

NEW RIVER COMMUNITY AND TECHNICAL COLLEGE

PROCEDURE NO. 27

TITLE: Equal Opportunity, Nondiscrimination, Sexual Misconduct, and Other Forms of Harassment

EFFECTIVE DATE: March 7, 2014

REPEALS: New River CTC Procedure 18 as of 10/25/2015

PROCEDURE

1. PURPOSE

To provide guidelines and reporting mechanisms for equal opportunity, nondiscrimination, sexual misconduct and other forms of harassment.

2. SCOPE AND APPLICABILITY

This procedure applies to behaviors that take place on campus, at College sponsored events, and may also apply off-campus and to actions online when the Title IX Coordinators determines that the off-campus conduct affects a substantial College interest. A substantial College interest includes, but is not limited to, the following:

- A. 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 the College is located;
- B. Any situation where it appears that the accused individual may present a danger or threat to the health or safety of him/herself or others;
- C. 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;
- D. Any situation that is detrimental to the educational interests of the College; or
- E. Any online postings or other electronic communication, including cyber-bullying, cyberstalking, cyber-harassment, etc. occurring within the College's control (e.g. College networks, websites or between College email accounts). Any online postings or other electronic communication, including cyber-bullying, cyberstalking, cyber-harassment, etc. occurring outside of the College's control jurisdiction will be investigated when those online behaviors can be shown to cause a substantial on-campus disruption.

3. DEFINITIONS

- A. Bullying-repeated and/or severe 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.
- B. Consent-knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.
- C. Discrimination-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.
- D. Domestic Violence/Intimate Partner Violence-violence between those in an intimate relationship to each other, including dating, domestic and/or relationship violence.
- E. EEO/Equity/AA/ADA/504 Coordinator/Title IX Coordinators
 - i. Vice President for Administrative Services, who serves as the Equal Employment Opportunity/Equity/Affirmative Action/Title IX Coordinator and the Americans with Disabilities Act/504 Coordinator and oversees implementation of the College's Affirmative Action and Equal Opportunity plan, disability compliance, and policies on discrimination and harassment for employees, visitors and third-parties.
 - ii. Vice President for Student Services, who serves as the Equal Employment Opportunity/Equity/Affirmative Action/Title IX Coordinator and the Americans with Disabilities Act/504 Coordinator for students.
- F. Hazing-acts likely to cause physical or psychological harm or social ostracism to any person within the College 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.
- G. Hostile Environment-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.
- H. Incapacitation-as 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).
- I. Intimidation-implicit threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a Protected Category.
- J. Minor-a person under the age of 16 years.
- K. Non-Consensual Sexual Contact-any intentional sexual touching, however slight, with any object, by a person upon another person, that is without consent and/or by force.
- L. Non-Consensual Sexual Intercourse-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.
- M. Protected Category-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.
- N. Retaliation-any adverse action taken against a person who complained about harassment, supported a complainant involving harassment, or for assisting in providing information relevant to a claim of harassment because of that person's participation in filing the complaint of harassment, supporting a complainant involving harassment, or for assisting in providing information relevant to a claim of harassment.
- O. Sexual Exploitation-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:

- i. Sexual voyeurism, such as watching a person undressing, using the bathroom or engaging in sexual acts without the consent of the person observed;
 - ii. taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all 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;
 - iii. prostitution;
 - iv. 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
 - v. 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.
- P. Sexual Harassment-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.
- Q. Sexual Penetration-vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.
- R. Sexual Touching-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.
- S. Stalking-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.
- T. Title IX Coordinators- Vice President for Administrative Services specifically oversees student complaints, employee, visitors and third-party complaints.

4. PROCEDURES

A. Affirmative Action Manual

- i. The College subscribes to the principles and regulations pertaining to equal opportunity and affirmative action.
- ii. In compliance with these regulations, the College shall maintain an affirmative action manual in the Office of Human Resources.

B. Nondiscrimination

- i. The College will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, color, religion, sex (including pregnancy), sexual orientation, gender

identity, national origin, age, marital status, veteran or military status, disability, or genetic information.

- ii. This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the College community, third-party, guest or visitor who acts to deny, deprive or limit the educational, employment, and/or social access, benefits and/or opportunities of any member of the College community on the basis of their actual or perceived membership in a Protected Category is in violation of this policy on nondiscrimination.

C. Accommodation of Disabilities

- i. The College is committed to compliance with the Americans With Disabilities Act of 1990 ("ADA") and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the College whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

- ii. The Vice President for Administrative Services/Affirmative Action Officer is responsible for coordinating efforts to comply with the disability laws set forth in the above section, including investigation of any employee complaint alleging noncompliance.

iii. Students with Disabilities

1. Pursuant to the ADA, the College will provide reasonable accommodations and support to all students that have a qualifying disability to ensure equal access to the programs and activities of the College.
2. All accommodations are made on a case-by-case basis by the Coordinator Student Success Center. Students requesting any accommodation should contact the Student Success Center on their campus, who will review documentation provided by the student and in consultation with the student and other appropriate resources, determine which accommodation, if any, is appropriate to the student's particular needs and programs.

iv. Employees with Disabilities

1. Pursuant to the ADA, the College will provide reasonable accommodations to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.
2. An employee with a disability is responsible for requesting an accommodation in writing from his or her supervisor, who will consult with the individual and the Vice President for Administrative Services/Affirmative Action Officer to identify which essential

functions are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

3. Employees requesting accommodation may be required to provide medical certification from the employee's health care provider that includes: (1) identification of the health care provider; (2) the health care provider's diagnosis of the disabling condition; (3) specific limitations and/or suggested restrictions and their relation to the disability; and (4) suggested accommodations.

