

10-26-2015

## SR-15-16-12 SCWC

Marshall University

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**COMMITTEE  
RECOMMENDATION**

**SR-15-16-12 SCWC**

**RATIONALE:**

President Obama signed a bill that strengthened the Violence Against Women Act (VAWA). Included in the bill was the Campus Sexual Violence Elimination Act (Campus SaVE) that amends the Clery Act to include reporting of the following effective in April 2015

- Dating violence
- Domestic violence
- Stalking

These additions have to be included in University's Student Code of Conduct.

**FACULTY SENATE CHAIR:**

APPROVED BY THE  
FACULTY SENATE:

Larry Sticker DATE: 10/26/2015

DISAPPROVED BY THE  
FACULTY SENATE:

DATE: \_\_\_\_\_

**UNIVERSITY PRESIDENT:**

APPROVED:

Ray E. White

DATE: 11/10/15

DISAPPROVED:

DATE: \_\_\_\_\_

**COMMENTS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **MARSHALL UNIVERSITY STUDENT HANDBOOK**

### **Purpose**

The Code of Student Rights and Responsibilities-also referred to as the Code of Conduct, reflects the University community's expectations and standards established for each of its members. The Code and Student Conduct system are founded on principles of fairness and due process, and a commitment to the educational development of students, and are designed to balance the interests of the University community as a whole with the protection of student's individual liberties.

Disciplinary action on campus deals administratively and developmentally with prohibited or unacceptable student behavior in the University community. Any complainant may refer any student or organization to the Office of Student Conduct. Official University action will be taken when a student's or student group's behavior violates community standards, interferes either with the University's educational purpose, or with its duty to protect and preserve individual health, welfare, and property. When the behavior is aggravated or presents a continuing danger to the University community, accused students are subject to separation from the institution.

Thus, the primary purpose of this Code is to serve the interests of both the Marshall Community and individual student(s) by: (1) Establishing a general policy on student life, including a statement on student rights and responsibilities, at Marshall University. (2) Identifying behavioral expectations for students and certain prohibited acts by students at Marshall University. (3) Prescribing penalties and sanctions for such prohibited conduct. (4) Defining generally the powers, authority and duties to be exercised under the control of the Board of Governors, by the president and the officials of Marshall University in applying these policies, rules and regulations. (5) Imposing sanctions and/or providing conflict resolution in the University setting to protect, deter, and educate.

### **Marshall University Creed**

Inspired by the example of John Marshall, we, the students, faculty, and staff of Marshall University, pledge to pursue the development of our intellects and the expansion of knowledge, and to devote ourselves to defending individual rights and exercising civic responsibility. In our own lives, we strive to exemplify the core values of John Marshall's character: independence, initiative, achievement, ethical integrity, and commitment to community through association and service. As Marshall University, we form a community that promotes educational goals and that allows individuals maximum opportunity to pursue those goals.

We are:

**An Educational Community** in which all members work together to promote and strengthen teaching and learning

**An Open Community** uncompromisingly protecting freedom of thought, belief and expression

- **A Civil Community** treating all individuals and groups with consideration, decency, respect, and expressing disagreements in rational ways

- **A Responsible Community** accepting obligations and following behavioral guidelines designed to support the common good
- **A Safe Community** respecting each other's rights, privacy and property
- **A Well Community** respecting and promoting physical and emotional health
- **An Ethical Community** reflecting honesty, integrity and fairness in both academic and extracurricular activities
- **A Pluralistic Community** celebrating and learning from our diversity
- **A Socially Conscious Community** acting as citizens of the world and seeking to contribute to the betterment of people and their environments
- **A Judicious Community** remaining alert to the threats posed by hatred, intolerance, other injustices and ever-prepared to correct them.

### **Authority for Student Discipline**

The Marshall University Student Conduct System and the Code of Student Rights and Responsibilities are imposed under the authority of the Board of Governors of the University of West Virginia System. Board of Governor's Policy Bulletin No. SA-1 sets forth policies, rules and regulations regarding student rights, responsibilities and conduct in West Virginia Universities and Colleges. Students should familiarize themselves with Policy Bulletin 1 which is printed in this *Student Handbook*.

By action of the Board of Governors, the President of the University is responsible for all matters of student discipline, including the preservation of due process procedures. This responsibility is normally delegated to the Dean of Student Affairs and the Office of Student Conduct for the purpose of implementing approved policies and regulations. However, the President is the ultimate authority in the regulation of a student's conduct, including direct intervention by the President when appropriate.

The Code of Student Rights and Responsibilities and the Student Conduct System are subject to change and amendment. Marshall University's student-based system gives students maximum opportunities to participate in the formulation of policies concerning student conduct and in the adjudication of cases arising under conduct policies. Maintenance of discipline and preservation of community standards are the concerns of all students, faculty, staff, and administration. All members of the University community will be provided with appropriate opportunities for representation and involvement in the development, revision, and maintenance of the Code of Student Rights and Responsibilities. All changes made shall take effect immediately following approval by the Student Conduct and Welfare Committee, the Faculty Senate, and the President of the University.

### **Student Rights and Responsibilities**

As a public institution of higher education, Marshall University seeks to advance knowledge, promote scholarship and create an environment conducive to the intellectual, personal growth and development of all its students. In keeping with these aims, the University recognizes the following rights of students:

- **NONDISCRIMINATION** - Students have the right to be free from discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, handicap, age, disability, military veteran status.
- **FREEDOM OF EXPRESSION** - Students have the right of expression to the extent permitted by law and University rules and regulations.
- **FREEDOM OF ASSEMBLY** - Students have the right to assemble, provided that the operation and functioning of the University is not disrupted, the movement of individuals is not restricted and the activity complies with applicable laws, and University rules and regulations.
- **DUE PROCESS** - Students have the right to be treated in an impartial and judicious manner by the University, as provided for by law and University rules and regulations.
- **PARTICIPATION** - Students have the right to establish and elect a democratic student government, to organize and join student organizations, and to be selected or appointed as members of appropriately designated University committees, in accordance with University rules and regulations.
- **REDRESS OF GRIEVANCES** - Students have the right of access to copies of University rules and regulations directly affecting them and to petition for the redress of grievances, within the University's grievance and appeal procedures. All of the above rights can be exercised only in accordance with University rules and regulations, federal, state and local laws.

