Counseling Center**

Ignatius G 23  
316 Washington Ave  
Wheeling, WV 26003  
304-243-2081

**WJU Campus Ministry**

Acker 112 A  
316 Washington Ave  
Wheeling, WV 26003  
304-243-2635

**I. INTRODUCTION**

Wheeling Jesuit University (“WJU” or “University”) is committed to providing an institutional environment where all persons may pursue their studies, careers, duties, and activities in an atmosphere free of the threat of Sexual Assault, Sexual Harassment, Sexual Exploitation, Domestic Violence, Dating Violence, or Stalking (for purposes of this Policy, this conduct may be referred to, collectively, as “Sexual Misconduct”).

Sexual Misconduct directed toward students, employees or any other member of the University community, including third parties, regardless of sexual orientation or gender identity, interferes with the expectation that all individuals at the University will learn and work in an environment that is free from discrimination. Sexual Misconduct undermines the mission and character of the University and will not be tolerated. Certain Sexual Misconduct may also constitute a crime.

## II. POLICY

### A. Scope and Jurisdiction

The University's Policy Regarding Sexual Misconduct, Retaliation, and Intimidation ("Policy") applies to the conduct of University students (including students who have satisfied degree requirements but who have not yet graduated) employees, and campus visitors (including but not limited to independent contractors, volunteers, and guests), regardless of sexual orientation or gender identity ("Covered Individuals").

The University prohibits Sexual Misconduct on its campus, on non-campus property owned or controlled by the University, and at University-sponsored events or programs (occurring either on- or off-campus). The Policy also applies to defined off-campus behavior of students or employees, even if unrelated to a University-sponsored event or program, that has actual or potential adverse impact on the University, the educational processes of the University, or any member of the University community.

### B. Prohibited Conduct

Conduct prohibited by this Policy (the "Prohibited Conduct") includes:

1. Sexual Misconduct
  - a. Sexual Assault
  - b. Sexual Harassment
  - c. Domestic Violence
  - d. Dating Violence
  - e. Sexual Exploitation
  - f. Stalking
2. Retaliation
3. Intimidation

### C. Definitions

The Prohibited Conduct and other terms and concepts relevant to this Policy are defined as follows:

**Sexual Misconduct:** An umbrella term encompassing a range of behavior, including Sexual Assault, Sexual Harassment, Domestic Violence, Dating Violence, Sexual Exploitation, and Stalking (as each term is further defined below).

**Sexual Assault:** 1) Having Sexual Intercourse or Sexual Contact with another individual by the use or threat of force, violence, or any other form of Coercion or Intimidation; without Consent; or where the other individual is Incapacitated.

- **Sexual Intercourse** is any penetration (anal, oral, or vaginal), however slight, with any object or body part performed by one person upon another person.

- **Sexual Contact** is any touching, other than Sexual Intercourse, with any body part or object by one person upon another person, for purposes of sexual gratification of the touching party. Sexual Contact includes touching of intimate body parts (including, but not limited to, genitals, buttocks, groin, or breasts, and even if clothed) and the removal of another's clothing for purposes of sexual gratification. Non-consensual Sexual Contact therefore also includes the non-consensual removal of another's clothing, indecent contact (i.e., the unwanted touching of intimate body parts), or causing another to have indecent contact with one's own intimate body parts.

2) For purposes of this Policy, prohibited Sexual Assault also includes: Rape, Statutory Sexual Assault, Sexual Assault, Indecent Assault, Fondling, Sexual Abuse, and Incest as those acts are defined by the FBI's Uniform Crime Reporting Program (available at <http://www.fbi.gov/about-us/cjis/ucr/nibrs/nibrs-user-manual>), and/or the West Virginia Criminal Code. Applicable definitions from the West Virginia Criminal Code are provided in Appendix A.

**Sexual Harassment:** Unwelcome conduct of a sexual nature, including unwelcome requests for sexual favors, sexual advances, and other verbal, nonverbal, graphic, or physical conduct of a sexual nature, when: (1) submission to or rejection of such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing or is used as the basis for employment decisions or for academic evaluation, grades, or advancement (quid pro quo); or (2) such conduct creates a Hostile Environment.

