

**MARSHALL UNIVERSITY
JOAN C. EDWARDS SCHOOL OF MEDICINE
GRADUATE MEDICAL EDUCATION**

POLICY ON DISCRIMINATION AND HARRASSMENT

Effective Date: November 18, 2018

GMEC Policy Subcommittee Review: November 2, 2022

Review Date: December 2024

SECTION 1. STATEMENT AND SCOPE OF POLICY

The Marshall University Joan C. Edwards School of Medicine Graduate Medical Education Community provides a graduate medical education training environment in which trainees to ensure that no discrimination against or harassment of individuals will occur. The graduate medical education community will comply with all federal and state laws, as well as executive orders to prohibit different treatment of an individual or group based upon protected characteristics to provide an educational, training and work environment free from discrimination or harassment.

This policy ensures compliance with the Accreditation Council for Graduate Medical Education (ACGME) Institutional Requirements that the Sponsoring Institution and its programs must provide a professional, equitable, respectful, and civil environment that is free from unprofessional behavior, including discrimination, sexual, and other forms of harassment, mistreatment, abuse, and/or coercion of residents/fellows, other learners, faculty members, and staff members.

To ensure compliance, this policy requires that each program develop and implement a written policy to create a respectful and civil environment and include a process for education of residents/fellows and faculty members regarding professional behavior. This policy also establishes a GME confidential process for reporting, investigating, monitoring, and addressing such concerns in a timely manner.

SECTION 2. DEFINITIONS

2.1. For the purposes of this policy, the following definitions have been established:

- 2.1.1. **Complainant:** An individual bringing forward a complaint of harassment, discrimination, or retaliation, whether on the individual's own behalf or on behalf of another person or group.
- 2.1.2. **Respondent:** An individual or entity against whom a complaint has been filed.

2.1.3. Discrimination: Discrimination is different treatment of an individual or group based upon race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, or domestic violence victim status (together defined as “protected characteristics”). Discrimination may result from failure to provide accommodations to individuals when required due to the individual's disability, religion, pregnancy status, maternity, breastfeeding, transgender status, or sexual violence victim status. Discrimination may also result from the failure to consider applicants with criminal convictions for participation in a UB-sponsored training program on an individualized basis, in accordance with GME's Pre-Employment Background Investigation Policy for Residents and Fellows.

2.1.4 Sex discrimination includes, but is not limited to sexual harassment, sexual assault, and sexual violence. Policies or practices that adversely impact a protected group may also constitute discrimination, even when applied in a consistent manner.

SECTION 3. SEXUAL HARRASMENT

3.1. Sexual Harassment shall include but not be limited to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- 3.1.1. Submission to or enduring such conduct when rejected is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other university activities, or;
- 3.1.2. Submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting an individual, or;
- 3.1.3. Such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or offensive university environment.

SECTION 4. HARRASMENT ON THE BASIS OF OTHER PROTECTED CHARACTERISTICS

4.1. Harassment is a form of discrimination consisting of oral, written, graphic or physical conduct relating to an individual's protected characteristics that has the effect of subjecting the individual to inferior terms, conditions or privileges of employment or interferes with or limits the ability of an individual to participate in or benefit from the university's programs or activities.

- 4.2. Such conduct must amount to more than petty slights or trivial inconveniences but need not be severe or pervasive. Engaging in speech or expression protected by the First Amendment is not a violation of the university's policies against discrimination and harassment

SECTION 5. EDUCATION

In accordance with Marshall University policies, all trainees, Marshall Health, and Marshall University employees must complete Title IX Online Training on an annual basis. The Marshall University Office of Equity Programs/Title IX is charged with monitoring completion.

SECTION 6. REPORTING

- 6.1. An individual who believes he or she has been subject to discrimination or harassment (complainant) has the following options:
 - 6.1.1. Consulting with the Program Director of his or her residency, the resident's Department Chair, the Office of Graduate Medical Education (GME) or the University Equity and Title IX Office.
 - 6.1.2. An individual may consult with these offices without proceeding with a formal report of discrimination, in order to seek advice or an informal resolution to their concerns;
 - 6.1.3. Filing a formal report of discrimination with Office of Equity and Title IX.

SECTION 7. REPORTING OBLIGATIONS

- 7.1. Residents and fellows who observe or become aware of sexual harassment, sexual violence, and other forms of discrimination or harassment should report this information to the Office of Equity AND Title IX Office.
- 7.2. Supervisors (including Program Directors, Chairs, faculty, and residents/fellows acting as supervisors as defined in the Marshall GMEC Levels of Supervision Policy) who observe or become aware of sexual harassment, sexual violence, and other forms of discrimination or harassment must report this information to the Office of Equity and Title IX Office.

SECTION 8. INVESTIGATION

- 8.1. The University Title IX Office will lead all investigations of complaints of harassment and discrimination. The GME Office will monitor the outcome and progress of the investigation. Information about complaints must be kept confidential to the maximum extent possible.

