



## INSTITUTIONAL POLICY: GA-28

Category:	General Administration
Subject:	Discrimination in the Workplace and Educational Environment Prohibited
Effective Date:	<del>November 10, 2021</del>
Updated:	<del>October 4, 2022</del>
Applicability	WVSOM Community – Employees, Students, Volunteers, Vendors, and Visitors

### GA 28-1. Authority

W. Va. Code § 18B-1-6

### GA 28-2. Purpose and Scope

- 2.1 This policy sets forth how discrimination, harassment, stalking, certain consensual relationships, and retaliation will be addressed by the West Virginia School of Osteopathic Medicine (“WVSOM”).
- 2.2 This policy applies to conduct that does not fall under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (“Title IX”). For conduct falling under Title IX, see Institutional Policy GA-14: Title IX, Sexual Harassment and Discrimination.
- 2.3 The prohibitions contained in this policy apply to other conduct for which jurisdiction under Title IX does not apply that occurs on WVSOM premises or in connection with a WVSOM education program or activity; off-campus conduct that unreasonably interferes with the educational or orderly operation of the WVSOM community, its mission, or its objectives as determined by a reasonable person; any off-campus conduct that, in light of all of the facts and circumstances, would endanger the health and safety of the WVSOM community. As a result, any individual found to have committed these acts against another is subject to appropriate disciplinary action.

### GA 28-3. Nondiscrimination Policy

- 3.1 ~~WVSOM is committed to fostering a diverse and inclusive culture by promoting diversity, inclusion, equality, intercultural and intercommunity outreach. Accordingly,~~ WVSOM does not discriminate on the basis of race, ethnicity, color, religion, sex (including pregnancy), gender, ~~gender identity, sexual orientation, sexual orientation,~~ national origin, age, marital status, veteran or military status, disability, genetic information, or other category that is protected under federal, state, or local anti-discrimination laws, in the administration of any of its education programs or activities, or with respect to admission or employment.

- 3.2 WVSOM prohibits discrimination, harassment, stalking, and retaliation as defined in this policy (collectively referred to as “prohibited conduct”) by or against any member of the WVSOM community.
- 3.3 WVSOM employees and students are responsible for maintaining a discrimination and harassment free work and educational environment. The Office of Human Resources and the Office of Student Affairs are responsible for the promotion and implementation of this policy as well as responding to any and all complaints of violations of this policy.

#### **GA 28-4. Definitions**

- 4.1 “Consensual Relationship” means a mutually acceptable romantic, dating, or sexual relationship between individuals.
- 4.2 “Discrimination” means conduct that is based upon an ~~individual’s any category that is protected under federal, state, or local anti-discrimination laws~~ ~~race, ethnicity, color, religion, sex (including pregnancy), gender, gender identity, sexual orientation, national origin, age, marital status, veteran or military status, disability, genetic information, or other category that is protected under federal, state, or local anti-discrimination laws~~ and excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term of condition of an individual’s employment, education, or participation in a WVSOM program or activity. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities. It does not, however, include programs or activities specifically exempt by law. *See, e.g., 20 U.S.C. § 1681(a) (2015).*
- 4.3 “Education Program or Activity” includes, for purposes of this policy, locations, events, or circumstances over which WVSOM exercises substantial control over both the respondent, as defined below, and the context in which the prohibited conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by WVSOM.
- 4.4 “Harassment” means conduct that creates a hostile environment, as defined below, and is based upon ~~an individual’s any category that is protected under federal, state, or local anti-discrimination laws~~ ~~race, ethnicity, color, religion, sex (including pregnancy), gender, gender identity, sexual orientation, national origin, age, marital status, veteran or military status, disability, genetic information, or other category that is protected under federal, state, or local anti-discrimination laws~~. Harassment may take various forms, including, but not limited to, name-calling, graphic or written statements (including the use of social media, text messages, e-mail, or other similar forms), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not necessarily have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- 4.5 “Hostile Environment” means a situation where an individual is subjected to any conduct based on the reasons set forth in Section 4.4 above and that conduct is sufficiently severe or pervasive, or so objectively offensive, so as to unreasonably interfere with an individual’s educational experience, work or academic performance or deny or limit the individual’s

ability to participate in or benefit from WVSOM's programs, services, opportunities, or activities.

4.5.1 A hostile environment can be created by anyone involved in a WVSOM education program or activity (e.g., employees, students, volunteers, vendors, and visitors). Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a serious incident, even if isolated, can be sufficient to create a hostile environment.