**Hostile Environment:** The environment caused by unwelcome verbal or physical conduct that: (1) is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from an education program at the University or creates a hostile or abusive educational environment, or (2) is sufficiently severe, persistent or pervasive so as to affect an individual's employment or educational environment, unreasonably interfere with an individual's work performance or educational environment, or create an intimidating, hostile or offensive environment. In determining whether Sexual Harassment has created a Hostile Environment, consideration must be given not only to whether the conduct was unwelcome to the person who feels harassed, but also to whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive.

**Consent:** Words or actions that reasonably demonstrate a knowing and voluntary agreement, by both parties, to engage in mutually agreed upon sexual activity.

- Consent is active, not passive.
- In whatever way Consent is communicated, it must be mutually understandable.
- An affirmative statement or action does not constitute Consent if such Consent is the product of threat or Coercion or is given by a person who is unable to make a reasonable judgment concerning the nature or harmfulness of the activity because of:
  - Incapacitation;
  - Unconsciousness; or
  - Mental disability or incapacity.

- It is the responsibility of the initiator of sexual contact to make sure that they understand fully what the person with whom they are involved wants and does not want sexually.
- Past Consent does not imply future Consent.
- Silence, in and of itself, or the absence of resistance, does not mean Consent.
- A current or past dating relationship, or prior consensual sexual activity, is not sufficient in and of itself to constitute Consent between the same parties.
- Consent to one form of sexual activity does not imply Consent to other forms of sexual activity.
- Consent to engage in sexual activity with one person does not imply Consent to engage in sexual activity with another.
- Consent can be withdrawn through words or action at any time.

**Incapacitation:** The inability, temporarily or permanently, to give Consent. A person may be incapacitated because they are mentally and/or physically helpless, asleep, unconscious, or unaware that the sexual activity is occurring. Incapacitation may result from the use of alcohol and/or drugs; however, Incapacitation is a state beyond drunkenness or intoxication.

The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching Incapacitation may include slurring speech, vomiting, unsteady gait, acting confused or incoherent, and/or emotional volatility.

Evaluating Incapacitation due to alcohol and/or drug consumption requires an assessment of how the consumption of alcohol and/or drugs affects an individual's:

- Decision making ability;
- Awareness of consequences;
- Ability to make informed judgments; and
- Capacity to appreciate the nature and quality of the act.

Evaluating Incapacitation, and its impact on Consent, also requires an assessment of whether a Respondent should have been aware of the Complainant's Incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the Respondent's position at the time.

**Coercion:** Unreasonable pressure for sexual activity, such as blackmail, threats of violence, etc. Coercive behavior is unreasonable, and is something well beyond seductive behavior.

**Domestic violence:** A felony or misdemeanor crime of violence committed by: (1) a current or

former spouse or intimate partner of the victim, (2) a person with whom the victim shares a child in common, (3) a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner, (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of West Virginia, or (5) 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 West Virginia.

Those laws can be found at:

<http://www.legis.state.wv.us/wvcode/chapterentire.cfm?chap=61&art=2&section=28> *and*  
<http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=48&art=27>

**Dating Violence:** Sexual or physical abuse, not including acts covered by the definition of Domestic Violence, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim that causes physical harm to the victim. The existence of such a relationship will be determined by giving deference to the victim's characterization of the relationship, but also taking into consideration the following factors: (1) the length of the relationship; (2) the type of the relationship; and (3) the frequency of interaction between the persons involved in the relationship.

**Sexual Exploitation:** Taking non-consensual or abusive sexual advantage of another for the benefit of anyone other than the one being exploited, where that behavior does not otherwise constitute one of the other Sexual Misconduct offenses defined in this Policy. Sexual Exploitation includes, but is not limited to:

- non-consensual video or audio recording or photographing of private sexual activity and/or a person's intimate body parts;
- non-consensual dissemination, streaming, or posting images of private sexual activity and/or a person's intimate body parts;
- allowing third parties to observe private sexual activity from a hidden location (e.g. closet) or through electronic means (e.g. Skype or live-streaming of images);
- engaging in voyeurism (e.g. watching private sexual activity without the consent of the participants or viewing another person's intimate body parts without consent and in a place where that person would have a reasonable expectation of privacy);
- knowingly transmitting a sexually transmitted infection to another;
- exposing one's genitals in non-consensual circumstances;
- prostituting another individual; or
- inducing Incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

**Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for that person's safety or the safety of others known to that person, or (b) suffer substantial emotional distress.

