

MARSHALL UNIVERSITY BOARD OF GOVERNORS

Rule No. GA-4

MINOR PROTECTION

1 General Information

- 1.1 Scope: This policy establishes the protections and special considerations to be applied to minors on any Marshall University campus.
- 1.2 Authority: W. Va. Code §§ 18B-1-6, 18B-2A-4
- 1.3 Passage Date: October 28, 2021
- 1.4 Effective Date: January 1, 2022
- 1.5 History: This is a new policy. Impermanent data, such as phone numbers, email addresses and titles contained in this policy may be modified or changed, as needed, without further approval of the Marshall University Board of Governors.
- 1.6 Marshall University (Marshall or University) is committed to providing for the protection of minors on the University's campuses or involved in University sponsored programs at its geographical locations by providing guidance on reporting requirements for Child Abuse or Neglect, providing guidelines for appropriate supervision of minors; and ensuring that the University complies with all federal, state laws and regulations regarding the employment of minors.

2 Definitions

- 2.1 The definitions contained within this Section are applicable to this Policy. However, these definitions do not supersede or supplant the definitions of these terms provided under West Virginia law, including those used within the West Virginia Child Welfare Act, Chapter 49 of the West Virginia Code. This Act may provide other obligations upon individuals.
- 2.2 **Adult.** Any person eighteen (18) years of age or older.
- 2.3 **Authorized Adult and/or Program Staff.** Individuals, paid or unpaid, including volunteers, who interact with, supervise, or chaperone minors in program activities, recreational activities, and/or residential facilities. This includes but is not limited to faculty, staff, volunteers, graduate and undergraduate students, interns, employees of temporary employment agencies, and independent contractors/consultants. The Authorized Adults' roles may include positions as counselors, chaperones, coaches, instructors, etc. For the purposes of this policy the term "Program Staff" is also assigned this definition. This definition does not include individuals who work with the program but do not have contact with the minor participants, including guest speakers, presenters, judges, or other individuals who have only short-term interactions with the participants while in the presence of Program Staff.
- 2.4 **Covered Program.** A Covered Program is a program and/or group or individual activity designed for or marketed to Minors and/or that includes Minors as participants. Covered Programs may be offered by Marshall, its employees or students or by non-University groups using University facilities. Covered Programs include private lessons, tutoring, mentoring or other instruction or assistance

offered by individuals using University facilities and any IRB approved research involving Minor subjects or in which Minors are participating as researchers or assistants. All programs or activities that involve Minors should contact the Environmental Health and Safety Department to determine whether they are a Covered Program and such decisions shall be made based on the totality of the circumstances. By way of example only, the following activities would NOT, as a general rule, be deemed to be Covered Programs:

- 2.4.1 activities or events on campus that are open to the general public and at which a parent/guardian/chaperone is reasonably expected to be present at all times or to otherwise provide appropriate supervision of the Minors, including but not limited to, athletic events, concerts, theater productions, carnivals or activities, and/or open house events;
 - 2.4.2 activities, even if not open to the general public, at which a parent/guardian is present with the Minor at all times;
 - 2.4.3 campus visits as part of a field trip or event hosted by a childcare facility, elementary or secondary school, community college, religious organization or other group where supervision would reasonably be expected to be provided by such group;
 - 2.4.4 athletic, academic, musical or other competitions that involve no significant, substantive programming beyond the competition itself, including but not limited to, high school football games, science fairs, ACT testing, choral or band competitions;
 - 2.4.5 campus tours to prospective students, including, but not limited to, prospective athletes, including overnight campus visits;
 - 2.4.6 activities that have as their primary purpose recruiting students to enroll at Marshall;
 - 2.4.7 services provided by the Autism Training Center, the University Counseling Center, the Marshall Child Development Academy, any licensed childcare facility housed on campus or under Marshall's oversight, or any entity that provides counseling or other medical or mental health treatment to Minors;
 - 2.4.8 off-campus activities, including clinical, practicum or student teaching experiences; off-campus activities undertaken by Marshall students or employees that are not part of an off-campus program sponsored by Marshall, even if these activities are undertaken in order to satisfy service or volunteer hour requirements (e.g., tutoring, coaching or mentoring Minors as an individual activity, working with Boys Club or Girls Club); and
 - 2.4.9 private, personal events that occur on campus (e.g., birthday parties, weddings).
- 2.5 **Mandatory Reporter.** Any individual obligated by West Virginia law to report any type of Child Abuse or Neglect, including physical or Sexual Abuse. Under West Virginia law, this includes: Any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect Child Abuse or Neglect or observes the child being subjected to conditions that are likely to result in Child Abuse or Neglect. See W. Va. Code § 49-2-803 (2017).