Students charged with violating University regulations or standards are guaranteed to receive notification of charges, the outcome of hearings, the imposition of sanctions, and the routes of appeal. Marshall University pledges to uphold student's rights guaranteed under the United States Constitution, Federal and State statutes.

## **JURISDICTION**

Because the primary purpose of this Code is to support the protection and advancement of the University community's educational interests, unacceptable conduct will be reviewed under the Code of Student Rights and Responsibilities. These behaviors can occur on or about University premises, at University-sponsored events, or at functions in which University-recognized student organizations are engaged. On or off-campus conduct issues may fall under the University's jurisdiction and are subject to review under the Student Conduct System when the conduct of the student(s) is alleged to:

- Interfere with the Mission of the University
- Compromise the University's integrity in the granting of degrees or other certification
- Threaten the health or safety of members of the campus community
- Interfere with the orderly operation of the University.

Complaints about students' off-campus behavior will be considered on a case-by-case basis, following the guidelines stated above, to determine whether they merit review within the Student Conduct System.

Marshall University enjoys close and mutually supportive relationships with the communities in which its campuses are located and expects University students to abide by the laws of these communities. Marshall University acknowledges the right and duty of these communities to prosecute and hold accountable any person found in violation of their laws.

## **GROUP RESPONSIBILITY**

The Code of Student Rights and Responsibilities applies to the behavior of recognized student organizations both on and off campus. Marshall University has established the following group responsibility policy to define organizations' responsibility for the actions of their members. This policy pertains, but is not limited, to incidents involving hazing, discrimination, vandalism, theft, alcohol or substance abuse, dishonesty, disorderly conduct, violence, misuse of organization or University funds and any other violations of the Code of Student Rights and Responsibilities.

Upon registration or application for recognition, by the University, each student organization becomes responsible for acting in accordance with the provisions of the Code of Student Rights and Responsibilities, and all other applicable University and community policies and standards. Official University action will be taken when the behavior of the members of a student organization is in violation of community standards and interferes with the University's educational purpose, or with its duty to protect individual health, welfare, and property.

Student organizations may be held responsible for the acts of individual members. The degree to which an organization is responsible for the activity of its members is not necessarily dependent upon the number of members engaging in the activity, but depends upon whether the activity is related to the organization as described in the following four categories: .

- When a member of an organization is violating local, state, or federal law or present, by failing to discourage such activity, or by implicitly condoning the behavior
- When the acts grow out of or are directly related to the student organization's activities or an environment created by the organizations;
- When the acts are those of guests of an organization, or persons authorized/permitted to represent themselves as connected with the organization;
- When an organization places prospective members in a subordinated status prior to achieving full membership, or imposes any kind of probationary period prior to full membership, and hazing occurs.

In addition to the group being held liable, members and officers may be cited and held responsible as individuals for their roles in any violations of the Code.

## **STUDENT BASED SYSTEM:**

Marshall University has a student based system. This system is designed to give students a role in the formulation of basic policies concerning student conduct and in the adjudication of cases arising under those policies. Upon enrollment at the University, each student becomes responsible for acting in accordance with the provisions of the Code and all other applicable University and community standards. Official University action will be taken when a student's behavior violates these standards and interferes with the University's educational purpose, or with its duty to protect health, welfare, and property. A student or organization suspected of misconduct may be referred by any member of the University community to the Office of Student Conduct. If there is sufficient evidence of a violation, the student will be given the opportunity to accept responsibility and have the case adjudicated informally by the Director of Student Conduct. As an alternative, the student may request that the case be heard by either a hearing panel or an administrative hearing examiner. Regardless of the hearing option, in

most cases, a student advocate will represent the University's case, and the accused will have the right to student representation as well. Members of the Student Judiciary, including all student advocates, have studied and received extensive training regarding the procedures for University conduct hearings and the University Code.

#### **JUDICIAL MEDIATION:**

Mediation is a method of resolving disputes and conflicts as an alternative to the formal student conduct process. It is a voluntary process requiring the participation of a mediator who operates from an impartial base and whose primary role is to promote agreement. The purpose of mediation is not to judge guilt or innocence, but to help parties get to the root of their problems and to devise their own solutions. Compromise is at the heart of a successfully mediated dispute and the end result of a mediation session is that there are neither winners nor losers, but rather, it is hoped, generally satisfied individuals. If a satisfactory agreement cannot be reached through mediation, the complainant may refer the complaint to the Office of Student Conduct for student conduct action.

#### **EMERGENCY AUTHORITY:**

The president (or designee) may invoke the emergency authority to impose the sanction, among other things, of suspension to a group of students whose conduct is non-peaceful, disruptive, or constitutes a danger to health safety or property. In this situational hearing is held within seventy-two (72) hours of the decision to suspend a student and is subject to a forty-eight (48) hour extension at the option of the student. Emergency dismissals from University Housing and/or emergency suspensions, as well as revocations of computing privileges resulting from violations of the Code of Student Rights and Responsibilities will be handled in the same manner as emergency suspensions.