- As used in this definition:
  - “course of conduct” means two or more acts within a year, including, but not limited to, acts in which the individual 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.
  - “substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling; and
  - “reasonable person” means a person under similar circumstances and with similar identities to the victim.
- Examples of stalking include, but are not limited to, unwelcome and repeated visual or physical proximity to a person; repeated oral or written threats; and unwelcome/unsolicited communication of any kind including communication through a third party.
- Stalking, as defined herein, includes Cyber-Stalking, a particular form of Stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are utilized.

**Intimidation:** Any act to deter an individual from making a report of an alleged violation of this Policy or participating in an investigation or related proceeding under this Policy, by imposing fear through threats of physical or emotion harm to anyone.

**Retaliation:** Any act or attempted act to seek retribution against anyone who has reported an alleged violation of this Policy or against anyone who has participated in an investigation or related proceeding under this Policy. Prohibited retaliatory acts include, but are not limited to, Intimidation, threats, Coercion, and discrimination. Retaliation does not include good faith actions pursued in response to a report of Sexual Misconduct.

**Complainant:** The person alleged to have been subjected to conduct in violation of this Policy. *Note: The University reserves the right to investigate a report or complaint of Sexual Misconduct regardless of whether the Complainant desires the University to pursue the report or complaint, if the University has cause to believe that the action reported or complained of is serious and may constitute a violation of this Policy, breach applicable law, and/or poses a threat to the University community.*

**Respondent:** An individual accused of conduct that might be a violation of this Policy.

**Reporter:** An individual reporting alleged conduct prohibited by this Policy. The Reporter may be the Complainant him or herself, or any other person (but not a Responsible Employee).

**Student:** Any individual who has matriculated at the University, regardless of whether on a full-time or part-time basis, and regardless of whether they are enrolled in a graduate or undergraduate program, until that individual obtains their degree from the University.

**Responsible Employee:** University employees required to report instances of Sexual Misconduct of which they become aware. The University has designated all administrators, including the President, Vice Presidents and Deans of the University; faculty members, including adjunct and visiting faculty; resident advisors (RAs) and their supervisors; Luceats; Athletics staff and coaches; and University security officers as Responsible Employees.

- **Obligations of Responsible Employees:**

- If a Responsible Employee becomes aware of an alleged act of Sexual Misconduct that could violate this Policy, then they ***must promptly contact the Title IX Coordinator and report what they know.*** They can do so via [https://cm.maxient.com/reportingform.php?WheelingJesuitUniv&layout\\_id=4](https://cm.maxient.com/reportingform.php?WheelingJesuitUniv&layout_id=4) or by contacting the Title IX Coordinator at:

Title IX Coordinator  
316 Washington Ave.  
Wheeling, WV 26003  
304.243.2650  
[Title9@wju.com](mailto:Title9@wju.com)

- If a Responsible Employee is having a conversation with an individual, and believes that the individual may be about to report an alleged act of Sexual Misconduct, or the individual has already done so, the Responsible Employee should advise the individual that the University will maintain the privacy of the information to the best of its ability, but the Responsible Employee ***cannot maintain confidentiality*** and is required to report the alleged conduct to the Title IX Coordinator and to communicate the names of the parties involved, if revealed.
- If the individual wishes to reveal information, or has already done so, but would like to remain anonymous or requests confidentiality, the Responsible Employee should inform the individual that their name will be shared with the Title IX Coordinator, and that the request for confidentiality will be considered by the Title IX Coordinator, not the Responsible Employee him/herself. *See* Section IV.A of this Policy for information on how the University will weigh, and respond to, requests for confidentiality.
- If the individual has not already shared information about a potential violation of the Policy, and does not wish to reveal any such information except in a Confidential setting, the Responsible Employee should offer to refer or accompany the student to one of the Confidential Reporting Locations identified below.

