

**WEST LIBERTY UNIVERSITY
BOARD OF GOVERNORS**

**December 10, 2014
4:00 p.m.
Shaw Hall Board Room**

AGENDA

1. Call to Order
2. Chairperson Comments
3. Swearing in New Board Member
4. Consent Agenda*
 - a. Minutes of the Full Board 10/15/14, 10/29/14
 - b. Minutes of the Executive Committee 11/25/14
 - c. Honorary Degree
5. Action Items*:
 - a. Audit Report
 - b. Campbell Hall Lawsuit Settlement
 - c. University Place II Agreement
6. Informational Items:
 - a. Policy 32 - Sexual Discrimination and Other Unlawful Discrimination (revision)
 - b. President's Report
 - c. Faculty Senate Update
7. Executive Session (if needed)
8. Action Items from Executive Session*
9. Adjournment

*Action Items

**West Liberty University
Board of Governors**

Minutes

October 15, 2014

Attendance:

Beverly Burke, Joe Carey, Sandra Chapman, George Couch, Les DeFelice, Patrick Kelly, Evan Newman, Frank Noble, Ann Thomas

Unable to Attend:

Richard Carter, Brian Joseph

Administration/Faculty/Staff:

Robin Capehart, Linda Cowan, Brian Crawford, John Davis, Mary Ann Edwards, John Gompers, John McCullough, Jack Wright

1. Call to Order:

Chair Couch called the meeting to order at 4:09 p.m.

2. Chairperson Comments:

Chair Couch congratulated everyone involved in the West Family Stadium event and renovations. WLU thanked Gary and Flip West, and their daughters, and he acknowledged brothers James and Jack as part of the recognition.

On Friday the Science Wall of Fame members recognized were Professor Emeritus Robert Schramm, Internet Pioneer Elizabeth "Jake" Feinler, and biologist Dr. Philip D. Stahl; we are pleased to have them recognized in Campbell Hall. The Alumni Hall of Fame members recognized were John Wm. Hoppers, West Virginia Senate President Jeff Kessler, and Mary Hinzman Whitman; they were honored Saturday morning. Jason Koegler and Intern Levi Smith, Institutional Advancement's team, did a wonderful job with the Benefactor's Gala held at the Capitol.

Chair Couch thanked Dr. Crawford for his service and leadership during President Capehart's sabbatical and is grateful for what he did for WLU; the President is back at the helm. He also noted that Fall Commencement will be held December 13th and would like to have a good showing of Board members in attendance.

3. Swearing in of New Board Member:

Chair Couch issued the Oath of Office to Leslie DeFelice, of Visiting Angels WV.

4. Consent Agenda Items*:

Chair Couch stated that the Consent Agenda consists of the minutes of the full Board of August 13, 2014, and the Executive Committee of October 1, 2014. A discussion followed with regard to changes to the Executive Committee minutes.

A motion that the West Liberty University Board of Governors approve the Consent Agenda, adopting the revised minutes of the Executive Committee of October 1, 2014, was then made by Pat Kelly and seconded by Ann Thomas; motion passed unanimously.

5. Action Items*:

a. WLU Institutional Compact Update

Dr. Crawford gave background on the Institutional Compact, noting that last fall the Board was asked to approve the required information for target numbers and rationales. This document is WLU's set of strategies and plans for meeting those targets. President Capehart stated that the Compact is our response to the HEPC's Master Plan. The HEPC establishes the matrix, such as headcount, degrees awarded, etc., and asks us to set targets and come up with plans to meet the targets. In many cases WLU is already doing this, but we need to identify this in a particular format.

A discussion followed with regard to approval of the Update to the Compact. The completed document will be made available to the Board by the close of business Friday, October 24, 2014, with a special meeting of the Board to be held the following week.

A motion that the West Liberty University Board of Governors table the approval of the 2014 Update to the Compact until a special meeting to be held October 29, 2014 was then made by Les DeFelice and seconded by Sandra Chapman; motion passed unanimously.

b. Master of Science in Criminology

Dr. Crawford presented the proposed new graduate degree program, a Master in Science in Criminology. No additional staffing would be required, with 15 to 20 students anticipated for the first class.

A motion that the West Liberty University Board of Governors approve the creation of a new graduate degree program, the Master of Science in Criminology, within the College of Liberal Arts, was then made by Patrick Kelly and seconded by Beverly Burke; motion passed unanimously.

c. Graphic Narrative Major

Dr. Crawford presented the new major, Graphic Narrative, housed in the College of Liberal Arts. This is a specific genre of literature that is of great interest, and we believe WLU has the first-ever major in the country. Currently there are two students in the program and we are hopeful we will attract many more in the coming year. No additional staffing would be required.

A motion that the West Liberty University Board of Governors approve the creation of a new major, Graphic Narrative, within the College of Liberal Arts, and the Department of Humanities, was then made by Les DeFelice and seconded by Frank Noble; motion passed unanimously.

d. Study Abroad Fee

Dr. Crawford stated that the study abroad fee comes as a requirement from a grant received by WLU from the HEPC early in the summer. WLU agreed when the grant was accepted to establish this fee to help support future trips for the program. The fee will be charged only to those students participating in the Study Abroad Program.

A motion that the West Liberty University Board of Governors approve the Study Abroad Fee was then made by Patrick Kelly and seconded by Sandra Chapman; motion passed unanimously.

e. Highlands Center Lease Modification

Mr. Wright noted that the Board approved the lease modification with the Ohio County Development Authority, involving the conference room at the Highlands Center, at the April 2014 meeting. Unfortunately, the business venture has not gone as quickly as hoped and the lease execution date of September 30, 2014 has passed. It is being recommended that this timeline be extended to December 31, 2014.

A motion that the West Liberty University Board of Governors extend this timeline to December 31, 2014 was then made by Les DeFelice and seconded by Patrick Kelly; motion passed unanimously.

6. Informational Items:

a. President's Report

Pursuant to Board of Governors Policy 2, Section 6, President Capehart gave a report on activities undertaken during his sabbatical from July 1, 2014 through September 30, 2014. Attached to the minutes is the Report on Sabbatical covering research activities, professional, and personal renewal.

A discussion followed with regard to long-term items to be addressed going into next year and the Smart Campus Program, along with the necessary process for developing and implementing master's programs.

b. Faculty Senate Update

There will be no Faculty Senate update this evening. An update will be given at the December meeting.

7. Executive Session (if needed)

None.

8. Action Items from Executive Session*

None.

9. Adjournment:

Chair Couch asked if any further business was required. There being none the meeting adjourned at 4:59 p.m.

A motion that the West Liberty University Board of Governors adjourn the October 15, 2014 meeting was then made by Sandra Chapman and seconded by Ann Thomas; motion passed unanimously.

George Couch

Chair

Sandra Chapman

Secretary



WEST LIBERTY UNIVERSITY

Office of the President
208 University Drive
College Union Box #142
West Liberty, WV 26074

Robin C. Capehart
Office: (304) 336-8000
Fax: (304) 336-8285
wlpres@westliberty.edu

TO: George Couch, Chair
Board of Governors
West Liberty University

FROM: Robin C. Capehart
President
West Liberty University

RE: Report on Sabbatical

DATE: October 15, 2014

Pursuant Board of Governors Policy 2, Section 6, I would submit this report on the activities undertaken during my sabbatical taken from July 1, 2014 through September 30, 2014.