D. Discriminatory Harassment

- i. The College 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.

- ii. The following forms of harassment are prohibited under this policy:

1. Discriminatory and Bias-Related Harassment

- a. 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 College 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. For assistance with conflict resolution techniques, contact the Office of Human Resources. Harassment that does not rise to the level of creating a Hostile Environment is still a concern to the College and should be reported so that appropriate intervention and remedies can be implemented, if needed.

- b. The College 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.

2. Sexual Harassment

- a. 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.

E. Additional Misconduct Offenses

- i. 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;

- ii. intimidation;

- iii. hazing;
- iv. bullying;
- v. domestic violence/intimate partner violence;
- vi. stalking; and
- vii. violating any other College policies or procedures, when such violation is motivated by the actual or perceived membership of the victim in a Protected Category.

F. Consensual Relationships

1. There are inherent risks in any romantic or intimate relationship between individuals in unequal positions. Thus, except as otherwise provided in the section below, any romantic or intimate relationships in which power differentials are inherent are prohibited, which include, but are not limited to, the following:
 - a. relationships between students or applicants for admission and administrators, faculty, preceptors, or any College employee where a direct power differential exists between the student or applicant for admission and the employee.
 - b. relationships between a College employee holding a direct or indirect supervisory and/or evaluative role over the other person in the relationship; and
 - c. 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.
2. Notwithstanding the prohibitions in the above section, any romantic or intimate relationship prohibited in the above section 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 the above section before the power differential is created and (ii) the individuals consent to the removal of any potential power differential that could exist, which may require appropriate administrative action, including but not limited to, shifting or otherwise relocating an employee within 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.
3. Issues may also arise in the educational setting or workplace from romantic or intimate relationships between students or applicants for admission and College employees or between College 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.

4. If a relationship develops that falls under the above sections, 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 Vice President for Student Services; employees shall report to the Vice President for Administrative Services.
5. Once a relationship is reported under the above section, the Vice President for Student Services and the Vice President for Administrative Services working in consultation with the President, shall inform the persons involved in the relationship of the College's standards concerning consensual relationships, may set parameters while the persons are on campus, and make take other steps as appropriate.
6. Persons who engage in any relationship prohibited in the above sections and who fail to timely report shall be subject to administrative action, up to and including termination of employment or dismissal from the College, as applicable

G. Sexual Misconduct

- i. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. The following acts of sexual misconduct are prohibited;
- ii. sexual harassment;
- iii. non-consensual sexual intercourse;
- iv. non-consensual sexual contact; and
- v. sexual exploitation

H. Consent

- i. Since individuals may experience 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, there must be a clear expression in words or actions that the other individual consented to that specific sexual activity.
- ii. 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.
- iii. This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the taking of incapacitating drugs.
- iv. 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 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 alone 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.

- v. 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 old is a crime as well as a violation of this policy, even if the minor wanted to engage in the act.

I. Filing of Complaints

- i. To file a complaint of sexual misconduct or other violation of this policy, an employee, student, applicant, vendor, third-party, visitor, or others may complete a Complaint Form. Forms may be obtained from:
 - 1. Ms. Leah Taylor, Vice President for Administrative Services, Title IX Coordinator, Phone: 304.929.6701 Email: ltaylor@newriver.edu).
- ii. Completed Complaint Forms shall be submitted to the appropriate Title IX Coordinator as soon as possible after the incident. The Title IX Coordinator will then immediately notify the president of the complaint. If a complaint is against a Title IX Coordinator, the Complaint Form shall be submitted directly to the President. Once notified of a complaint the President will immediately designate investigator(s) to begin an investigation consistent with this policy.
- iii. The President or designee shall notify the Complainant and Respondent in writing of the appointment of the investigators.
- iv. The designated investigator(s) shall conduct a prompt, thorough, reliable, and impartial investigation of all complaints. Parties to a complaint may present witnesses and other evidence during the investigation. Interim corrective measures such as no contact orders may be taken during the investigation process. Parties will be informed, on an ongoing basis, of the status of the investigation. The investigation will be allotted forty-five (45) calendar days to complete, beginning from the appointment letter to the investigators. Should the investigator(s) determine they are unable to complete the investigation within the forty-five (45) calendar days; they must promptly request an extension in writing from the President. The request must state the reason(s) for the requested extension. The investigator(s) shall promptly notify the Complainant and Respondent of the extension, if granted.
- v. Upon completion of the investigation, the investigator(s) or designee shall provide a written report of investigation to the President. The President shall have fifteen (15) calendar days from receipt of the report to render a final determination. The final determination of the complaint is based on a preponderance of the evidence. Parties will be notified simultaneously and in writing of the disposition of the complaint and the process for appeal.
- vi. The final investigation file shall be retained by the College for the period set forth by law.