- **Exceptions to the Responsible Employee Designation – Confidential Reporting Locations for Policy Violations:**

- University employees who are professional and/or licensed counselors and pastoral counselors, including clergy, meaning those who have been appointed to serve at the University or were hired and are acting in the role of providing men-

tal health counseling or pastoral/spiritual care to members of the University community ***will not report any information about a potential Policy violation reported to them in these capacities*** (as opposed to reports that may be made to them in their roles as administrators, faculty, or otherwise). These individuals are the University's **Confidential Reporting Locations**.

- The Confidential Reporting Locations may be contacted at:

WJU Counseling Center  
Ignatius G 23  
316 Washington Ave  
Wheeling, WV 26003  
304-243-2081

WJU Campus Ministry  
Acker 112 A  
316 Washington Ave  
Wheeling, WV 26003  
304-243-2635

- **Exceptions to the Responsible Employee Designation – Quasi-confidential Reporting Locations for Policy Violations:**

- A second and narrower exception to the definition of Responsible Employee is for the Campus Nurse, who is considered to be a “Quasi-confidential Reporter.” The Campus Nurse, when acting in this capacity, is not required to report personally identifiable information about the Reporter/Complainant to the Title IX Coordinator. Instead, the Campus Nurse need only report general information about an incident such as the nature, date, time, and general location of the incident and, if it can be done without disclosing information about the Reporter/Complainant, information about the Respondent if known.
- The Campus Nurse may be contacted at:

Campus Health Center  
Swint Hall, Suite 208  
316 Washington Ave  
Wheeling, WV 26003  
304-243-2275

### III. RESOURCES

The University encourages all members of the University community who believe that they have witnessed, experienced, or are aware of conduct that constitutes a violation of this Policy to seek immediate medical attention, take steps to preserve pertinent information and tangible materials, and/or report the violation, as applicable.

When Sexual Misconduct occurs, the University will take all necessary and reasonable steps to stop the alleged conduct and provide support to the Complainant (and, as appropriate, the Respondent) and, as necessary, to other members of the University community, including the Reporter. Law enforcement, medical, mental health, victim advocacy and legal resources are identified below. The University may also provide assistance with class schedules, housing, no contact orders, immigration, and student financial aid issues, and offer other services that may be relevant, all to be coordinated by the Title IX Coordinator or a Deputy Title IX Coordinator.

The University will provide a written explanation of rights and options to any student or employee who reports to the University that they have been a victim of Sexual Misconduct regardless of whether the offense occurred on or off campus.

#### **A. Reporting an Emergency and Getting Medical Attention**

***Contact Public Safety and/or local law enforcement if you are in any immediate danger.***

##### Options for Contacting Law Enforcement:

- WJU Public Safety  
Call 304-243-2486 or x2486 from any campus phone  
Location: Swint Hall, Suite 209, 316 Washington Ave.
- Wheeling Police Department  
Emergency: 911  
Phone: 304-234-3661  
Location: 1500 Chapline St., Wheeling, WV 26003

##### Options for Contacting Other On-Campus “First Responders”:

- Title IX Coordinator  
316 Washington Ave.  
Wheeling, WV 26003  
304-243-2650  
[Title9@wju.edu](mailto:Title9@wju.edu)
- Director of Resident Life  
Swint Hall, Suite 201  
316 Washington Ave  
Wheeling, WV 26003  
304-243-2390

##### Options for Seeking Medical Attention:

An individual who believes that they have been subjected to Sexual Misconduct is urged to be medically examined as soon as possible. **It is also important that you retain all pertinent evidence – clothing, photographs, electronic and social media data, and even bodily fluids.** Treatment for injuries, medication for sexually transmitted infections (STI) and HIV, and forensic exams are all options.

Both the Ohio Valley Medical Center (OVMC) and Belmont Community Hospital have on-call Sexual Assault Nurse Examiners (“SANE Nurses”) who are trained to assist victims of sexual violence. OVMC and Wheeling Hospital are located at:

OVMC  
2000 Eoff Street  
Wheeling WV 26003  
Call: 304-234-8111

Belmont Community Hospital  
4697 Harrison St.  
Bellaire, OH 43906  
Call: 704-671-1200

A forensic exam, completed by a medical practitioner, is the process through which physical evidence is collected and may include a rape kit. Please note that obtaining a forensic exam, or taking other steps to gather evidence, does not require the individual to file a police report. There is a limited window of time (typically 72 to 96 hours) following an incident of Sexual Assault to preserve physical evidence. Physical evidence can include photo documentation of injuries, collection of fluids (blood, semen, urine, saliva) and other identifiable objects (e.g. hair, clothing with potential DNA). If you choose to have a forensic medical exam, you should not bathe, douche, brush your teeth or hair, drink, eat, smoke, or change your clothing, if possible. If you need to change your clothing, you should place it in a paper bag.