#### **COMPLAINTS:**

Any member of the University community may refer a student or student organization suspected of violating the Code of Student Rights and Responsibilities to the Office of Student Conduct. Complainants and other persons making student conduct referrals are expected to cooperate with the Office of Student Conduct to provide all information relevant to handling and deciding the case. Complaints must be filed within twenty-one (21) days of the alleged violation, or within twenty-one (21) days from the date the complainant became aware of the violation. The Director of Student Conduct in consultation with the Dean of Student Affairs and the President may waive this requirement in appropriate circumstances. Students and employees who witness violations of the Code of Conduct are expected to cooperate in campus judicial proceedings. Under West Virginia Board of Governors' policies, accused students have the right to know the identity of people who testify against them, and to ask questions about witnesses' testimony in campus conduct proceedings. By filing a formal, written complaint or Incident Report with the Office of Student Conduct, the complainant gives permission for his or her name to be so included in the disciplinary record of the accused student. The Office of Student Conduct strives to respect and uphold the safety and privacy concerns of complainants and witnesses. The educational conduct records of all students are subject to complex regulations for confidentiality. Information about witnesses, complainants, and the accused is generally restricted to those persons directly involved in deciding the outcome of the case or who have a legitimate educational need to know. Complainants, witnesses, and members of the public are not usually entitled to information about a student's campus conduct proceedings and educational record. However, victims of sexual assault

and/or violence are in most circumstances entitled to know the final outcome of conduct proceedings against their alleged attackers. Complaints filed with the Office of Student Conduct are not criminal complaints and campus conduct proceedings are not offered as substitutes for criminal prosecution. Persons who witness criminal acts by students should report those acts to the appropriate law enforcement agency.

#### **CONCURRENT CRIMINAL PROCEEDINGS:**

Because students are also members of larger communities such as city, state and nation, their conduct may also be subject to review within other jurisdictions. Criminal prosecution in the court system is designed to be punitive and to provide social consequences for convicted offenders. Therefore, disciplinary action under the Code of Student Rights and Responsibilities cannot substitute for judicial mechanisms of the larger community. Students charged under the University's Code of Student Rights and Responsibilities may also be held responsible for violating existing local, state, and federal law. Because the purposes and consequences of the two processes are so different, such concurrent reviews are mutually exclusive and do not create double jeopardy for charged students.

Disciplinary action at the University will in most cases proceed without regard to the status of criminal proceedings and will not be subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced. However, the University reserves the right to postpone campus disciplinary proceedings during the pendency of criminal proceedings when the conduct of such campus proceedings would interfere with the concurrent civil or criminal process. The decision to postpone on the grounds of interference will be made by the President or his/her designee upon the request of the accused student, the prosecutor or complainant.

#### **PENDING CHARGES:**

During the period in which student conduct charges are pending, a student under charges, unless suspended, or when his/her continued participation or presence would serve to disrupt the purpose of the University, shall continue to have the rights and privileges accorded other students. However, grades, records, transcripts, or diplomas may be withheld pending determination of the charges.

#### **INTERPRETATION OF REGULATIONS:**

The purpose of publishing disciplinary regulations is to give students general notice of proscribed behavior. This Code is not written with the specificity of a criminal statute.

#### **DEFINITIONS:**

**Activity:** All or any operations conducted, sponsored, promoted, operated or otherwise but not limited to foregoing classroom and course activities, recreational and cultural programs, committee or other business activity, registration, advising, teaching, research, or service.

**Administrative Hearing Examiner:** A faculty or staff member versed in the student conduct process who, as an alternative to a hearing panel, hears cases of alleged violations, renders decisions, and recommends sanctions.

**Administrative Review Board (ARB):** An interim review board to assist the Director of Student Conduct in adjudicating complicated cases where a decision cannot be rendered based upon the weight of the



evidence. The board will consist of two faculty/staff members and one student who is currently part of the Faculty/Staff Board Members and the Student Conduct/Advocate Society. This board will act as a decision making body to issue or not issue sanctions in accordance with the student code when a case is referred by the Director of Student Conduct. Typically, this will be for cases where the Director is unable to render a sanction or dismissal based upon the weight of the evidence. This Review Board is not a replacement for the current Student Conduct Program which is structured for the accused to have the ability to appeal a sanction issued by the Director. Due to the nature of the Student Code of Conduct, with regard to sexual misconduct and the evidence that may or may not exist, all cases of this nature will be referred to the Administrative Review Board to determine if a sanction is warranted. The Director will determine other cases to be referred to the board. As with decisions rendered by the Director all decisions rendered by the ARB may be appealed through the Student Conduct Process.

**Advocate:** A full-time student appointed who provides, on a voluntary basis, advice, assistance and representation to students charged with violating the Code of Student Rights and Responsibilities. They may also represent the University or assist in the representation of student complainants in presenting their cases at student conduct hearings. Advocates must meet established criteria and complete University-sponsored training.

**Advocate Society:** An organization of students dedicated to the promotion and preservation of student rights and responsibilities at Marshall University.

**Authorized:** As used in this Code, the term refers to any behavior or activity that is specifically permitted by policy or by the express action of a University official who has the right to grant such permission.

**Complainant:** Any person who brings a complaint to a University official, whether written or oral, about the conduct of a student. This term may be synonymous with Member of the University Community, as defined below.

**Day:** The term "day" shall refer to calendar days unless otherwise specified.

**Director of Student Conduct:** The staff member designated by Marshall University as responsible for administration of the Code of Student Rights and Responsibilities. The Director's duties include but are not limited to investigating complaints, charging students with violations, imposing sanctions, and representing the University in hearings. The Director supervises the selection and training of student justices and advocates.

**Due Process:** Appropriate protection of the rights of an individual while determining his/her liability for wrongdoing or the applicability of sanctions.

**Conduct Hearing Officer:** Any Marshall University faculty or staff member, experienced upper class or graduate student, well versed in the student conduct process, appointed to preside over a student conduct hearing. The Hearing Officer's function is to ensure that a hearing is conducted fairly and in compliance with stated policy. A Hearing Officer provides "technical" advice to the hearing panel, but does not vote or participate in decision-making.

**Hearing Panel:** The three- or five-member group of student, faculty or staff conducts officers, assigned to hear a specific case.

**Hazing:** No student shall individually, or by joining with one or more other persons, engage in any act of hazing involving another member of the institutional community. This includes prospective members, new members, initiates, or members of a student organization. Those activities which are personally demeaning or involve a risk of physical injury are prohibited. This includes both organized rites or initiation and informal activities. If a student(s) or organization violates this standard, Marshall University can invoke disciplinary action whether or not there is prosecution for such actions in local, state or federal courts

**Intent, Intentional, and intentionally:** These terms shall apply to conduct engaged in or committed by purposeful design or with reckless disregard for the consequences of the act.