- 2.5.1 West Virginia law requires any person over the age of eighteen who receives a disclosure from a credible witness or observes any Sexual Abuse of a child is also a Mandatory Reporter. Any school teacher or other school personnel who receives a disclosure from a witness, which a reasonable prudent person would deem credible, or personally observes any sexual contact, sexual intercourse or sexual intrusion, as those terms are defined in article eight-b [§§ 61-8B-1 et seq.], chapter sixty-one, of a child on school premises or on school buses or on transportation used in furtherance of a school purpose is also a Mandatory Reporter; Provided, that this subsection will not impose any reporting duty upon school teachers or other school personnel who observe, or receive a disclosure of any consensual sexual contact, intercourse, or intrusion occurring between students who would not otherwise be subject to section three [§ 61-8B-3], five [§ 61-8B-5], seven [§ 61-8B-7] or nine [§ 61-8B-9] of article eight-b, chapter sixty-one of the West Virginia Code. See W. Va. Code § 49-2-803 (2017).
- 2.5.2 For the purposes of this Policy, all University Faculty and Staff are considered Mandatory Reporters
- 2.6 **Member of the University Community.** i) an individual engaged in any University activity or program, whether on or off campus; (ii) any individual lawfully on University property; (iii) any individual that is a University Student, Faculty, Staff, University official, University volunteer, or a University visitor; and (iv) any vendor or contractor, including that vendor's or contractor's employees and independent contractors, who are working on campus.
- 2.7 **Minor.** Any person under eighteen (18) years of age, unless that person is:
- 2.7.1 An enrolled student at Marshall;
- 2.7.2 A Marshall employee; or
- 2.7.3 A recipient of healthcare or mental health services at Marshall.
- 2.8 **President.** The President of Marshall University or his or her designee.
- 2.9 **Program Director:** The individual responsible for the administration of any Covered Program. In the case of a private or semi-private lessons, tutoring, or mentoring, the Program Director shall be the Marshall employee or student providing such services.
- 2.10 **Sponsoring Unit.** The academic department, administrative unit, or other organization of the Marshall which offers a program or gives approval for housing or use of the facilities.
- 2.11 **Visiting Child or Minor.** Any person under the age of eighteen (18) years who is attending a Marshall program or activity or any person under the age of eighteen (18) years who is on University premises. However, this definition does not include children at general public events where parents or guardians are invited and expected to provide supervision of children. Additionally, it does not include any person under the age of eighteen (18) years who is enrolled as a Marshall student.

3 Reporting Abuse

- 3.1 If any Authorized Adult and/or Program Staff observes, or has reasonable cause to suspect, any type of Child Abuse or Neglect, including physical or Sexual Abuse, they must immediately report the circumstances to the Title IX Coordinator and the Marshall University Police Department at:

Title IX Coordinator

Old Main Room 324
Hart70@marshall.edu or TitleIX@marshall.edu
304-696-2597

Marshall University Police Department
Office of Public Safety
mupd@marshall.edu
304-696-HELP (4357)

- 3.1.1 Upon receiving a report, the University's Title IX Coordinator and/or Marshall University Office of Public Safety shall take immediate action in order to protect children present on the Marshall campus or participating in Marshall sponsored programs.
- 3.2 Under West Virginia state law, some individuals are considered Mandatory Reporters. Mandatory Reporters are required by West Virginia law to report any type of Child Abuse or Neglect, including physical or Sexual Abuse, in accordance with W. Va. Code §§ 49-2-801 to 814 (2017).
 - 3.2.1 In cases involving a Mandatory Reporter, reports of Child Abuse or Neglect should be immediately reported to each of the following:
 - 3.2.1.1 West Virginia Department of Health and Human Resources or by contacting the Child Abuse and Neglect Hotline (1-800-352-6513), seven days a week, twenty-four hours a day¹;
 - 3.2.1.2 West Virginia State Police at 304-528-5555;
 - 3.2.1.3 Marshall University Police Department, Office of Public Safety at 304-696-HELP (4357) or other appropriate law enforcement agency; and
 - 3.2.1.4 If the Reporter is a Member of the University Community, the Title IX Coordinator at 304-696-2597.
- 3.3 Marshall's reporting requirements within this Policy do not supersede the requirements placed on individuals by law. West Virginia's mandatory reporting obligations can currently be found at W. Va. Code §§ 49-2-801 to 814 (2017).
<https://www.wvlegislature.gov/WVCODE/code.cfm?chap=49&art=2>.
- 3.4 Under West Virginia law, an individual that reports an incident of Child Abuse or Neglect in good faith is immune from civil or criminal liability.
- 3.5 Additionally, no individual may retaliate against any person who makes a good faith report of Child Abuse or Neglect, any person who assists in the investigation of a report of Child Abuse or Neglect, or a witness to Child Abuse or Neglect.
- 3.6 In deciding whether or not to report an incident or situation of suspected abuse or neglect, it is not required that you have proof that abuse or neglect has occurred. Any uncertainty in deciding to report suspected abuse or neglect should be resolved in favor of making a good faith report as outlined above.