The University encourages individuals to bring a support person for accompaniment during medical treatment, including forensic exams. Public Safety officers are also available to arrange for transportation to medical exams.

Nonemergency healthcare services are available as follows:

On-Campus:

Campus Health Center  
Swint Hall, Suite 208  
316 Washington Ave  
Wheeling, WV 26003  
304-243-2275

***Reminder:*** The Campus Nurse serves as a Quasi-Confidential Reporting location as described in Section II above.

Off-Campus:

EMSTAR Trauma Services  
Ohio Valley Medical Center  
2000 Eoff Street  
Wheeling WV 26003  
304-234-0123

Family Health Center  
1 Medical Park  
Wheeling, WV 26003  
304-243-3880

On-Campus Confidential Counseling Resources

***Confidential*** counseling and mental health resources can be found both on-campus at:

WJU Counseling Center  
Ignatius G 23  
316 Washington Ave  
Wheeling, WV 26003  
304-243-2081

Father Ignatius Hadi Sasmita, S.J.  
Acker 112 A  
304-243-2635

### Additional Off-Campus Resources

The following off-campus resources provide advocacy, legal, financial, and/or counseling assistance:

- **Sexual Assault Help Center**  
24-hour Hotline: 304-234-8519  
Toll-free Hotline: 1-800-884-7242
- **Tri-County Help Center**  
1041/2 North Marietta Street.  
St. Clairsville, Oh 43950  
800-695-1639
- **National Domestic Violence Hotline**  
1-800-799-SAFE (7223) OR 1-800-787-3224 (TTY)
- **Women Against Abuse**  
Hotline: (866) 723-3014  
<http://www.womenagainstabuse.org>
- **The U.S. Department of Education, Office for Civil Rights**  
Phone: (215) 656-8541  
Email: [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov)  
The Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323

While off-campus counselors and advocates may maintain confidentiality vis-à-vis the University, they may have reporting or other obligations under state or federal law. You should inquire of each off-campus resource as to the level of confidentiality, if any, they can provide.

### **B. Preservation of Information and Tangible Material**

Preservation of information and tangible material is essential for both law enforcement investigations and campus disciplinary processes and may assist in proving that the alleged criminal offense occurred and may be helpful in obtaining a Protective or Restraining Order. Therefore, potential information and materials including, but not limited to, clothing, drinks, glasses, bed linens, electronic communications (e.g. text messages, emails), and photographs should be preserved, if possible.

### C. Interim Relief and Remedial Measures

Interim relief and remedial measures may be requested and/or offered and instituted at any time following a reported violation of this Policy in order to ensure the safety and wellbeing of the Complainant, the Reporter, the Respondent, and other members of the WJU community.

Examples of interim and remedial measures include: assistance in academic, living, transportation, and working situations, and protective measures such as options to obtain modification of or relief regarding financial aid, obtain on-campus escort services from Public Safety, etc. The University may also issue no contact orders, which restrict contacts between Complainant and Respondent.

In assessing or delivering such interim relief or remedial measures, the University will attempt to keep personally identifiable information about the Complainant confidential (i.e., shared only with persons with a need to know) to the extent that maintaining such confidentiality would not impair the ability of the University to provide such support.

The University will make an individualized assessment about the propriety of a particular interim or remedial measure in each case, and as to a particular Complainant and Respondent.

## IV. REPORTING ALLEGED POLICY VIOLATIONS

The University encourages any individual who believes he or she has been the victim of Sexual Misconduct, or is aware of such Misconduct, to report the incident immediately to an on-campus reporting resource and/or local law enforcement. ***If safety is an immediate concern, contact Public Safety or call 911 to reach the local police department for assistance.***

A non-confidential report of an alleged violation of this Policy may be reported to the Title IX Coordinator, a Deputy Title IX Coordinator, or any Responsible Employee. Confidential Reports may be made to a Confidential Reporting Location, as defined above in Section II.C (under the definition of Responsible Employee).