**Student Conduct:** The division of the Department of Student Affairs responsible for the University-wide implementation of the Code of Student Rights and Responsibilities and the student conduct system.

**Judiciary:** The aggregate association of full-time students, faculty, and staff members from which are drawn members who serve on conduct hearing panels and serve as conduct hearing officers, conduct examiners, and advocates.

**Conduct Hearing Justices:** Full-time students faculty and staff members who, on a voluntary basis, hear student conduct cases and recommend sanctions for students found in violation of the Code of Student Rights and Responsibilities. Justices must meet established criteria and complete University-supervised training.

**Member of the University Community:** Any officer, administrator, faculty member, staff member, employee, or student of Marshall University, as well as any person authorized to participate in an institutional activity at the time applicable.

**President:** The chief executive officer of Marshall University, whether responsible directly to the Board of Governors or through some other officer to the Board of Governors, and shall include all those acting for or on behalf of such chief executive officer, at or by his or her direction, or at or by the direction of the Board of Governors.

**Reasonable Care:** That degree of care which would be exercised by the ordinarily prudent person under like or similar circumstances.

**Respondent:** In any given student conduct case, the respondent is the student about whom a complaint has been made or against whom charges have been filed. Also referred to as "accused" or "charged" student.

**Student:** any person, who has been admitted to an institution to pursue a course of study, research or service, who is currently engaged in an institutional-sponsored activity, or who has some right or privilege to be on campus or in the facilities of the institution, or who yet has some right or privilege to receive any benefit, service, or recognition or certification from the institution, under the rules, regulation, or policies of the Board of Governors or the Institution. The term "student" when used in this code includes all persons taking courses at or from Marshall University, both full-time and part-time, pursuing undergraduate, graduate, or professional studies and those who attend educational institutions other than Marshall University and who reside in Marshall University residence halls or utilize Marshall University facilities or services for the purpose of pursuing studies at those institutions.

For the purposes of the Code of Student Rights and Responsibilities, persons who have been admitted to Marshall University, but are not officially registered for a particular term, and/or who have a right to, or expectation of, a continuing or future student relationship with Marshall University are considered "students." A person shall be considered a student during any break or holiday period that occurs during a term in which that person is registered or between terms for which that person registers. A person shall be considered a student while suspended from the institution, or while the person is attending or participating in any activity preparatory to the beginning of a term, including, but not limited to, athletic training, orientation, placement testing, and residence hall check-in.

**Student Organization:** Any group of persons who have complied with formal requirements for provisional or full recognition as a student organization at Marshall University, including social fraternities and sororities, and organizations whose recognition has been suspended.

**Unauthorized:** An act or behavior not permitted by policy or by the express action of a University Official with the authority to grant such permission.

**University:** This term, where used in this document, refers to Marshall University, including all branch campuses and affiliated units and centers.

**University Official:** This term includes any person employed by Marshall University or the Board of Governors of the West Virginia state college and university system, performing assigned duties or professional responsibilities.

**University Premises:** All the land, buildings, facilities, and other property including intellectual and virtual property, owned, used, or controlled by Marshall University, including adjacent streets and sidewalks. This incorporates the Board of Governors' definitions for "property," "facility," and "campus."

**Racial Harassment:** Defined as the targeting of an individual based upon race or ethnicity with rhetoric or actions, which display acts of prejudice, racism, and/or failure to abide by the University Policies concerning Acts of Intolerance.

**Sexual Harassment:** Defined as unwelcome sexual advances, request for sexual favors, or any other verbal or physical conduct of a sexual nature that infringes upon the University Acts of Intolerance or Section 3 of Marshall University's Sexual Harassment Policy in the Student Handbook.

#### **STANDARDS PROSCRIBED CONDUCT AND SANCTIONS:**

The following standards and sanctions express the University's expectations for student conduct, and are essential to the University's educational mission. Participation by students in activities that violate the standards, including the proscribed behaviors listed under each standard, may result in referral to the Office of Student Conduct or to another University office responsible for examining and upholding standards of conduct, in accordance with the due process guarantees and procedures defined in this Code and in Board of Governors' Policy Bulletin SA-1. The maximum sanction applicable to each proscribed behavior is noted in parentheses following the description of the behavior: P = Probation; PS = Probationary Suspension; SP = Suspension; EX = Expulsion.

**Standard 1: Marshall University students and student groups observe the highest principles of honesty and integrity and support a campus environment conducive to trust and scholarship as defined in the Statement of Student Academic Rights and Responsibilities. Under Marshall University Board of**

**Governors Policy No. SA-1 (previously West Virginia Board of Trustees Policy Bulletin No. 60), disciplinary action for academic misconduct will, in most cases, be the responsibility of the academic unit in which the misconduct occurred. Violations of this standard include but are not limited to:**

1. A. Unauthorized taking or possession of academic records, University documents, academic documents, or the academic work of others. (EX)
1. B. Unauthorized alteration of academic records, University documents, academic documents, or the academic work of others. (EX)
1. C. Furnishing false information to the University by forgery, alteration, or misuse of documents with the intent to deceive. (EX)
1. D. Furnishing to a University office or official a written or oral statement known to be false. (EX)
1. E. Falsification, distortion, or misrepresentation of information before a University judicial officer, hearing panel, or grievance board. (EX)
1. F. Plagiarism: use or close imitation of the ideas, data, language, or thoughts of another without appropriate acknowledgment done with the intent to deceive or with disregard for proper scholarly practice. (EX)
- 1.G. Cheating: seeking to gain unfair advantage by using or attempting to use unauthorized assistance, material, or time in examinations or other academic work or preventing, or attempting to prevent, another from using authorized assistance, material, or time. (EX)
1. H. Complicity with others in violation of any of these standards. (EX)
1. I. Should a student be unsure whether their action(s) constitute academic misconduct, it is that student's responsibility to consult with the instructor or other University official to clarify any ambiguities.