4.5.2 In determining whether harassment has created a hostile environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as sufficiently severe or pervasive, or objectively offensive. Also, the following factors will be considered:

- (i) The degree to which the conduct affected one or more student's education or individual's employment;
- (ii) The nature, scope, frequency, duration, and location of the incident or incidents;
- (iii) The identity, number, and relationships of persons involved; and
- (iv) The nature of higher education, and specifically medical education.

4.6 "Member of the WVSOM Community", for purposes of this policy, means an individual engaged in any WVSOM education activity or program, whether on or off campus, or any individual lawfully on WVSOM property, including, but not limited to, any person who is an employee, student, volunteer, vendor, or visitor.

4.7 "Respondent" means, for purposes of this policy, an individual who has been reported to be the perpetrator of conduct prohibited by Section 3 above. Any "individual" can be a respondent, whether such individual is an employee, student, or other person with or without any affiliation with WVSOM.

4.8 "Stalking" means:

4.8.1 engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (i) Fear for the person's safety or the safety of others; or
- (ii) Suffer substantial emotional distress.

4.8.2 For the purposes of this definition:

- (i) "Course of conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) "Reasonable person" means an individual with an ordinary degree of reason, prudence, care foresight, or intelligence under similar circumstances and with similar identities to the victim.

- (iii) “Substantial emotional distress” means significant mental suffering or anguish that may, but not necessarily, require medical or other professional treatment or counseling.

#### **GA 28-5. Consequences and Corrective Action**

- 5.1 Violators of this policy are subject to appropriate disciplinary action that may include but not be limited to sanctions such as warning, suspension, or termination of employment of an employee, suspension or expulsion of a student, or other action depending on the particular circumstances.
- 5.2 Violations of this policy will be addressed through applicable WVSOM policies and procedures, including but not limited to the Employee Handbook, Faculty Handbook, Student Handbook, Institutional Policy PE-01: Employees, Institutional Policy PE-02: Faculty, [Institutional Policy DO-01: Academic and Professional Standards](#), and Institutional Policy [STGP-01: Academic and Professional Standards](#).
- 5.3 Prohibited conduct that constitutes a criminal law violation will be referred to the appropriate authorities for prosecution.
- 5.4 Although certain conduct may not violate this policy, it may still be prohibited by WVSOM under a different policy or standard of behavior. Accordingly, in such cases, WVSOM reserves the ability to take any necessary action.

#### **GA 28-6. Consensual Relationships**

- 6.1 Although consensual relationships are within the purview of individual privacy, those engaging in such relationships that occur between persons in inherently unequal and closely related positions at WVSOM or employees within the same reporting line, including those between supervisors and supervisees, must remain aware that such relationships could lead to circumstances that result in harassment or sexual or domestic misconduct.
- 6.2 In any consensual relationship case falling under those described in Section 6.1 above, the individuals shall notify their immediate supervisor or other appropriate administrator. The supervisor or administrator shall be responsible for making arrangements to eliminate or mitigate any conflict of interest or other legitimate occupational interest related to employment, the consequences of which might prove detrimental to WVSOM or to either party in the relationship. In some instances, if no suitable way to eliminate or mitigate the conflict is reasonably feasible, one or both individuals may be separated from employment at WVSOM.
- 6.3 The types of consensual relationships described in Section 6.1 above may also result in a hostile or offensive environment affecting other employees or students. For example, others may perceive a person involved in the consensual relationship as receiving favorable treatment in employment or educational decisions and actions.

#### **GA 28-7. Prohibited Relationships with Students**

- 7.1 WVSOM staff, faculty, instructors, graduate teaching assistants, or other employees are prohibited from engaging in a consensual relationship with a student whom they may instruct, evaluate, supervise, or advise.
- 7.2 Where there is a pre-existing consensual relationship, the staff, faculty, instructor, graduate teaching assistant, or other employee shall forthwith notify his or her immediate supervisor or other appropriate administrator. The supervisor or other appropriate administrator shall be responsible for making arrangements to eliminate or to mitigate any conflict, the consequences of which might prove detrimental to WVSOM or to either party in the relationship.
- 7.3 Although WVSOM cannot prohibit consensual relationships between employees and students whom they do not instruct, evaluate, supervise, or advise, WVSOM strongly discourages such relationships. In addition, nothing contained in this policy would otherwise prohibit a complaint being made by either party against the other party.

## **GA 28-8. Reports of Misconduct & Complaints**

### **8.1 ~~Equal Opportunity Non-Discrimination and~~ ADA Coordinator**

The WVSOM President shall appoint an administrator to serve as WVSOM's ~~Equal Opportunity Non-Discrimination and~~ ADA Coordinator ("Coordinator") to handle all reports of prohibited conduct and complaints under this policy. The Coordinator will oversee all complaints filed under this policy generally and identify and address any patterns or systemic problems that arise during the review of such complaints. The Coordinator is further responsible for coordination of training, education, communications, and administration of complaint procedures for employees, students, and other members of the WVSOM community. The Coordinator may also appoint deputy coordinators to assist WVSOM in investigating complaints and furthering this policy.