### A. Privacy and Confidentiality

#### Privacy

The University is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report under this Policy to the greatest extent possible. The University will accordingly make every effort to protect the privacy interests of all individuals involved, consistent with the need for a thorough investigation and review of the allegation(s).

Information related to a report under this Policy will only be shared with those University employees who “need to know” in order to assist in the review, investigation, or resolution of the report.

All University employees or others involved in the University’s Title IX response, including the Title IX Coordinator, the Deputy Title IX Coordinators, members of the Department of Public Safety, Office of the Dean of Students, and investigators, receive specific training and guidance, on an annual basis, about Title IX, the University’s processes, and safeguarding private information.

## Confidentiality

If a Reporter discloses an instance of alleged Sexual Misconduct to a non-confidential reporting source (e.g. Responsible Employee, Title IX Coordinator) but subsequently seeks confidentiality, or a Reporter or Complainant (if different), having reported a potential violation of this Policy, then requests that no investigation into a particular incident be conducted or disciplinary action taken, the University will weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all members of the WJU community, including the Complainant and Respondent.

Specifically, the Title IX Coordinator or a Deputy Title IX Coordinator have been designated by the University to evaluate requests for confidentiality and/or that no investigation into a particular incident be conducted or disciplinary action taken. When evaluating such a request, the Title IX Coordinator/Deputy Title IX Coordinator may conduct a preliminary investigation into the alleged Sexual Misconduct and will weigh and consider a range of factors including, but not limited to, the increased risk that the alleged Respondent will commit additional acts in violation of this Policy, as well as:

- whether there have been other Sexual Misconduct complaints about the same Respondent;
- whether the Respondent has a history of arrests or records from a prior workplace or school indicating a history of violence;
- whether the Respondent threatened further Sexual Misconduct or other violence against the Complainant or others;
- whether the incident was committed by multiple Respondents;
- whether the incident was perpetrated with a weapon;
- whether the Complainant is a minor;
- whether the University possesses other means to obtain relevant evidence of the Sexual Misconduct (e.g. security cameras or personnel, physical evidence); and
- whether the information provided reveals a pattern of perpetration (e.g. via illicit use of drugs or alcohol) at a given location or by a particular group.

In order to provide a safe, non-discriminatory environment for all members of the WJU community, there are times when the University may not be able to honor a request for confidentiality and/or a request that no investigation into a particular incident be conducted or disciplinary action taken. In these circumstances, the University will inform the requesting party if it cannot ensure confidentiality and the University will respect the privacy of those involved to the greatest extent possible. The University will also take immediate action as necessary to protect and assist the Complainant (and, in appropriate circumstances, the Reporter).

If the University determines that it **is** able to honor the request for confidentiality, a Reporter (and Complainant, if different) will be informed, and must understand, that the University's ability to meaningfully investigate the incident and/or pursue disciplinary action against the alleged Respondent will likely be limited as a result of the Complainant/Reporter's request. Even if the University cannot take disciplinary action against the Respondent because the Reporter/Complainant insists on confidentiality or request that the complaint not be investigated or adjudicated, the University will take prompt and appropriate action to limit the effects of the alleged Sexual Misconduct and to prevent its recurrence. The University reserves the authority to issue a no-contact order and other interim or remedial measures as indicated in this Policy.

### **B. Timeframe for Reporting**

As explained above, it is best to report alleged Sexual Misconduct immediately. If at all possible, it is best to report Sexual Misconduct prior to the last date of enrollment or employment of the Respondent. Prompt reporting allows evidence to be preserved, witnesses to be interviewed, and any disciplinary/resolution process to move forward most effectively. ***While prompt reporting is important, reports may be made to the University at any time.*** It is important, however, to understand that the ability to investigate a report, and take action against a Respondent, becomes more limited as time goes on.

Reports may be made to external law enforcement at any time.

### **C. Limited Amnesty for Students who Report Sexual Misconduct**

The University encourages reporting of Policy violations. The University recognizes, however, that a student who has been drinking or using drugs at the time of alleged Sexual Misconduct may be hesitant to make a report because of potential consequences for his/her own conduct. A student who reports Sexual Misconduct will not be subject to disciplinary action by the University for his/her own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The University may, however, initiate an educational discussion or pursue other educational remedies with that reporting student regarding alcohol or other drugs.