**Standard 2: Marshall University students and student groups respect and promote the health safety, welfare of all persons, including themselves. Students are expected to exhibit responsible behavior regardless of time or place. Violations of these standards include but are not limited to:**

- 2.A. Physical or emotional/psychological abuse including restraint which threatens or endangers the health or safety of any person including himself or herself, whether such conduct occurs on or off University property. (EX)
2. B. Threats of physical violence against self or another person, including restraint. (EX)

**Sexual harassment or sexual misconduct includes sexual violence and crimes based upon sex including dating violence, domestic violence, sexual assault and stalking. Both males and females can be victims of sexual harassment, and the harasser and the victim can be of the same sex. The conduct can occur in any University program or activity and can take place in University facilities, or at other off-campus locations such as University-sponsored field trip or a training program at another location. The conduct can be verbal, nonverbal or physical**

2. C. Sexual misconduct, including any sexual acts committed without the effective consent of the victim and any other violations of University policies regarding sexual harassment. Engaging in

harassment or repeated contact that a reasonable person would understand to be unwanted, including, but not limited to, stalking. (EX)

2. D. Sexual Harassment is conduct that is: 1) sexual in nature; 2) unwelcome; and 3) denies or limits an individual's ability to participate in or benefit from the University's education program or work environment. (EX)

2. E. Dating Violence is violence by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Dating violence includes sexual or physical abuse or threat of such abuse. The existence of such a relationship is determined based on the reporting party's statement with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. (EX)

2. F. Domestic Violence is a felony or misdemeanor crime of violence by a current or former spouse or intimate partner of the victim or other individual similarly situated as a spouse. (EX)

2. G. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: 1) fear for his/her safety or the safety of others; or 2) suffer substantial emotional distress. (EX)

2. H. Brandishing of weapons. (EX)

2.I. Possession or storage, while on University-owned property or at University sponsored or supervised activities, of any weapons, dangerous devices or substances/chemicals such as, but not limited to, any fire alarm, pellet gun, 10 sling shot, fireworks, firecrackers or explosive devices, rifles, shotguns, ammunition, handguns, air guns, air rifles or air pistols, paint and BB guns, brass knuckles, gasoline, other combustible materials, realistic-looking toy firearms, knives, or swords, and knives with a blade longer than four inches, other than ones used as kitchen tools. (EX)

2. J Fighting. (SP)

2. K. Intentional disruption or obstruction of teaching, research, administration, disciplinary proceedings or other University activities. (Ex)

2. L. Intentionally initiating or causing to be initiated any false report, warning, or threat of impending fire, explosion, or any emergency. (EX)

2. M. Intentionally causing the evacuation of a University building for reasons known to be false. (EX)

2.N. Tampering with, misusing, abusing, or altering any safety equipment or devices, including but not limited to, fire extinguishers, elevators, emergency telephones, elevators, etc. (EX)

2. O. Violation of the Board of Governors or University policies concerning hazing. Hazing is defined in the Student Handbook. (EX)

2. P.1 Hazing-see definition

2. Q. Intimidation: committing, conspiring to commit, or causing to be committed any act which would compel or deter another's actions through the threatened or actual use of force, coercion, or blackmail. Unlawful retaliation against any person who files a complaint or testifies in a campus judicial case is considered intimidation. (EX)

- 2. R. Stalking: engaging in an intentional course of behavior directed at a specific person, which frightens, intimidates, or harasses. (EX)
- 2. S. Operating a motor vehicle while under the influence of alcohol or other drugs. (SP)
- 2. T. Negligent Bodily Harm: Failure to exercise reasonable care, thereby causing bodily harm. (SP)
- 2. U. Throwing objects from or causing objects to fall from University buildings. (SP)
- 2. V. Interference with Emergency Services and procedures. This includes obstructing or hindering the maintenance, provision, or function of such emergency services as fire department, police department, security, first aid, or rescue; and obstructing or hindering emergency or practice evacuation or similar procedures announced for any building or facility. (EX)
- 2. W. Violation of University policies regarding smoking and tobacco use on University property refer to the Smoking Policy in the Student Handbook]. (P)
- 2. X. Complicity with others in violation of this standard. (EX)

**Standard 3: Marshall University students and student groups respect and honor the human rights, and dignity of other persons, groups, and organizations. Violations of this standard include but are not limited to:**

- 3. A. Harassment/Bullying: Any action or behavior directed towards another person, including but not limited to, physical force or conduct, intimidation, stalking, hazing, or degradation that results in the intent or actuality to physically or mentally harm another person, which threatens or violates an individual's personal safety and/or well-being. This includes but is not limited to racial, sexual, cyber, or peer harassment. (EX)
- 3. A.1. Cyber bullying/Harassment, includes any language that can serve as a hindrance, interfere with another student's educational activity or potentially result in another student feeling tormented, threatened, harassed, humiliated, embarrassed that is generated from the internet, interactive and digital technology, mobile phones or personal electronic devices regardless of origin network. (EX)
- 3. B. Unlawful discrimination on the basis of race, sex, gender, color, national origin, religion, political affiliation, handicap, age, or sexual orientation. (EX)
- 3. C. Commitment of any other violation in this code for the purposes of harassing and/or discriminating on the basis of race, sex, gender, color, national origin, religion, political affiliation, handicap, age, or sexual orientation. (EX)
- 3. D. Complicity with others in violation of this standard. (EX)

**Standard 4: Marshall University students and student groups uphold the mission of the University by protecting and preserving a campus environment consonant with the University's educational and academic goals. Violations of this standard include, but are not limited to:**

- 4. A. Unauthorized possession or use of drugs or narcotics. This includes any drug for which the required prescription has not been validly obtained. (SP)