The purpose of a sabbatical is to engage in professional renewal activities that will enable a president to maintain enthusiasm and effectiveness in his or her role as the chief executive officer of an institution. I would add that personal renewal, likewise, is an important part of a president maintaining his ability to execute his duties with passion and efficiency.

In this regard, I would offer the following:

1. Research activities

During the period of my sabbatical, I engaged in two research projects.

Higher Education Financing Policy

The initial thrust of my research was to focus solely on developing an outcomes-based funding model for higher education in the State of West Virginia. However, my research revealed W.Va. Code §18B-1B-4(a)(2) that requires the Higher Education Policy Commission to “develop, oversee and advance the implementation . . . of a financing policy for higher education in West Virginia.” The statute requires that the policy meet three criteria:

- (A) Provide for an adequate level of educational and general funding for institutions pursuant to section five, article one-a of this chapter;
- (B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and eliminating deferred maintenance; and
- (C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one and article one-d of this chapter.

In 2011, the Higher Education Policy Commission created a funding model in response to this statutory directive. The Commission included an outcomes-based funding that would implement Section (C). Despite two and one-half years of work by the Commission and its forty-member staff, the Legislature ignored the proposal.

Upon review of this work, I decided to expand my research and create a funding model that addressed all three statutory requirements as they relate to the state's four year institutions. The operational funding model consists of three major components:

- a. The core-funding component will provide support for the basic operational needs for the four-year colleges through a formula that includes mission-related funding targets, a high cost academic program factor, an enrollment factor and further consideration for special programs.
- b. The quality/campus improvement and priorities component will allocate resources to the Higher Education Policy Commission a discretionary amount of funding from which they may make strategic investments in programs designated by statute as public priorities.
- c. The performance incentives component will allocate resources to the Higher Education Policy Commission to reward institutions for high performance and to provide incentives for institutional improvement. These incentives will be linked to the each campuses institutional compact.

One difference in this proposed model and other models is that the proposal does not create an institutional entitlement that invariably requires increased funding over and above the amount allocated by the Legislature. Instead, this model will establish "institutional shares" of existing amounts that are allocated.

Currently, the proposal is being revised to include more up-to-date data from SREB member institutions whose funding under their respective state formula is used as a factor in the determination of the core-funding component.

It is my intention to finish the project for presentation to the Higher Education Policy Commission in December.

Charles Town Race Track Economic Impact Study

Penn National Gaming, Inc., owners of the Charles Town Race Track, has requested a study evaluating the fiscal and economic impact on the State of West Virginia and Jefferson County should the facility be closed.

Dr. Serkan Catma and I have been working on the study. Dr. Catma has taken the lead on the economic part while my responsibility has been to evaluate the fiscal impact in terms of tax revenue.

2. Professional renewal

The past three months have provided the opportunity to engage in other professional renewal activities. These activities have included reading such books as *American Higher Education, Leadership and Policy* by Penny Pasque and *The Innovative University* by Henry J. Eyring. Pasque's book deals with the ability of the American system of higher education to address certain critical issues of public good. Eyring's book addresses the ability of traditional bricks and mortar institutions to confront the rising impact of online and other educational delivery models.

Other activities included reviewing professional journals and magazines; evaluating current personnel; and reviewing institutional information for the purposes of addressing budget and fiscal issues.

3. Personal renewal

Over the past seven years, the time consumption required to execute my duties and responsibilities outside the office has created a personal health situation of which I was uncomfortable. Since 2008, I've experienced a weight increase as well as a higher cholesterol count and other issues. Also, my energy level had decreased significantly. My family physician told me that I needed to undertake a serious program of diet and exercise.

In response, I used my sabbatical time to undertake such a program. As a result, I have lost 42 pounds. My next physical is in November and I am hoping for a much-improved report.

In summary, my sabbatical has been extremely valuable in renewing my professional interest and personal well-being.

**West Liberty University
Board of Governors**

Minutes

October 29, 2014

Attendance:

Beverly Burke, Joe Carey, Richard Carter, Sandra Chapman, George Couch, Les DeFelice, Brian Joseph, Patrick Kelly, Evan Newman, Ann Thomas

Unable to Attend:

Frank Noble

Administration/Faculty/Staff:

Brian Crawford, John Gompers

2. Call to Order:

Chair Couch called the meeting to order at 8:00 a.m.

2. Approval of Institutional Compact:

The Board of Governors is asked to approve, per the West Virginia Higher Education Policy Commission, the 2014-18 strategies and comprehensive plans for annual Compact reporting. The Compact is due to the Commission on November 1, 2014.

3. Action*:

Chair Couch asked for a motion to accept the 2014 update to the Institutional Compact.

A motion that the West Liberty University Board of Governors approve the 2014 update to the Institutional Compact was then made by Patrick Kelly and seconded by Ann Thomas; motion passed unanimously.

Sandra Chapman asked that an executive summary be included in the future with important points of the document noted. Dr. Crawford made note of this and explained how WLU plans to reach their goals. An annual report is made to the HEPC; this is a five-year plan with set timelines to meet goals. There are no penalties if we don't meet the goals, but we need to make every effort. This becomes part of the State-Wide Master Plan.

4. Adjournment:

Chair Couch asked if any further business was required. There being none the meeting adjourned at 8:10 a.m.

A motion that the West Liberty University Board of Governors adjourn the October 29, 2014 meeting was then made by Beverly Burke and seconded by Ann Thomas; motion passed unanimously.

George Couch

Chair

Sandra Chapman

Secretary

**West Liberty University
Board of Governors**

**Executive Committee
Minutes
November 25, 2014**

Executive Committee Members: Richard Carter, George Couch, Patrick Kelly

WLU Administrators: Robin Capehart, Jim Clark, John Davis, Bridgette Dawson, John Gompers, Stephanie Hooper, Scott Johnson, John McCullough, Jim Stultz, Jack Wright