¹ Please see the following website for more information: <https://dhhr.wv.gov/bcf/Services/Pages/Centralized-Intake-for-Abuse-and-Neglect.aspx>

4 Requirements for Covered Programs

- 4.1 The requirements listed herein are in addition to any requirements of other Marshall Policies or Procedures, including any obligations imposed in connection with research involving Minor subjects. All Covered Programs are required to comply with the below requirements, which are set forth more fully in the applicable Administrative Procedures:
- 4.1.1 **Registration.** The Program Director, or other appropriate person or designee, of the Covered Program must register the program with the Environmental Health and Safety Department.
- 4.1.2 **Background examinations.** All Authorized Adults must have a background examination or acceptable proof of such examination on file with Marshall prior to commencement of the Covered Program. The background examination must be made in accordance with the applicable Administrative Procedures. It is the responsibility of the Sponsoring Unit, the Program Director, and the Authorized Adult to ensure that this requirement is satisfied prior to the commencement of the Covered Program. An exception to this requirement may be granted in limited circumstances set forth in the Administrative Procedures. Even in cases where an exception is applicable, the Covered Program must comply with this Policy in all other aspects.
- 4.1.3 **Training.** The Sponsoring Unit and/or Program Director shall be responsible for ensuring that all Authorized Adults working in a Covered Program have completed training, as set forth in the applicable Administrative Procedure, prior to the commencement of the Covered Program. Evidence of completion of the training shall be provided to the Environmental Health and Safety Department upon completion of the training. Training must be renewed annually by all Authorized Adults.
- 4.1.4 **Conduct of Program.** Each Covered Program must establish and follow guidelines that comply with the requirements of the applicable Administrative Procedures, including requirements related to medical information of Minors, emergency plans, and behavioral expectations for Minors and Authorized Adults.
- 4.1.5 **Acknowledgement Required.** All Authorized Adults must acknowledge this Policy and the applicable Administrative Procedures and agree to abide by all requirements imposed therein prior to participating in a Covered Program. This acknowledgment shall also include a representation that the Authorized Adult (1) has not been convicted of any crime related to the abuse or neglect of a Minor, (2) has not entered a guilty plea, a no contest plea or any other plea other than not guilty in response to a charge related to the abuse or neglect of a Minor, and (3) is not currently under investigation for any claim related to the abuse or neglect of a Minor. The Acknowledgement Form is available from the Environmental Health and Safety Department

5 Employment of Children by the University

- 5.1 Employment with the University is available to any qualified person who has reached eighteen (18) years of age.
- 5.2 Employment of any person who is under eighteen (18) years of age is restricted. Prior to extending an offer to a prospective employee under eighteen (18) years of age, all hiring supervisors must contact the Director of Human Resources in order to receive approval to proceed with the hire.
- 5.3 Supervisors are ultimately responsible for adhering to the conditions of employing a child, as outlined and communicated during the approval process.

- 5.4 The Director of Human Resources will advise on the application of all federal and state laws related to the employment of children, and is responsible for providing final approval to hire a person under eighteen (18) years of age.

6 Discipline and Corrective Action

- 6.1 Any faculty, staff, or University volunteer who fails to abide by the requirements within this Policy shall be subject to appropriate disciplinary action, including warning, suspension, termination, or other disciplinary action as may be appropriate.
- 6.2 Any student who fails to abide by the requirements within this Policy shall be subject to appropriate disciplinary action, including, in accord with the Student Code of Conduct, suspension, expulsion, or other disciplinary action as may be appropriate.
- 6.3 Other Members of the University Community (excluding faculty, staff, students, and University volunteers which are discussed above) who fail to abide by the requirements within this Policy shall be subject to appropriate corrective action, including but not limited to issuance of trespass or cancellation of relationship with the University.
- 6.4 In addition, any Member of the University Community whose conduct constitutes a criminal law violation will be referred to the appropriate authorities for prosecution.
- 6.5 Furthermore, although conduct may not violate this Policy, it may still be prohibited by the University under a different rule, policy, or standard of behavior. Accordingly, in such cases, the University reserves the ability to take any necessary action.

7 Non-University Entities

- 7.1 Any entity using MARSHALL's facilities for the conduct of an event or program that would be a Covered Program if under the oversight of Marshall shall sign a Protection of Minors Addendum that obligates the third-party sponsor to comply with this Policy and the applicable Administrative Procedures and that contains any additional terms that Marshall deems necessary for the protection of Minors. The Addendum shall also require the third-party sponsor to provide proof of compliance to Marshall upon request.

8 Administration

- 8.1 The Board of Governors delegates to the President the authority to adopt additional administrative procedures to effectuate the implementation of this Board of Governors Policy or in furtherance of any other authority that the Board of Governors has specifically delegated to the President pursuant to this Policy. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Policy.