- 4.B. Unauthorized possession or use of alcoholic beverages or beer, as defined by alcoholic beverage policies established by the University and its governing bodies.(SP)
- 4.C. Behavior that evinces underage consumption of alcohol. (P)
- 4.D. Actual, attempted, or intended manufacture, cultivation, distribution and/or sale of drugs, narcotics or marijuana or other controlled substances. (EX)
- 4.E. Disruptive or disorderly behavior attributable to the use of alcohol or other controlled substance(s), including public intoxication. (SP)
- 4.F. Misbehavior at Sports Events, Concerts, or Social/Cultural Events. (SP) This includes, but is not limited to:
  - 4. F.1. Throwing of any article into a crowd or onto a playing field, court or stage.
  - 4. F.2. Bringing bottles, coolers or other prohibited items into the stadium, Henderson Center, track, theatre, or to any University sponsored events unless permitted by the appropriate University officials.
  - 4. F.3. Displaying at any sports or cultural event any unauthorized or obscene, offensive, or obstructive banner or sign.
  - 4. F.4. Inappropriate yelling at or harassment of performers, athletes, spectators or event staff.
  - 4. F.5. Violations of the Conference USA code of spectator conduct as presented in the Student Handbook.
- 4. G. Unauthorized animals on campus or other violation of the University's Animal Policy presented in the Student Handbook. (P)
- 4. H. Disruptive or disorderly conduct; disturbing the peace through noise, rowdiness, or pranks. (P)
- 4. I. Obstructing or interfering with the orderly conduct of University affairs including teaching, research, administrative and disciplinary procedures, University sponsored elections, or any University-sponsored activity. (EX)
- 4. J. Obstructing the free flow of vehicular or pedestrian traffic on University premises. (PS)
- 4. K. Failure to comply with the lawful direction of University or other law enforcement officers, or University officials in the proper performance of their duties. (SP)
- 4. L. Complicity with others in violation of this standard. (SP)

**Standard 5: Marshall University students and student groups respect the property of others, and the property, facilities, equipment, and resources of the University. Violations of this standard include, but are not limited to:**

- 5. A. Defacement, damage, destruction, or interference with any property, property right, or service belonging to other persons, groups, or organizations. (EX)

5. B. Theft or unauthorized possession of, or misuse of property belonging to other persons, groups, or organizations. This includes possessing, receiving, storing, using, moving, giving away, or selling of property known to have been wrongfully taken from the University or from any person or group. (EX)

5. C. Theft or unauthorized use of, misuse of, or interference with services provided by or for other persons, groups, or organizations. This includes but is not limited to telephone services, credit services, mail services, tutoring services, photocopying services, internet services, etc. (EX)

5. D. Attempted theft or unauthorized possession or use of, or misuse of, or interference with property or services provided by or for other persons, groups, or organizations. (PS)

5.E. Negligent Destruction or Impairment of Property or Services: Failure to exercise reasonable care, thereby causing damage, defacement, destruction, interference, theft, or loss of property belonging to the University or any person, group, or organization. (SP)

5. F. Negligent Risk of Destruction or Impairment of Property or Services: Failure to exercise reasonable care, thereby creating a risk of damage, defacement, destruction, interference, theft, or loss of property belonging to the University or any person, group or organization. (PS)

5.G. Misuse of University Keys: The unauthorized duplication, attempted duplication, use, loan, possession, giving away, or selling of any key to any building, room, property, or facility owned or controlled by the University. (SP)

5. H. Forcibly breaking into and/or entering, or attempting to break into, any building, room, property, locker, vehicle, or other facility. (EX)

5.I. Misuse of computing networks, services, systems, or equipment, unauthorized accessing of accounts, all other provisions of the University's and abuse policies for its information technology environment, as approved by the student conduct and welfare committee and set forth in the student hand book. This includes using a computer services to violate or aid in violation of any other provision of this code. (EX)

5. J. Misuse of the internet. Including viewing pornographic materials in a public location or on a university computer. (SP)

5. K. Unauthorized presence or improper use of the University building or facilities or trespassing at the university. (PS)

5. L. Using the Marshall University telephone system in a wrong way. Running up the phone bill with long distance calls, or using a telephone without permission. (PS)

**Standard 6: Marshall University students and student groups uphold the mission of the University by being responsible citizens. Marshall University students and student groups comply with the policies, procedures, and programs of the University, and obey all Federal, State, and local laws. Violations of this standard include but are not limited to:**

6. A. Gambling including but not limited to participation in chain letters, games of chance, betting pools, and unauthorized raffles or lotteries. (SP)



6. B. Scalping: selling tickets to University functions for any price higher than the price shown on the ticket or higher than the original price of the ticket. (SP)

6. C. Violation of the University's Fundraising, Sales and Solicitation Policy. (PS)

6. D. Violation of the policies for demonstrations and mass gatherings. (PS)

6. F. Violations of Housing and Residence Life policies and / or procedures as stated in university publications provided that these documents have been approved by the Student Conduct and Welfare Committee. (P)

**Standard 6F: addresses policies specific to the operation of campus residence halls and includes, but is not limited to, policies concerning quiet hours, visitation, unauthorized moves, guest registration, defacement, pranks, pets, smoking, appliances, and room key usage. (P)**

6.G. Violations of Student Center, Facilities Scheduling, and Food Services policies and procedures as approved by the Student Conduct and Welfare Committee and / or the Student Center Governing Board. (P)

6. H. Passing worthless checks or failing to promptly redeem a worthless check submitted to any unit within the University. (SP)

6. I. Violation of Federal, State, local, city, county, or municipal laws or ordinances. To be charged under this section the student will, in most cases, have been found guilty or declined to contest charges in a court of law. (EX)

6. J. Violation of Board of Governors Policies not covered in this Code. (EX)

6. K. Repeated or Multiple Violations, Violations of Probation or Mediation Agreements. This applies to students who have demonstrated a history of violating University regulations, and/or who commit any violation of the terms of any University-imposed sanction or mediation agreement, and/or who fail to comply with sanction(s) imposed under the student code. (EX)

6. L. Failure to comply with a directive or request issued by a duly constituted campus student conduct official or hearing body. (PS)

6. M. Failure to report to University officials a known or suspected violation of University policies. (SP)

6. N. Complicity with others in violation of this standard. (EX)

6. O. Failure to report a change of address to the Register. (P)

## **SANCTIONS**

The purpose of a sanction, in addition to protecting others, is primarily to educate an individual by increasing his/her awareness of the importance of responsibility to the University community for one's actions. This will ordinarily be the guiding force behind the imposition of sanctions by the University conduct system. In some instances, however, the community's need to properly function outweighs the University's ability to so educate an individual. In such a case, for the benefit of both the student and the community, suspension from the University may result. Normally, students facing suspension or expulsion from the institution will be entitled to a hearing prior to the imposition of the sanction.