### **D. Coordination with Law Enforcement**

The University encourages, but does not require, Complainants to pursue criminal action for incidents of Sexual Misconduct that may also be crimes under West Virginia law. In certain circumstances, the University may report a Sexual Misconduct allegation to the appropriate law enforcement agency, even if the Complainant does not, because of the unique circumstances presented (e.g., a discernible threat to the safety of others, involvement of a Minor, etc.).

It is important to emphasize, however, that neither law enforcement's decision of whether or not to investigate or prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this Policy has occurred. Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus. The University's Policy is not a criminal policy, criminal laws (and protections) do not apply, and this is a community standards Policy intended to protect the WJU community – not a court of law.

Having said that, in certain circumstances, the University may need to delay temporarily the fact-finding portion of its internal disciplinary process while law enforcement officials are gathering evidence. Once notified, however, that law enforcement has completed its gathering of evidence—but not the ultimate outcome of the investigation or the filing of any charges—the University will promptly resume and complete its internal disciplinary process.

Regardless of whether a criminal complaint is filed, the University will pursue its own internal processes to address the alleged conduct, and it expects that all those involved will participate in the process. The fact that an individual (Complainant, Reporter, Respondent and/or witness) refuses to participate in the University process does not mean that the disciplinary process will not take place if the University deems it appropriate to proceed.

#### **E. Non-Retaliation Statement/Good Faith Reporting**

The University will not engage in nor tolerate Retaliation or Intimidation of any kind against/of any individual who makes a good faith complaint or third-party report of Sexual Misconduct or who participates in the investigation or disciplinary process (e.g. as a witness) of such a complaint. Complaints of Retaliation and Intimidation will be investigated and addressed in the same manner as any other complaint brought under this Policy.

Reports made in good faith under this Policy will not result in any adverse action against the Reporter, and no other person who participates in good faith in the disciplinary/resolution process will be treated adversely because of that participation. However, if an investigation results in a finding that the Reporter knowingly falsely accused another of an act of Sexual Misconduct, then the Reporter will be subject to appropriate sanctions, up to and including permanent separation from the University (i.e., expulsion).

### **V. DISCIPLINARY PROCESS FOR ALLEGED VIOLATIONS OF THE SEXUAL MISCONDUCT POLICY**

Any member of the University community who believes that they have been subjected to Sexual Misconduct by a Covered Person may choose to participate in: (1) both the University disciplinary process and an outside law enforcement process; (2) the University disciplinary process only; (3) an outside law enforcement process only; or (d) neither the University disciplinary process nor an outside law enforcement process.

The University will provide a prompt, fair, and impartial disciplinary process—starting with the initial report through to the final result—conducted by officials who are trained annually on issues related to Sexual Assault, Sexual Harassment, Domestic Violence, Dating Violence, and Stalking, as well as on how to conduct a process that protects the safety of victims and promotes accountability.

The University’s Grievance Procedure Applicable to Complaints of Sexual Misconduct, Retaliation or Intimidation is attached as Exhibit “A” and available at <<[\*insert link to website\*](#)>>.

### **VI. ROLE OF THE TITLE IX COORDINATOR**

The University’s Title IX Coordinator is responsible for coordinating the University’s compliance with Title IX and overseeing the University’s investigation and complaint resolution process for

reports of Sexual Misconduct. The Title IX Coordinator is supported by several Deputy Title IX Coordinators.

The Title IX Coordinator and Deputy Title IX Coordinators are knowledgeable and routinely trained in state and federal laws that apply to matters of Sexual Misconduct, as well as University policy and procedure.

The names and contact information for the current Title IX Coordinator and Deputy Title IX Coordinators can be found by visiting <http://www.wju.edu/titleix/>.

**The Title IX Coordinator can be reached at Title9@wju.com and 304.243.2650.**

## **VII. EDUCATION AND TRAINING**

The University is committed to providing programming designed to educate the University community about Sexual Misconduct in all of its forms and to prevent its occurrence. The University also provides specific training to faculty and staff members who may be responsible for responding to, investigating or adjudicating complaints of Sexual Misconduct. Copies of this training are available in the office of the Title IX Coordinator.