1. Chair George Couch called the meeting to order at 8:12 a.m.
2. BOG Business – The next Board meeting will be held in the Shaw Hall Board room at 4:00 p.m. on Wednesday, December 10, 2014.
3. Laptop Program Revision – Jim Clark, Chief Information Officer, reviewed the proposed changes to the Laptop Program. Because so many students now bring their own electronic devices to campus, the program will be revised in terms of the students will now be charged for the devices. This charge can be covered by financial aid. The charge will “zero out” the expense of the Laptop Program.
4. Campbell Hall Lawsuit Settlement – Jack Wright, Executive Vice President/CFO, explained the details of the proposed agreement, which is considered to be reasonable in terms of all aspects of the case and all costs involved and to be in the best economic interests of the University. The proposed settlement was approved by the Executive Committee.
5. Revisions to BOG Policy 32–Sexual Discrimination and Other Unlawful Discrimination – John Davis, General Counsel, Jim Stultz, Vice President of Human Resources, and Bridgette Dawson, Title IX Coordinator, reviewed details of the procedural revisions and editing recommendations. Also discussed was the subsequent training that would be needed, along with a change in the title of the policy in order to be more inclusive. Our revised policy will be similar to that of WVU. The revised policy was adopted by the Executive Committee and does not have to be approved by the full Board.
6. Campus Housing/University Place II – Jack Wright, Executive Vice President/CFO, discussed possible action regarding the newly constructed University Place II. The full Board will review any possible action to be taken.
7. Credit-Hour Charges – Jack Wright explained possible charges to students for credit hours in excess of the standard credit-hour load. Such charges would be in lieu of a significant tuition increase and would apply only to students enrolling in the additional credits.
8. Review of Action Items – Chair George Couch reviewed the action items on the BOG meeting agenda.
9. New Action Item – Jack Wright identified a new action item involving the University’s financial audit.
10. Approval of Agenda – The Executive Committee approved the formal agenda for the December 10 meeting of the BOG.
11. President’s Report – The President discussed seven short-term action plans/strategies to address operating efficiencies and costs/revenues, and he will update the Board on those and other items on December 10.
12. The meeting adjourned at 10:05 a.m.

George Couch

Chair

Sandra Chapman

Secretary

West Liberty University Board of Governors
December 10, 2014

HONORARY DEGREE

It is the recommendation of the Honorary Degrees and Recognition Committee and the President of the University, for the conferral of an honorary Doctor of Humane Letters (DHL) degree from West Liberty University at the December 2014 commencement to Richard A. Lucas.

**SETTLEMENT OF CLAIMS IN RE:
CAMPBELL HALL CONSTRUCTION PROJECT**

Action Item

Proposed Resolution: *Resolved*, that the West Liberty University Board of Governors hereby approve the Settlement of all claims between Gito, Inc. dba Nello Construction Co., and West Liberty University relating to the Campbell Hall Construction Project in accordance with the terms and provisions set forth in that certain "Settlement Term Sheet," dated the 18th day of November, 2014, executed by both parties, as set forth in Exhibit "A" attached here.

The President of West Liberty University and/or the Chief Financial Officer, John E. Wright, III is hereby authorized to initiate all actions and execute all documents and instruments to carry into effect and finalize the terms of said settlement.

SETTLEMENT TERM SHEET

This Settlement Term Sheet is intended to be an enforceable agreement by and between Gito, Inc. d/b/a Nello Construction Co. ("Nello") and West Liberty University ("WLU") subject to the contingencies set forth in paragraph 9 below. It is agreed by and between the parties hereto as follows:

1. Nello will submit an Application for Payment upon execution of this Agreement in the amount of \$511,599.38 to WLU along with a Final Conditional Waiver and Release of Liens and Claims (in the form attached hereto as Exhibit 1); and WLU shall make payment to Nello in the amount of \$476,599.38 (the Contract balance of \$511,599.38 less \$35,000.00). Upon receipt of Nello's Application for Payment, WLU will proceed to file with the State for prompt payment.
2. The punch list is attached hereto as Exhibit 2. The "top coat on the walking path" and all electrical items listed on Exhibit 2 have been completed and accepted. Nello will complete all other punch list items, except the "window replacement," within 60 days of the execution of this Agreement.
3. WLU and Nello will meet with Nello's window replacement sub-contractor within two weeks after execution of the Agreement to determine when, how, and time frame for window replacement pursuant to the punch list. Nello agrees to be responsible for appropriate temporary protection and relocation of needed class, laboratory, and office equipment as well as for damage to real or personal property inside and outside the building caused by the window replacement.
4. WLU will release the remaining \$35,000 upon completion of the window replacement. Upon receipt of Nello's invoice/s WLU will proceed to file with the State for prompt payment.
5. WLU agrees to pay Nello, in addition to the \$511, 599.38 in paragraph no. 1 above, the change orders on attached Exhibit 3 totaling \$25,216.30 (#92, #93, #94, #95, #96, #97, #98 and Corr. #0713 and Corr. #01005).
6. WLU agrees to pay Nello, in addition to the \$511,599.38 in paragraph no. 1 above, Change Order No. 99 dated 09/29/2014 for \$18,513.63. WLU agrees to pay Nello, in addition to the \$511,599.38 amount in paragraph no. 1 above, \$300,000 in full and final satisfaction of all claims, including Claim No. CC-13-0597 filed by Nello with the Court of Claims of the State of West Virginia, related to the project.

[20062.09/768431:]

EXHIBIT "A"

7. Upon execution of this Agreement and in order to expedite final payment, WLU and Nello agree to combine the above three items into one final change order in the amount of \$343,729.93 (\$25,216.30 + \$18,513.63 + \$300,000.00). Both parties agree to expedite preparation of change order, which upon completion, will be promptly filed by WLU with the State. Upon confirmation of the change order from the State and receipt of an Application for Payment from Nello in the amount of \$343,729.93 (total of amounts from paragraph nos. 6, 7 and 8 above), WLU will proceed to file with the State for prompt payment.

8. The agreement and terms set forth in this Settlement Term Sheet are contingent on approval by WLU's Board of Directors. WLU will conduct a special Board meeting to seek Board approval of this agreement within 30 calendar days of the parties' execution of this Settlement Term Sheet, and will provide Nello with written response as to the Board's decision within 3 calendar days of said meeting.

9. The parties shall enter into a mutual general release and settlement agreement in connection with the Campbell Hall Health Sciences Building Project, and dismissal of all cases and claims related to the Project, including but not limited to West Virginia Court of Claims No. CC-13-0597. Pursuant to such release, WLU shall also release Nello's surety. Nello's release shall exclude latent defects, warranty obligations and 3rd party claims for personal injury or property damage.

Dated this 18 day of November, 2014.

Gito, Inc., d/b/a Nello Construction Company
By [Signature] *per*

West Liberty University
By [Signature] *CFO*

FINAL CONDITIONAL WAIVER AND RELEASE OF LIENS AND CLAIMS

The undersigned is President (title) of Nello Construction Co. ("Contractor") which has a contract with West Liberty University ("Owner") for work in connection with the Campbell Hall Health Sciences Building ("Project"). As of the date of execution of this Final Conditional Waiver and Release, Contractor warrants and represents the following:

Total Amount of Final Payment Due: \$855,329.31 (consisting of \$511,599.38 for outstanding contract balance, \$300,000.00 for settlement of claims, \$18,513.63 for Change Order No. 99 and \$25,216.30 for outstanding change orders)

Total Amount to be Retained for Punch List: \$ 35,000.00

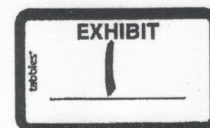
With the sole exception of the Total Amount to be Retained for Punch List, which amount shall be paid by Owner to Contractor upon Contractor's completion of Punch List work items in accordance with the terms of the Settlement Term Sheet executed by Owner and Contractor, a copy of which is attached hereto as Exhibit 1.