However, a student may be temporarily suspended pending final action on the charges when the student's continued presence on campus would constitute a potential for serious harm to himself/herself or to the safety of other members of the institutional community. Such temporary suspension shall be followed with speedy disciplinary proceedings consistent with these policies, rules and regulations. Also, a student who is expelled from one institution in the Board of Governors' system may not be considered for admission to another institution in the system until one year has elapsed after the student has been expelled. In addition, all other stipulations as stated in the Board of Governors' Policy Bulletin No.SA-1 shall apply.

The following sanctions may be imposed for violation of this code:

**Expulsion (EX):**

This sanction includes, termination of all student status, including any remaining right and/or privilege to receive any benefits, recognition or certification. Conditions for re-admission may be established only through written appeal to the President no sooner than one complete calendar year from the date the expulsion was placed in effect. During the expulsion, the person is barred from coming onto or using University property and facilities. The action will appear on the student's official transcript until such time as an appeal is made to and granted by the President to terminate the expulsion.

**B. Suspension (SP):**

This action involves separation of the student from the University as specified by the Student Conduct Board of the Office of Student Conduct for a definite stated period of time up to one academic year. Condition on resumption of activities, if any, also may be imposed. Notification appears on the student's official transcript until the expiration of the sanction. A suspended student may apply for re-admission to the University through the Office of Student Conduct at the end of the suspension period specified by the conduct action. The Office of Student Conduct may deny readmission in those instances where the suspended student fails to demonstrate a positive change in behavior which indicates that the suspended student is prepared to again become a responsible member of the University community. Numerous resources may be used to assist the student in identifying and clarifying experiences, goals, educational and career choices, and other personal objectives.

Two additional forms of suspension exist:

**Probationary Suspension (PS):**

Suspension is withheld pending careful evaluation of a student's behavior during a probationary period not to exceed one year. If the student is involved in any further offense, or if otherwise warranted, this suspension of disciplinary action may be revoked by the Dean of Student Affairs or his/her designee and the full sanction of suspension enforced subject to appeal to the Conduct Board. While a student is on Probationary Suspension, any of the conditions outlined under probation may be imposed.

**Deferred Suspension (DS):**

This is suspension which becomes effective at a specified future date. It is normally used near the end of a semester to avoid the financial penalty of immediate suspension. During this period of deferred suspension, probationary status as described in Probationary Suspension above will exist.

## **Probation:**

This action involves a specified period of time, not to exceed one year, determined by the Conduct Board or the Student Conduct Office during which a student in violation of one or more University regulations is given an opportunity to prove that he or she can become a responsible and positive member of the University community. A student violating any University regulation or the terms of probation while on probation may be subject to further disciplinary action as specified under this Code. When a student is placed on probation, the Office of Student Conduct will notify appropriate University offices of that action.

Probation may include one or more of the following:

- **Loss of Participation:** The student may not represent the University in any extracurricular activities such as intercollegiate athletics, debate teams, University Theater, band, etc.; however, the student may participate in informal activities of a recreational nature sponsored by the University.
- **Self-Improvement:** A program of self-development will be planned in conjunction with a faculty or staff person assigned to assist in a counseling/guidance capacity. Numerous resources may be used to assist the student in identifying and clarifying experiences, goals, educational and career choices, and other personal objectives.
- **Surrender of Student Activity Privileges:** A student required under this section to relinquish Student Activity privileges paid for by the Student Activity Fee may not participate in, or attend, events for which the Activity Fee is required or provides a discount or privilege. Exceptions may be granted by the Student Conduct Office in those instances where attendance at such events is required by academic courses or programs.
- **Loss of Privilege of Participation in Advanced Registration:** The student will relinquish his/her advanced registration privileges for one year. During this time, the student will register at the end of advanced registration for currently enrolled students. Exceptions may be granted by the Office of Student Conduct in those instances where the student is in need of a required course in order to progress academically.

## **STUDENT CONDUCT APPEALS**

The party being charged and any complainant other than employees of Marshall University acting in their official capacities may appeal the decision.

1. Appeals from decisions of the Director of Student Conduct or the Administrative Review Board will be directed to the Conduct Hearing Panel.
2. Appeals from recommendations of the Conduct Hearing Board shall be directed to a) the Conduct Hearing Board or b) the President of Marshall University. Decisions of all appeals must be rendered within 10 days.
3. The Conduct Hearing Board shall consist of three voting members: the Dean of Student Affairs as Chair or an appointed Hearing Officer, a full time faculty member, and two University students. The Chair of the Faculty Senate will select the faculty member. In consultation with the Dean of Student Affairs, the Student Government President will appoint the student members. Both the faculty and student appointments will be selected on a case by case basis, assuring that the board representatives

are not affiliated with the accused student. At the discretion of the Chair, substitutes may be named when necessary.

4. The Conduct Hearing Board will address all appeals where the recommended sanction is formal warning, probation, probationary suspension, or other sanctions of less severity. In these cases the decision of the Conduct Appeal Board is final.

5. Appeals for cases wherein the sanction is Deferred Suspension, Suspension, or Expulsion shall be considered by the President or his/her designee, which may include the Conduct Hearing Board. Except in cases where the recommended sanction is expulsion, the decision of the President is final. In cases where the President has imposed a sanction of expulsion, an appeal may be filled with the Marshall University Board of Governors.