### **8.2 Reporting**

8.2.1 Any member of the WVSOM community who believes someone has been subject to any of the prohibited conduct set forth in Section 3 above or has witnessed or is aware of such prohibited conduct is encouraged to report this information.

8.2.2 Reports of violations of this policy should be made to:

~~Equal Opportunity Non-Discrimination and~~ ADA Coordinator  
Office of Human Resources  
Main Building, A Building, Room A230  
400 Lee Street North  
Lewisburg, WV 24901  
Phone: (304) 647-6279 | Fax: (304) 647-6322  
Email: [hr@osteo.wvsom.edu](mailto:hr@osteo.wvsom.edu)

8.2.3 Reports of violations of this policy involving the Coordinator should be made to the WVSOM President.

### 8.3 Filing a Complaint

Any member of the WVSOM community who believes someone has been subject to any of the prohibited conduct set forth in Section 3 above or has witnessed or is aware of such prohibited conduct may file a complaint, in writing, to the Coordinator. Complaints involving the Coordinator should be filed, in writing, to the WVSOM President.

### 8.4 Responding to Complaints

8.4.1 The Coordinator, deputy coordinator(s), or their designees shall investigate and respond to all written complaints regarding alleged prohibited conduct in violation of this policy.

8.4.2 Complaints will be handled in such a manner to achieve a prompt and equitable resolution.

8.4.3 WVSOM will take appropriate steps to end the misconduct, prevent any further misconduct or retaliation, remedy the effects of misconduct to the extent possible, and eliminate any hostile environment that has been created.

8.4.4 Any investigation resulting from a written complaint will be separate from and in addition to any criminal investigation that may result.

### 8.5 Disclosure and Confidentiality

WVSOM respects the privacy of those reporting prohibited conduct and will endeavor to respect requests for confidentiality to the extent permissible by law. However, WVSOM has certain legal obligations to address this conduct and to prevent its recurrence and, as a result, cannot guarantee confidentiality to a complainant in all cases.

### 8.6 Dishonest or Frivolous Complaints

If a party is found to have intentionally or maliciously been dishonest, reckless, or frivolous in making allegations of a violation under this policy, that party shall be subject to appropriate disciplinary action, up to and including termination of employment or expulsion, as applicable.

## **GA 28-9. Retaliation Prohibited**

9.1 No WVSOM employee, student, volunteer, vendor, visitor, or any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under this policy. Intimidation, threats, coercion, or discrimination for the purpose of interfering with any right or privilege secured by this policy constitutes retaliation. Complaints alleging retaliation may be filed with the Coordinator in writing in the same manner as provided in Section 8 above.

9.2 The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under Section 9.1 above.

- 9.3 Charging an individual with a violation for making a materially false statement in bad faith in the course of an investigation under this policy does not constitute retaliation prohibited under Section 9.1 above; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

#### **~~GA 28-10. Committee on Diversity, Equity and Inclusion~~**

~~10.1 WVSOM's commitment to social and cultural diversity will be accomplished through the WVSOM Committee on Diversity, Equity and Inclusion ("Committee"). The Committee will develop plans, procedures, and initiatives to ensure WVSOM's ongoing commitment to social and cultural diversity is fulfilled. The Assistant Dean for Student Affairs will serve as the administrator responsible for overseeing the Committee.~~

~~10.2 The President will appoint a culturally diverse Committee annually. The Committee membership will include:~~

~~10.2.1 Associate Dean for Multicultural and Student Affairs, who shall serve as Chair~~

~~10.2.2 Equal Opportunity and ADA Coordinator~~

~~10.2.3 Representation from Faculty, Staff and Students~~

#### **~~GA 28-11.~~GA 28-10. Superseding Provisions**

This policy supersedes the West Virginia Higher Education Policy Commission ("HEPC") Series 40 (W. Va. Code R. § 133-40), any other rule of HEPC which relates to the subject matter contained within this policy, and any conflicting provisions within the WVSOM Employee Handbook, the WVSOM Faculty Handbook, or any other WVSOM policies or procedures. This policy also repeals and supersedes WVSOM Institutional Policy GA-28: Discrimination in the Workplace and Educational Environment Prohibited~~Committee on Diversity, Equity and Inclusion~~, (effective ~~October 2, 2017~~November 10, 2021, updated October 4, 2022).