Contingent upon receipt of the Total Amount of Final Payment Due of \$855,329.31, Contractor does hereby fully and finally release Owner, Project and the premises upon which the Project is located and any and all improvements thereon ("Property") from any and all claims, liens and/or rights to lien of any kind or nature whatsoever. Contractor further accepts and acknowledges the receipt of the aforesaid sums in full accord and satisfaction for the Work performed or supplied to the Project.

Contractor further represents and warrants that: the individual executing this Final Waiver is duly authorized and empowered to sign and execute this document on Contractor's behalf; that Contractor has properly performed all of the Work pursuant to the plans and specifications and/or Contractor's agreement with Owner; and that Contractor has paid for any and all labor, materials, equipment, services or other items that Contractor used or supplied to the above Project.

Contractor further agrees to indemnify, defend and hold harmless Owner from and against suits, claims, damages, losses, costs, settlements, arbitration awards and expenses, (including, but not limited to, attorneys' fees) incurred or arising from any claims, including but not limited to mechanics', materialmen's, construction or other similar types of lien asserted against Owner, the Project, the Property or any existing improvements on the Property, or any part thereof, arising out of the Project, should such claim, lien or right to a lien be asserted by a subcontractor, laborer, materialman, sub-subcontractor or supplier of Contractor.

(20062.09/765798:)



Signed and delivered this 4th day of NOVEMBER, 2014.

Signed: [Signature]

Print: GEORGE D LEASURE

Title: PRES

ACKNOWLEDGMENT

STATE OF Pennsylvania

COUNTY OF Washington

Before me, the undersigned Notary Public in and for the said County and State, personally appeared George D Leasure and acknowledged execution of the foregoing affidavit as his/her voluntary act and deed and further stated that the facts recited are true of his/her personal knowledge.

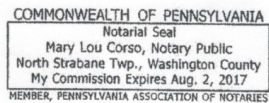
Given under my hand and seal of office this 4th day of Nov, 2014.

[Signature]

Notary Public

Printed Name: MARY LOU CORSO

My Commission Expires:



“UNIVERSITY PLACE II” APARTMENT BUILDING

Action Item

R & D Holdings, LLC has constructed an apartment building (University Place II) at 551 Van Meter Way, West Liberty and has offered the University a one-year lease that would commence July 1, 2015. Said lease contains a one-year renewal option.

Proposed Resolution: *Resolved*, that the West Liberty University Board of Governors approves authorization for the President of West Liberty University, in accordance with the laws of the State of West Virginia and the rules and regulations of the Higher Education Policy Commission, to enter into a lease of the apartment building located at 551 Van Meter Way (nee Chatham Street), West Liberty, West Virginia, effective July 1, 2015 and not to exceed two years.

**CAMPUS HOUSING
UNIVERSITY I & II
FY16**

I. University 1 – 44 Beds	
A. Room Revenue (\$3,450/Sem. x 2 x 42 beds)	\$289,800.00
B. Rent (\$15,314.01/Mo. x 12 Mo.)	-183,768.12
C. Expenses	<u>- 35,000.00</u>
D. Net Room Revenue	\$ 71,031.88
E. Board Revenue (\$650/Sem. X 2 x 42)	+ 54,600.00
F. R.A. Board (\$1,915/Sem. x 2 x 2)	<u>- 7,660.00</u>
G. Net Room & Board	\$117,971.88
II. University II – 43 Beds	
A. Room Revenue (\$3,750/Sem. x 2 x 41 beds)	\$307,500.00
B. Rent (\$17,116.15/Mo. x 12 Mo.)	-205,393.80
C. Expenses	<u>- 35,000.00</u>
D. Net Room Revenue	\$ 67,106.20
E. Board Revenue (\$650/Sem. x 2 x 41)	+ 53,300.00
F. R.A. Board (\$1,915/Sem. x 2 x 2)	<u>- 7,660.00</u>
G. Net Room & Board	\$112,746.20

DORMITORY PLANNING FOR FY16

Plan/Year	Total Beds	Beds in Use			Total	Gross Revenue	Rent			Net Revenue	Net Revenue Diff FY15
		WLU	University I	University II			University I	University II	Total		
FY15	1465	1121	44	-	1165	\$9,554,578	\$ 215,000	-	\$ 215,000	\$9,339,578	
Rent UI & UII											
FY16 Best	1508	1079	44	43	1166	9,568,923	220,000	240,000	460,000	9,108,923	\$ - 230,655
FY16 Ave	1508	1057.5	44	43	1144.5	9,392,247	220,000	240,000	460,000	8,932,247	- 407,331
FY16 Worst	1508	1036	44	43	1123	9,215,570	220,000	240,000	460,000	8,755,570	- 584,008
Rent UI Only											
FY16 Best	1465	1079	44	-	1123	9,209,443	220,000	-	220,000	8,989,443	- 350,135
FY16 Ave	1465	1057.5	44	-	1101.5	9,032,767	220,000	-	220,000	8,812,767	- 526,811
FY16 Worst	1465	1036	44	-	1080	8,863,310	220,000	-	220,000	8,643,310	- 696,268
No Rental											
FY16 Best	1411	1123	-	-	1123	9,228,253	-	-	-	9,228,253	- 111,000
FY16 Ave	1411	1079.5	-	-	1079.5	8,870,791	-	-	-	8,870,491	- 469,087
FY16 Worst	1411	1036	-	-	1036	8,513,330	-	-	-	8,513,330	- 826,248

Based on the University's previous three-year average dormitory reduction (3.6%/year) the FY16 would be at 1123.

Rent UI & UII

Best – Assume all are additional
Ave – Assume half are additional
Worst – Assume none are additional

Rent UI Only & No Rental

Best – Assume lose none
Ave – Assume lose half
Worst – Assume lose all

Policy 32 – Sexual Discrimination and Other Unlawful Discrimination

INFORMATION ITEM - EXPLANATION

At its November 25, 2014, meeting, the Board of Governors executive committee reviewed a revision to Policy 32, Sexual Discrimination and Other Unlawful Discrimination, that was prepared by Title IX Coordinator Bridgette Dawson. The revision was made necessary by changes Congress made to Title IX and to the Violence Against Women Act (VAWA). Moreover, the U.S. Department of Education's Office of Civil Rights promulgated new guidelines relating to the amended federal legislation.

Vice President of Human Resources Jim Stultz and EVP and General Counsel John Davis edited Ms. Dawson's draft, and comments offered by the executive committee were addressed in the document.

Since Policy 26, Order of Precedence, stipulates that federal law supersedes policies of the WLU Board of Governors, Policy 32 must be revised so it will be consistent with federal law. The revision need not be disseminated to campus constituencies for 30-day Comment Period. The executive committee has the authority to approve revisions in such instances and then simply notify the full Board.

The executive committee voted to approve the revision to Policy 32 and to re-name it "Sexual Harassment, Sexual Discrimination, and Other Unlawful Conduct."

WEST LIBERTY UNIVERSITY BOARD OF GOVERNORS

POLICY 32: SEXUAL HARASSMENT, SEXUAL DISCRIMINATION, AND OTHER UNLAWFUL CONDUCT

Section 1. Authority.