The request for appeal from a recommendation of the Director of Student Conduct, the Administrative Review Board, or the Conduct Hearing Board must be submitted in writing on Intent to Appeal Form to the Office of Student Conduct within forty-eight (48) hours (not including days the University is closed) from the conclusion of the Conduct Hearing or receipt of an official notification from all other decisions. The President or Dean of Student Affairs at his/her discretion may extend the deadline for filing an appeal upon the motion from either party.

The Conduct Hearing Board's findings regarding the charge(s) must be affirmed or remanded to the original hearing board. The Conduct Hearing Board's recommendation regarding sanctions may be affirmed, modified, or remanded to the original hearing board for further action as deemed appropriate. A written explanation of the grounds for appeal should be presented by the appellant within three (3) business days from the date of the appeal is filed. The scope of review shall be limited to the following:

1. Procedural errors.
2. Evidence not available at the time of the hearing.
3. Insufficient evidence to support the findings of the Conduct Board.
4. Misinterpretation of University policies and regulations by the Conduct Board.
5. A sanction or sanctions disproportionate to the offense.
6. Lack of jurisdiction.

All appeals to the Conduct Hearing Board or the President shall be considered upon the record of the original proceedings of the Conduct Hearing Board. The President or Dean of Student Affairs, at his/her discretion, may defer the imposition of sanction pending final disposition of the appeal. In the case of expulsion, the President must defer the imposition of sanction when a student files an appropriate appeal with the Board of Governors. A student desiring to appeal the sanction of expulsion must, within three (3) working days, indicate to the President, in writing, intent to appeal the decision to the Board of Governors. A written petition of appeal must be filed with the Chancellor of the Board of Governors within fifteen (15) days of the institutional President's decision. If the Board of Governors determines that the petition will not be heard, the decision of the President of the institution is affirmed and sanctions imposed therein shall be effective upon the President's receipt of the statement of denial.

### **NOTIFICATION TO PARENTS:**

The Dean of Student Affairs has the authority to notify parents or guardians when students under the age of 21 are found to have committed violations of University policies related to the possession, use, or distribution of alcohol or drugs. The notification of parents is indicated when:

- (1) The violation involved harm or threat of harm to persons or property
- (2) The violation involved an arrest in which the student was taken into custody
- (3) The violation resulted in or could result in the student being suspended from the University and/or dismissed from residence halls
- (4) The student has shown a pattern of violations - even if they are minor. Two or more violations associated with drug or alcohol use would be reasonable cause for notice
- (5) The student who committed the violation became physically ill and/or required medical intervention as a result of consumption of alcohol and/or drugs

Nothing in these guidelines shall prevent University officials from notifying parents or guardians of health or safety emergencies, regardless of the conduct status of the student. Nothing in these guidelines shall prevent the University from notifying parents or guardians when students under the age of twenty-one are involved in a group activity off campus, in which the students' organization is found to have violated University policy with respect to the use and/or consumption of alcohol or drugs. Whenever possible, students will be informed that parental notification is planned in advance of their parents' receiving the notice. The notification of parents is simply an act of notice and is not subject to Conduct Appeal.

### **RESIDENCE SERVICES POLICY AND CONTRACT VIOLATIONS:**

The Department of Housing and Residence Life (HRL) establishes, with the approval of the Student Conduct and Welfare committee, rules, policies and enforcement structures necessary to maintain the orderly functioning of campus residence halls.

By signing the Housing and Residence Life Contract, the student agrees to respect and adhere to all policies, regulations and procedures pertaining to University housing and food services as outlined in the contract. If the student is found to be in violation of any University policies or regulations as specified in the contract, the University reserves the right to change the student's assignment or to consider the contract terminated. When residency is terminated under these conditions, refunds will be made in accordance with the terms of the contract. All University students are expected to abide by the Housing and Residence Life rules and policies when visiting residence Halls. Any University student who violates HRL Policies may be subject to loss or restriction of residence hall privileges.

HRL policies and procedures (referred to in Standard 6.F. of the Code of Student Rights and Responsibilities) are described in The Residence Hall Guide. Violations result in HRL based sanctions. HRL incidents that involve suspected use or possession of drugs or alcohol, or any actions that could, under the Code, result in Suspension or Expulsion, must be referred to the Office of Student Conduct.

### **Residence Services Sanctions and Disciplinary Points:**

Each sanction carries a point value. An accumulation of 6 points in any academic year shall result in cancellation of the student's housing contract or, for non-residents, cancellation of visiting privileges, subject to appeal as defined below.

- Residence Services Written Warning — 1 point
- Residence Services Restrictions / Loss of Privileges – 2 points
- Disciplinary Room Change (may also include restrictions) – 2 points
- Residence Services Probation (may also include restrictions; room change) – 3 points
- Contract Cancellation/Cancellation of Non-Resident Privileges – 6 points

The Department of Housing and Residence Life may also assign points to students who are found to be in violation of the Code of Student Rights and Responsibilities as a result of acts committed in Residence halls, or as a result of acts that affect or endanger persons, property, or services within the residence halls. The Office of Student Conduct notifies the Department of Housing and Residence Life of the final outcome of all disciplinary proceedings related to residence halls. HRL may assign 1 point for each Formal Warning, 2 points for Probation, and 3 points for Probationary Suspension received as sanctions through the Office of Student Conduct.

Resident contract cancellation or non-resident privilege cancellation by the Department of Housing and Residence Life for disciplinary reasons shall be recorded in the student's file in the Office of Student Conduct as a probationary-level violation of Standard 6 of the Code of Student Rights and Responsibilities. The Residence Services points system does not affect the University's authority to dismiss or ban a student from campus housing as a condition of a disciplinary sanction issued under the Code of Student Rights and Responsibilities.

For information about disciplinary and appeals processes in Residence Halls, consult the Residence Hall Guide