## **VIII. REVISIONS**

The Title IX Coordinator will initiate an annual review of this Policy, consulting with legal counsel as appropriate. Additional review and revisions will be conducted as needed to comply with legal requirements.

EXHIBIT A

<< *Grievance Procedures for Matters Involving Sexual Misconduct or Related Retaliation or Intimidation* >>

## APPENDIX A

*In addition to the definitions identified above in Section II, the following definitions are applicable to this Policy. The conduct described in each definition below is prohibited by this Policy as a form of Sexual Assault.*

Each definition, and section number, herein is taken directly from Chapter 61 of the West Virginia Crimes Code, available at <http://www.legis.state.wv.us/wvcode/Code.cfm?chap=61&art=8B#08B>.

The pertinent definitions are:

### **§61-8-9. Indecent exposure.**

(a) A person is guilty of indecent exposure when such person intentionally exposes his or her sex organs or anus or the sex organs or anus of another person, or intentionally causes such exposure by another or engages in any overt act of sexual gratification, and does so under circumstances in which the person knows that the conduct is likely to cause affront or alarm: *Provided*, That it is not considered indecent exposure for a mother to breast feed a child in any location, public or private.

(b) Except as provided in subsection (c), any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than ninety days, or fined not more than two hundred fifty dollars, or both fined and confined .

(c) Any person who violates the provisions of subsection (a) of this section by intentionally exposing himself or herself to another person and the exposure was done for the purpose of sexual gratification, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in jail not more than twelve months, or both. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars and confined in jail for not less than thirty days nor more than twelve months. For a third or subsequent offense, the person is guilty of a felony and, upon conviction thereof, shall be fined not more than three thousand dollars and imprisoned in a state correctional facility for not less than one year nor more than five years.

### **§61-8B-3. Sexual assault in the first degree.**

(a) A person is guilty of sexual assault in the first degree when:

- (1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:
  - (i) Inflicts serious bodily injury upon anyone; or
  - (ii) Employs a deadly weapon in the commission of the act; or
- (2) The person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than twelve years old and is not married to that person.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment in a state correctional facility for not less than twenty-five nor more than one hundred years and a fine of not less than five thousand dollars nor more than twenty-five thousand dollars.

**§61-8B-4. Sexual assault in the second degree.**

(a) A person is guilty of sexual assault in the second degree when:

- (1) Such person engages in sexual intercourse or sexual intrusion with another person without the person's consent, and the lack of consent results from forcible compulsion; or
- (2) Such person engages in sexual intercourse or sexual intrusion with another person who is physically helpless.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in the penitentiary not less than ten nor more than twenty-five years.

**§61-8B-5. Sexual assault in the third degree.**

(a) A person is guilty of sexual assault in the third degree when:

- (1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or
- (2) The person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen years old and who is at least four years younger than the defendant and is not married to the defendant.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in a state correctional facility not less than one year nor more than five years.

**§61-8B-7. Sexual abuse in the first degree.**

(a) A person is guilty of sexual abuse in the first degree when:

- (1) Such person subjects another person to sexual contact without their consent, and the lack of consent results from forcible compulsion; or
- (2) Such person subjects another person to sexual contact who is physically helpless; or
- (3) Such person, being fourteen years old or more, subjects another person to sexual contact who is younger than twelve years old.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in a state correctional facility not less than one year nor more than five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment for not less than five nor more than twenty-five years and fined not less than one thousand dollars nor more than five thousand dollars.

**§61-8B-8. Sexual abuse in the second degree.**

(a) A person is guilty of sexual abuse in the second degree when such person subjects another person to sexual contact who is mentally defective or mentally incapacitated.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than twelve months, or fined not more than five hundred dollars and confined in the county jail not more than twelve months.

**§61-8B-9. Sexual abuse in the third degree.**

(a) A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than sixteen years old.

(b) In any prosecution under this section it is a defense that:

- (1) The defendant was less than sixteen years old; or
- (2) The defendant was less than four years older than the victim.

(c) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than ninety days, or fined not more than five hundred dollars and confined in the county jail not more than ninety days.