This policy derives its basis and authority from the following: Title IX of the Education Amendments of 1972; The Violence Against Women Act of 1994 (VAWA); the 1980 EEOC interpretive guidelines of Title VII of the Civil Rights Act of 1964; The Campus Security Act, part of the Higher Education Reauthorization Act of 1992.

Section 2. Definitions.

2.1 “Bullying” means repeated and/or significant aggressive behavior likely to intimidate or intentionally hurt, control, or diminish another person, physically or mentally on the basis of actual or perceived membership in a Protected Category.

2.2 “Complainant” means any current employee, student, or applicant to West Liberty University (regardless of whether he or she is applying for employment or for admission as a student), vendor or contractor representative, or visitor who reports an alleged violation under this policy. The complainant need not be the person who allegedly suffered the discriminatory or harassing treatment. The complainant may be a witness to the events or a Mandatory Reporter.

2.3 “Consent” means informed, knowing, voluntary and clear permission, through mutually understandable word or action, to engage in mutually agreed upon sexual activity. Under West Virginia law, a lack of consent results from: (1) forcible compulsion; (2) incapacity to consent; or (3) if the complaint charges sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor’s conduct. A person is deemed incapable of consent when such person is: (1) less than sixteen years old; (2) mentally defective; (3) mentally incapacitated; or (4) physically helpless. Consent is discussed in more detail in Section 7.2 of this policy.

2.4 “Discrimination” means actions that deprive others of educational or employment access, benefits, or opportunities on the basis of their actual or perceived membership in a Protected Category.

2.5 “Domestic Violence/Intimate Partner Violence” means the occurrence of one or more of the following acts between family or household members or between individuals in an intimate relationship to each other, including dating: (1) attempting to cause or intentionally, knowingly, or recklessly causing physical harm to another with or without dangerous or deadly weapons; (2) placing another in reasonable apprehension of physical harm; (3) creating fear of physical harm by harassment, stalking, psychological abuse, or threatening acts; (4) committing either sexual assault or sexual abuse as those terms are defined in Chapter 61 of the West Virginia Code; and (5) holding, confining, detaining, or abducting another person against that person's will.

2.6 “Hazing” means acts likely to cause physical or psychological harm or social ostracism to any person within the West Liberty University community, when related to the admission, initiation, pledging,

joining, or any other group-affiliation activity on the basis of actual or perceived membership in a Protected Category.

2.7 “Hostile Environment” means an environment created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent, or pervasive and objectively offensive so as to interfere with, limit, or deny the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits, or opportunities.

2.8 “Incapacitation” means a state where a person cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent (e.g. to understand the “who, what, when, where, why, or how of his or her sexual interaction”).

2.9 “Intimidation” means implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a Protected Category.

2.10 “Mandatory Reporter” means all employees, both full-time and adjunct faculty and full-time and part-time staff of West Liberty University.

2.11 “Minor” means a person under the age of 16 years.

2.12 “Non-Consensual Sexual Contact” means any intentional sexual touching, however slight, including with any object, by a person upon another person, that is without consent and/or by force.

2.13 “Non-Consensual Sexual Intercourse” means any sexual penetration or intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force.

2.14 “Protected Category” means a category under which an individual falls or is perceived to fall that is protected under federal, state, or local anti-discrimination laws, including race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age, marital status, veteran or military status, disability, or genetic information.

2.15 “Respondent” means the accused employee, student, or campus visitor who is alleged to have perpetrated acts of discrimination, harassment, or sexual misconduct.

2.16 “Retaliation” means any adverse action taken against a person due to the fact that he or she complains about harassment, supports a complainant involving harassment, assists in providing information relevant to a claim of harassment, or otherwise participates in any way in the investigation of the complaint.

2.17 “Sexual Exploitation” means a situation in which a person takes non-consensual or abusive sexual advantage of another and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse, or Non-Consensual Sexual Contact. The term includes, but is not limited to, the following situations:

2.17.1 Sexual voyeurism, such as watching a person undressing, using the bathroom or engaging in sexual acts without the consent of the person observed;

2.17.2 Taking pictures or video or audio recording another in a sexual act or in any other private activity without the consent of those involved in the activity, or exceeding the boundaries of consent, such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent;

2.17.3 Prostitution;

2.17.4 Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection; and

2.17.5 Administering alcohol or drugs (such as date rape drugs) to another person without his or her knowledge or consent for the purpose of engaging in sexually-related activity with that person.

2.18 "Sexual Harassment" means any unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual/gendered nature. A form of sexual harassment occurs when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status, submission to or rejection of such conduct by an individual is used as the basis of employment or academic decisions affecting such individual, or such conduct creates a hostile environment.

2.19 "Sexual Penetration" means vaginal or anal penetration by a penis, tongue, finger, or object or oral copulation by mouth-to-genital contact or genital-to-mouth contact.

2.20 "Sexual Touching" means any bodily contact with the breasts, groin, genitals, mouth, or other bodily orifice of another individual or any other bodily contact in a sexual manner.

2.21 "Stalking" means a course of conduct (i.e. repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of another) directed at a specific person that is unwelcome and would cause a reasonable person to feel fear.

2.22 "Title IX Coordinator" means the Dean of Students or other individual assigned by the VP of Human Resources to serve in this capacity.

Section 3. General Provisions.

3.1 West Liberty University is committed to promoting the goals of fairness and equity in all aspects of the educational enterprise. This policy applies with equal force to employees, students, vendors, contractors, and any other outsiders who may interact with West Liberty University or its students or employees.

3.2 This policy applies to behaviors that take place on campus and West Liberty-sponsored events and may also apply off-campus and to actions online when the Title IX Coordinator determines that the off-campus conduct affects a substantial West Liberty University interest. A substantial West Liberty University interest includes, but is not limited to, the following:

3.2.1 Any action that constitutes a criminal offense as defined by federal or state law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law committed in the municipality where West Liberty is located;

3.2.2 Any situation where it appears that the accused individual may present a danger or threat to the health or safety of himself/herself or others;

3.2.3 Any situation that significantly impinges upon the rights, property, or achievements of self or others or significantly breaches the peace and/or causes social disorder;

3.2.4 Any situation that is detrimental to the educational interests of West Liberty University; or

3.2.5 Any online postings, including cyber-bullying, cyber-stalking, or cyber-harassment on electronic communication systems operated by West Liberty University or on behalf of the University, e.g. Google Apps for Education. Any online postings (as described above) hosted on electronic systems external to the University (e.g. Facebook) will be investigated if they may create a hostile environment on campus.

3.3 Inquiries about this policy may be made internally to either the Title IX coordinator, in person, via telephone or via e-mail at bdawson@westliberty.edu; or the Vice President of Human Resources, in person, via telephone, or via e-mail at jstultz@westliberty.edu. Contact information for these individuals is located on the West Liberty University website, at <http://www.westliberty.edu>.

Section 4. Discriminatory Harassment.

4.1 West Liberty University is committed to providing a work and educational environment free of discriminatory harassment. This harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters.