- 8.2. The University will strive to honor an individual's choice as to how to proceed with reported information to the extent possible, including a decision not to proceed with a formal complaint and investigation. In some circumstances, the University may be required to proceed with an investigation and remedial action even if the reporting party does not wish that action be taken. These situations will arise when informal means of resolution cannot mitigate further risk of discrimination, harassment, or harm to the reporting party or others.
- 8.3. When analyzing whether the University must take action on reports of sexual violence (including sexual assault, stalking, dating violence and domestic violence), the following factors will be considered:
 - 8.3.1. Whether the accused has a history of violent behavior or is a repeat offender,
 - 8.3.2. Whether the incident represents escalation, such as a situation that previously involved sustained stalking,
 - 8.3.3. The increased risk that the accused will commit additional acts of violence,
 - 8.3.4. Whether the accused used a weapon or force,
 - 8.3.5. Whether the victim is a minor,
 - 8.3.6. Whether other means to obtain evidence such as taped security footage may be utilized, and
 - 8.3.7. Whether the report reveals a pattern of perpetration at a given location or by a particular group.
- 8.4. Due to the nature of resident assignments, it is a common occurrence that the reporting party, the party against whom the complaint is made, and/or third-party witnesses are not employees of Marshall Health, Marshall University, or any of its participating training sites.
- 8.5. In the event that parties or witnesses to a complaint are employed by an affiliated hospital, the University Title IX Office and the GME Office shall coordinate with the Human Resources Department of the affiliated hospital to determine the assignment of responsibility for complaint investigation. A joint investigation may be conducted if appropriate.
- 8.6. A complaining party may also choose to pursue a complaint through the applicable policy and procedure of an affiliated hospital. In this event, the GME Office shall maintain contact with the individual(s) investigating the complaint to ensure that an appropriate investigation is conducted and that all parties are afforded all rights and protections as described in Section 8.

SECTION 9. RIGHTS AND PROTECTIONS

- 9.1. This policy establishes the following rights and protections to all parties to an investigation:

9.1.1. Confidentiality: It is expected that individuals handling complaints, as well as Program Directors, Department Chairs and other individuals who have knowledge about a complaint situation, will not disclose or discuss the subject of a complaint or information about an investigation, except under limited circumstances which may include:

- 9.1.1.a. Necessary interactions with the administration of Marshall Equity Office or affiliated hospitals;
- 9.1.1.b. Mandatory reporting in accordance with the medical staff bylaws of the affiliated hospital, the State of West Virginia Board of Medicine Policies, or other ethical requirements;
- 9.1.1.c. Otherwise as required by law or court order.

9.2. Individuals who have been designated to investigate complaints may also be required, in the course of the investigatory process, to notify third-party witnesses that they are being questioned in connection with a discrimination complaint. In this event, third-party witnesses will be provided information only as necessary.

SECTION 10. DUE PROCESS

Parties against whom claims are raised have the right to be notified of the specific charges against them, to answer to such charges, and to provide the names of witnesses or other evidence in support of their defense.

SECTION 11. FREEDOM FROM RETALIATION

It is unlawful and against University policy to take action in retaliation for any complaint filed or reported, or against any witness who testifies or provides evidence in support of or against a person who has been charged with harassment or discrimination. Claims of retaliation will be investigated as separate charges.

SECTION 12. RECORD MAINTENANCE

12.1. Records of claims or allegations which, after investigation, are not substantiated will be retained in a confidential file in the Office of Equity and Title IX. Records of substantiated harassment claims will be retained in the charged resident's personnel file.

12.2 The GME Office will keep these records strictly confidential and will not be released except for legitimate business reasons or as mandated by law. Records of an investigation may also be maintained, as necessary and appropriate, by the University's Office of Equity and Title IX.

SECTION 13. CORRECTIVE MEASURES

- 13.1. If, after investigation, it is found that a complainant's charge is substantiated, necessary corrective action will be taken to remedy any discrimination or harassment.
- 13.2 The residency program director will receive notice of the outcome of the investigation and, if appropriate, any recommendations to remedy or resolve the situation.
- 13.3. Corrective measures, including counseling, reassignment and/or change in duties, suspension (with or without compensation), or dismissal may be appropriate in accordance with the GME Disciplinary Action Policy or the GME Academic and Misconduct Policy.
- 13.4. Actions regarding individuals who are not Marshall residents or fellows will be taken in accordance with relevant Marshall University and affiliated training sites policies and procedures.

SECTION 14. APPEALS

If the respondent is subject to disciplinary action (e.g., suspension, non-promotion, non-renewal, dismissal), an appeal may be made through the Disciplinary Action Policy.

All other cases shall be held in accordance with the policies and procedures as set by the Marshall University Equity Programs/Title IX Office.