4.2 The following forms of harassment are prohibited under this policy:

4.2.1 Discriminatory and Bias-Related Harassment

(i) Harassment constitutes a form of discrimination that is prohibited by law. This policy explicitly prohibits any form of harassment on the basis of actual or perceived membership in a protected category, by any member or group of the West Liberty University community, which creates a hostile environment, both objectively and subjectively. Merely offensive conduct and/or harassment of a generic nature not on the basis of an actual or perceived membership in a protected category is not prohibited by this policy and should be addressed with civil confrontation or effective conflict resolution mechanisms. Contact the West Liberty University Office of Human Resources or, if you are a student, the Office of Student Affairs for assistance with conflict resolution. Harassment that does not rise to the level of creating a hostile environment is a concern to West Liberty University and should be reported so that appropriate intervention and remedies can be implemented, if needed.

(ii) West Liberty University will not tolerate discriminatory harassment against any employee, student, visitor, or guest on the basis of his or her actual or perceived membership in a protected category.

4.2.2 Sexual Harassment

Sexual Harassment, which applies to employer and employees and students, is a form of sex/gender discrimination, is an unlawful discriminatory practice, and is a violation of this policy.

Section 5. Additional Misconduct Offenses.

5.1 Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person on the basis of their *actual or perceived membership* in a protected category;

5.2 Intimidation, i.e. any administrator, faculty, or staff not authorized by this policy contacting or attempting to contact a complainant directly or indirectly in regard to allegations made, e.g. a coach contacting a female student who has alleged sexual assault by a male athlete;

5.3 Hazing (see West Liberty University's student handbook policy on hazing);

5.4 Bullying (including cyber-bullying);

5.5 Domestic Violence/Intimate Partner Violence;

5.6 Stalking (including cyber-stalking); and

5.7 Failure to comply with restrictions or sanctions during or after the investigation, including but not limited to no contact orders as defined in Section 11.

5.8 Violating any other West Liberty University policies or procedures when such violation is motivated by the actual or perceived membership of the victim in a protected category.

Section 6. Consensual Relationships.

6.1 There are inherent risks in any romantic or intimate relationship between individuals in unequal positions. Thus, except as otherwise provided in Section 6.2, any romantic or intimate relationships in which power differentials are inherent are prohibited, which include, but are not limited to, the following:

6.1.1 relationships between students or applicants for admission and administrators, faculty, or any other West Liberty University employee where a direct power differential exists between the student or applicant for admission and the employee;

6.1.2 relationships between a West Liberty University employee holding a direct or indirect supervisory and/or evaluative role over the other person in the relationship; or

6.1.3 any other romantic or intimate relationship between students or applicants for admission and employees or between employees where any employment-related power differential exists between the persons in the relationship.

6.2 Notwithstanding the prohibitions in Section 6.1, any romantic or intimate relationship prohibited in Section 6.1 that exists prior to the creation of a power differential between the individuals involved in the romantic or intimate relationship shall not violate this policy if (i) the individuals in the relationship report the existence of the relationship as required in Section 6.4 upon the creation of the power differential and (ii) the individuals consent to the removal of any potential power differential that could exist. When a party reports the relationship, all involved parties will be contacted to verify the report, review the policy, and determine administrative action. Addressing such a situation may require appropriate administrative action, including but not limited to, shifting or otherwise relocating an employee to a separate department or reporting capacity from the other individual involved in the relationship or the shifting of grading or other decision-making responsibilities of a faculty member which affect a particular student in the case of a pre-existing relationship with that student.

6.3 Issues may also arise in the educational setting or workplace from romantic or intimate relationships between students or applicants for admission and West Liberty University employees or between West Liberty University employees where a direct or indirect supervisory and/or evaluative role or other power differential does not exist between the persons in the relationship. Thus, while not prohibited, such relationships are highly discouraged.

6.4 If a relationship develops that falls under Sections 6.2 or 6.3, the student, applicant for admission, or employee involved in the relationship must timely report the existence and termination, if any, of such relationship as follows: applicants for admission and students shall report to the Dean of Students and Academic Dean and employees shall report to the Vice President of Human Resources.

6.5 Once a relationship is reported under Section 6.4, the Vice President and Academic Dean and the Director of Human Resources, respectively, shall inform the persons involved in the relationship of West Liberty University's standards concerning consensual relationships, may set parameters while the persons are on campus, and make take other steps as appropriate.

6.6 Persons who engage in any relationship prohibited by Section 6.1 or who engage in any relationship listed in Sections 6.2 and 6.3 and who fail to timely report shall be subject to administrative action up to and including termination of employment or dismissal from West Liberty University, as applicable.

Section 7. Sexual Misconduct.

7.1 Any person, regardless of their sex, gender, sexual orientation, and/or gender identity may be the victim of sexual misconduct. The following acts of sexual misconduct are prohibited:

7.1.1 Sexual Harassment, as set forth in Section 7.2.2 of this policy;

7.1.2 Non-Consensual Sexual Intercourse;

7.1.3 Non-Consensual Sexual Contact; and

7.1.4 Sexual Exploitation.

7.2 Consent

7.2.1 Since individuals may perceive the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the sexual activity. For consent to be valid, it must be informed, knowing, and voluntary. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in that specific sexual activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and gauging consent, and you are thus urged to seek consent in verbal form. Talking with sexual partners about desires and limits may seem awkward but serves as the basis for positive sexual experiences shaped by mutual willingness and respect.

7.2.2 A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the individual initiating or furthering the sexual misconduct was intoxicated and, therefore, did not realize the incapacity of the other.

7.2.3 This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the taking of incapacitating drugs.

7.2.4 Consent to some sexual contact, such as kissing or fondling, cannot be presumed to be consent for other sexual activity, such as intercourse. A current or previous dating or sexual relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.

7.2.5 In the State of West Virginia, a minor cannot consent to sexual activity. Thus, sexual contact by an adult with a person younger than 16 years is a crime and must be reported as well as a violation of this policy.

7.3 Filing of Complaints

7.3.1 To file a complaint of sexual misconduct or other violation of this policy falling under Title IX, a sexual misconduct complaint form must be completed. Typically, the form will be completed by an employee, student, or applicant allegedly victimized. However, another individual shall complete the form if they believe a violation occurred. Forms may be obtained from the Office of Student Affairs, the Office of Human Resources, or on the West Liberty University website. The Title IX Coordinator will provide assistance in completing the form.

7.3.2 Completed Sexual Misconduct Complaint Forms shall be submitted to the Title IX Coordinator as soon as possible after the incident. If a complaint is against the Title IX Coordinator, the Sexual Misconduct Complaint Form shall be filed with Dean of Students or Vice President of Human Resources, who will immediately designate a person to begin an investigation consistent with this policy.

7.3.3 As is addressed in more detail in Section 7.5, the Title IX Coordinator shall conduct a prompt, thorough, reliable, and impartial investigation of all complaints or shall appoint unbiased investigators to do so. Interim corrective measures may be taken during the investigation process, such as a ban from certain locations or events on campus, an adjustment to an academic schedule, and/or a temporary suspension or removal from campus. Parties will be informed, on an ongoing basis, of the status of the investigation, to the extent possible, appropriate, and practical, and provided that update does not interfere with the investigation. Parties requesting information on the status of the investigation should contact the Title IX Coordinator.

7.3.4 Upon completion of the investigation, the Title IX Coordinator shall provide a written report of investigation, which will provide an opinion of the complaint on the basis of the legal standard of “preponderance of the evidence.” Parties will be notified simultaneously and in writing of the disposition of the complaint and the process for appeal.

7.4 Receipt of Notice

Regardless of whether a complaint is filed under Section 7.3, if a Mandatory Reporter (as defined herein) receives notice concerning alleged sexual misconduct or other violation of this policy falling under Title IX, then that Mandatory Reporter shall report to the Title IX Coordinator as much of the information as that employee is permitted to report under applicable confidentiality laws, unless an immediate threat of harm exists to self or others. Upon receipt of the notice, the Title IX Coordinator shall investigate the information contained in the notice, determine what sexual misconduct or other violation of this policy occurred, if any, and respond appropriately. The Title IX Coordinator’s response may vary, depending on the information contained in the particular notice, including initiation of the formal investigation process set forth in Sections 7.3.3 and 7.3.4 above. The Title IX Coordinator shall immediately report allegations of criminal conduct to the appropriate law enforcement agency.

7.5 Investigation

7.5.1 Following the receipt of a report of sexual misconduct, the respondent will be notified that a report has been filed and will be given written notice of the allegations. The respondent will have the opportunity to submit a statement within five business days, whenever possible. The respondent and complainant will be given the opportunity to meet separately with the Title IX Coordinator (or designee) to review the policy and procedure.

7.5.2 A specially trained investigator(s) designated by the Title IX Coordinator will interview the complainant, respondent, and any witnesses. This investigator(s) will also gather any pertinent documentation materials. The investigator will not interview witnesses whose sole purpose is to

provide character information. The investigator(s) will then prepare a report detailing the relevant content from the interviews and the documentation materials gathered.

7.5.3 Directly following the conclusion of the investigation, a determination of whether or not to proceed to the administrative resolution (see below) phase will be made. This determination will be based on whether reasonable cause exists to believe that a policy violation may have occurred. If reasonable cause does not exist, the procedure will be concluded at this point. However, West Liberty University may institute other forms of remedial, community-based efforts such as educational initiatives and/or trainings.

7.6 Administrative Resolution

7.6.1 If reasonable suspicion exists to move to the administrative resolution phase of the process, the respondent and complainant will have the opportunity to review the investigative report and the documentation from the investigation. Given the sensitive nature of the information provided in the investigative report, the review of the report must occur in the Title IX Coordinator's/Vice President of Human Resource or the Campus Judicial Coordinator's office. Ample time will be afforded to the complainant and respondent to review the report prior to responding to the allegations.

7.6.2 Following this review, the respondent will be given the opportunity to respond to the alleged violation of policy in the following ways: 1) No response; 2) Not Responsible; or 3) Responsible.

7.6.3 If the respondent is a student and accepts responsibility, the Title IX Coordinator will determine whether or not the case will proceed to a Campus Judicial Board or sanction based on the evidence provided in the investigative report and documentation. The Title IX Coordinator (or designee) will contact the respondent to inform him/her of the sanctioning outcome within five business days whenever possible.

7.6.4 The complainant and respondent will be made aware of the sanctioning decision. The Title IX Coordinator will contact the respondent to inform him/her of the sanctioning outcome within five business days whenever possible. The complainant will then have the opportunity to appeal the sanctioning decision by Dean of Students or his or her designee. The acceptance of responsibility, however, is not appealable (see Appeals Process.)

7.6.5 If the respondent is a student and declines responsibility or chooses not to respond, a Campus Judicial Board will be convened unless the student agrees to move to the sanctioning phase without need for a Campus Judicial Board.

7.6.6 If the respondent is an employee, the results of the investigation will be forwarded to the President for appropriate administrative resolution.

7.7 The Hearing Process

7.7.1 In matters involving only students, a Campus Judicial hearing will be convened within 25 calendar days of receipt of the final investigation report. The hearing will follow the process and procedures set out in West Liberty University's Student Handbook.

7.8 Refusal to Participate

7.8.1 In cases where a complainant and/or respondent is a student and refuses to participate in the investigative process and where it is determined that reasonable suspicion exists to believe a policy may have been violated, a Campus Judicial Board will convene and determine a finding based on the information available to it.

7.9 Appeal

7.9.1 Any party who wishes to appeal the recommendations contained in the report of investigation as they relate to sexual misconduct or other violations of this policy falling under Title IX shall appeal to the Campus Judicial Board. Appeals shall be in writing and shall be delivered to the Title IX Coordinator or his or her designee. A decision reached by the Campus Judicial Board or a sanction imposed may be appealed by the accused student(s) or complainant(s) to the Dean of Students within five (5) school days of the decision. However, the president may appoint a different administrator to hear an appeal, e.g. when the Dean of Students recuses herself/himself or when a conflict of interest exists.

7.9.2 Recommendations not related to a student's alleged sexual misconduct or other student violations of this policy falling under Title IX shall be addressed through applicable West Liberty University policies and procedures, including handbooks, concerning employee and student conduct, as set forth in Section 9.

7.9.3 All appeals and responses are then reviewed by the Appeals Officer to determine if the appeal request meets the limited grounds and is timely. The original recommendations and sanctions will stand if the appeal is not timely or does not fall within the grounds for appeal set forth below, and the decision is final. The original recommendations and sanctions will also remain in effect pending the outcome of any appeal. If the appeal has standing, the Appeals Officer will consider the appeal. The party requesting the appeal has the burden of proving the error, as the original recommendations and sanctions are presumed to have been decided reasonably and appropriately. The only grounds for appeal are as follows:

- (i) A procedural or substantive error occurred that significantly impacted the outcome of the investigation, such as substantiated bias or material deviation from established procedures;
- (ii) To consider new evidence, unavailable during the original investigation, that could substantially impact the original recommendations or sanctions (a detailed description of this new evidence and its potential impact must be included); or
- (iii) The sanctions imposed are substantially disproportionate to the severity of the violation.

7.9.4 Within five (5) business days of receiving the response(s) to the appeal(s), if any, the Appeals Officer will provide to both parties a Memorandum of Decision.

7.9.5 If the Appeals Officer determines that a material procedural or substantive error occurred, the Appeals Officer may return the matter to the original investigators and/or judicial board with instructions to reconvene to cure the error. When the original investigators are unavailable, another specially trained investigator may be substituted by the Title IX Coordinator to review the appeal. The results of a reconvened investigation cannot be appealed. In rare cases where the procedural or substantive error cannot be cured by the original investigators, as in cases of substantiated bias, the Appeals Officer may order a new investigation on the complaint with new investigators. The results of a new investigation can be appealed once on the applicable grounds for appeals.

7.9.6 If the Appeals Officer determines that new evidence should be considered, the Appeals Officer will return the matter to the original investigators to reconsider in light of the new evidence only. The reconsideration of the original investigators is not appealable.

7.9.7 If the Appeals Officer determines that the sanctions imposed are disproportionate to the severity of the violation, the Appeals Officer will return the matter to the hearing board, which will modify the sanctions according to the directions of the Appeals Officer. The modified decision of the board is final.

7.9.8 Once an appeal is completed, the parties will be notified of the final determination and any changes that result.

Section 8. Reporting of Violations of this Policy.

8.1 Reports of violations of this policy should be made promptly as follows:

8.1.1 Reports of discrimination, harassment, retaliation, or other violations of this policy should be made to the Title IX Coordinator;

8.1.2 Reports of violations of this policy involving the Vice President of Human Resources or the Title IX Coordinator shall be made to the President;

8.1.3 Reports of violations of this policy involving the Provost and Academic Dean shall be made to the President of West Liberty;

8.1.4 Reports of violations of this policy involving the President of West Liberty shall be made to the Chair of the West Liberty University Board of Governors; and

8.1.5 Reports of violations of this policy involving the Chair of the West Liberty University Board of Governors shall be made to the Chancellor of the West Virginia Higher Education Policy Commission.

8.2 If a reporting individual believes that an immediate threat of harm exists to self or others or that an individual has violated federal, state, or local law, the Title IX Coordinator shall immediately contact law enforcement.

8.3 Individuals responsible for receiving and investigating complaints made under this policy shall ensure that victims are notified of their option to seek assistance from law enforcement and/or campus authorities. In addition, victims shall be provided with contact information for the local domestic violence shelter and magistrate court for purposes of determining whether to seek additional relief from the alleged conduct.

8.4 Upon receiving a report of an alleged violation of this policy, the appropriate administrator listed in Section 8.1 shall promptly investigate the alleged violation contained in the report.

8.5 Although reports of violations of this policy should be and are expected to be made promptly, there is no time limitation on the filing of reports, as long as the accused individual remains subject to West Liberty University's jurisdiction.

Section 9. Violations of Policy.

9.1 Any employee or student who is found to have violated this policy will be subject to administrative action, up to and including termination of employment or dismissal from West Liberty University, as applicable.

9.2 Except as provided in Section 7 of this policy concerning sexual misconduct or other violations of this policy falling under Title IX, violations of this policy shall be addressed as follows:

9.2.1 Violations by students shall be addressed through West Liberty University policies and procedures in the Student Code of Conduct.

9.2.2 Violations by employees shall be addressed through the West Virginia Higher Education Policy Commission rules and procedures and the West Liberty University policies and procedures on employee conduct, including applicable faculty and staff handbooks.

Section 10. Retaliation.

10.1 Retaliation is a serious violation of this policy. No retaliation shall occur against any individual who participates in any way in an investigation of a claim of sexual misconduct or harassment, including but not limited to alleging sexual misconduct or harassment, supporting a complainant, or providing information relevant to a claim of sexual misconduct or harassment. Retaliation will be treated as another instance of harassment or discrimination and shall be reported immediately as set forth in Section 8.1. West Liberty University will take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Section 11. Campus No-Contact Orders.

11.1 A campus no-contact order is a directive issued by a campus authority that forbids contact between parties or from one party to another. Such an order may be issued through the formal reporting process

(i.e. Student Affairs, Human Resources, or under the direction of a Title IX Coordinator). This may apply to communications in-person, online, and other forms of contact, both on- and off-campus. This is different than a civil order which is issued by a court. Campus no-contact orders may be issued as a sanction or outcome and may also be issued on an interim basis while an incident is under investigation or adjudication. The burden of proof for a campus no-contact order is often less than that required for a court issued order, and the consequences for violating it are also limited to action that can be taken by West Liberty University, such as an additional student conduct charge of failure to comply with a university official.

Section 12. Remedial Action.

12.1 West Liberty University will implement initial remedial and responsive actions upon notice of alleged harassment, retaliation, or discrimination and will take additional prompt remedial and/or disciplinary action with respect to any member of the West Liberty community, guest, or visitor who has been found to engage in harassing or discriminatory behavior or retaliation.

12.2 Deliberately false and/or malicious accusations of harassment, as opposed to good faith complaints which ultimately turn out to be erroneous, are serious and will be subject to appropriate disciplinary action.

Section 13. Confidentiality of Reported Information.

13.1 Depending upon their roles, West Liberty University administrators have varying reporting responsibilities and abilities to maintain the confidentiality of the individual making the report. Prior to reporting a violation of this policy to a particular administrator, an individual may inquire as to whether that administrator is bound by certain confidentiality and mandatory reporting requirements. Some West Liberty University resources may be able to maintain confidentiality, offering options and advice without any obligation to inform an outside agency or individual unless the reporting person requested information to be shared or the information indicates an immediate threat of harm to self or others. This distinction—the obligation to report or not to report conduct to external agencies—is especially critical in regard to criminal conduct.

13.1.1 If one wishes to keep their identity and the details of an incident confidential, they may find it helpful to speak with the on-campus mental health counselor, campus health service provider, or off-campus rape crisis resources or clergy members who can maintain confidentiality. A campus counselor is available to help students free of charge. A complainant may wish to consider this option if he or she:

- (i) Would like to know about support and assistance but are not sure if they want to pursue formal action against the individual;
- (ii) Have questions or would like to process what happened with someone without involving police or campus disciplinary procedures; or
- (iii) Do not want the perpetrator to know that they are seeking help or support.

13.1.2 There are occasions when even confidential resources have some obligations to report, such as in situations of imminent danger and/or sexual abuse of a minor. Thus, West Liberty University cannot guarantee confidentiality to those who report incidents of sexual violence except where those reports are privileged communications with licensed health care professionals. In such instances, West Liberty University will investigate and take appropriate action, taking care to protect the identity of the complainant and any other reporter as best possible in accordance with this policy.

13.2 When a report of gender-based misconduct is filed, the complainant, the respondent, and all identified witnesses who are named in the investigation will be notified of West Liberty University's expectation of confidentiality/privacy. Subject to the issues addressed in Section 13.1, West Liberty University will make all reasonable efforts to maintain the confidentiality/privacy of parties involved in sexual or gender-based misconduct investigations. Breaches of confidentiality/privacy may result in additional disciplinary action.

Section 14. Federal Timely Warning Obligations.

14.1 Victims of sexual misconduct should be aware that West Liberty University administrators must issue timely warnings to the West Liberty University community for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. No such warning will identify a victim or contain information that could do so unless authorized by the victim.

Section 15. Implementation of Policy.

15.1 This policy will be implemented using applicable West Virginia Higher Education Policy Commission rules and procedures, West Liberty University policies and procedures, and West Liberty University faculty, staff, and student handbooks. In the event that the individual, name, title, or contact information changes for any of the individuals listed in this policy, the Board of Governors Executive Committee of West Liberty may revise such information within this policy without resubmittal of this policy through the rulemaking process (BOG Policy 23).

Approved by the WLSC Board of Governors on Dec. 11, 2006.

Revision approved by the WLU Board of Governors executive committee on Nov. 25, 2014.