J. Receipt of Notice

- i. Regardless of how the complaint is filed, if an employee of the College receives notice concerning alleged sexual misconduct or other violation of this policy falling under Title IX, then that employee shall report to the appropriate Title IX Coordinator that much of the information contained in the notice as that employee is permitted to report under applicable confidentiality laws or that has not been requested by the victim to be specifically withheld, unless an immediate threat of harm exists to self or others. Upon receipt of the notice, the appropriate Title IX Coordinator or designee 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 Coordinators' response may vary, depending on the information contained in the particular notice, including initiation of the formal investigation process.

K. Appeal

- i. 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, including the sanctions imposed, may do so by submitting that party's appeal in writing to the President. Signed appeals should be hand-delivered or emailed in pdf format to the President within five (5) business days of the issuance of the final report of investigation. The President shall share a copy of the written appeal with the other party, who will be given an opportunity to respond to the appeal. All responses to the appeal must be submitted in writing to the President within five (5) business days of receiving the copy of the appeal from the President.
- ii. Recommendations not related to sexual misconduct or other violations of this policy falling under Title IX shall be addressed through applicable College policies and procedures, including handbooks, concerning employee and student conduct.
- iii. All appeals and responses are then reviewed by the President 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 President 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:
 1. A procedural or substantive error occurred that significantly impacted the outcome of the investigation, such as substantiated bias or material deviation from established procedures;
 2. 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
3. The sanctions imposed are substantially disproportionate to the severity of the violation.
 - iv. Within ten (10) business days of receiving the response(s) to the appeal(s), if any, the President will provide to both parties a Memorandum of Decision.
 - v. If the President determines that a material procedural or substantive error occurred, the President may return the matter to the original investigators with instructions to reconvene to cure the error. 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 President 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.
 - vi. If the President determines that new evidence should be considered, the President 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.
 - vii. If the President determines that the sanctions imposed are disproportionate to the severity of the violation, the President will return the matter to the investigators, who will modify the sanctions according to the directions of the President. The modified decision of the investigators is final.
 - viii. Once an appeal is completed, the parties will be notified, simultaneously, of the final determination and any changes that result.

L. Reporting of Violations

- i. Reports of violations of this policy should be made promptly as follows:
 1. Reports of discrimination, harassment, retaliation, sexual misconduct or other violations of this policy falling under Title IX should be made to the Title IX Coordinators: Vice President for Student Services and/or the Vice President for Administrative Services;
 2. reports of violations of this policy involving the Vice President for Administrative Services or Vice President for Student Services should be made to the President;
 3. reports of violations of this policy involving the President should be made to the Chair of the New River CTC Board of Governors; and
 4. reports of violations of this policy involving the Chair of the College Board of Governors should be made to the West Virginia Community and Technical College Council.
- ii. 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 reporting individual should immediately contact law enforcement.
- iii. Although reports of violations of this policy should be made promptly, there is no time limitation on the filing of reports, as long as the accused individual remains subject to the College's jurisdiction.

M. Retaliation

- i. Retaliation against an individual for alleging harassment, supporting a complainant or for assisting in providing information relevant to a claim of harassment is a serious violation of this policy, will be treated as another possible instance of harassment or discrimination, and should be reported immediately. The College will take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

N. Remedial Action

- i. The College 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 College community, guest, or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. Deliberately false and/or malicious accusations of harassment, as opposed to complaints which, even if erroneous, are made in good faith, are just as serious an offense as harassment and will be subject to appropriate disciplinary action.

O. Confidentiality of Reported Information

- i. Individuals wishing to report violations of this policy must be aware that College administrators, depending on their roles, 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 should inquire as to whether that administrator is bound by certain confidentiality and mandatory reporting requirements.
- ii. Confidential reports may be made to the following positions in the Student Success Centers:
 1. Educational Counselors
 2. Coordinator of the Student Success Centers
- iii. The College maintains a listing of resources including counseling, advocacy and support in the Student Success Center.

P. Federal Timely Warning Obligations

- i. Victims of sexual misconduct should be aware that College administrators must issue timely warnings to the College 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 permitted by the victim.

Q. Violations of Policy

- i. 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 the College, as applicable

R. Implementation of Policy

- i. This policy will be implemented using applicable West Virginia Community and Technical College Council rules and procedures, College policies and procedures, and the College faculty, staff, and student handbooks. In the event the individual, name, title, or contact information changes for any of the individuals listed in this policy, the

President of the College may revise such information within this procedure without resubmittal through the rulemaking process.

RELATED POLICIES AND/OR PROCEDURES: Operating Rule 13 Equal Employment Opportunity and Affirmative Action

RESPONSIBLE OFFICES: President, Vice President for Student Services, Vice President for Administrative Services and Director of Human Resources

Approved by: President's Cabinet-Draft Format 3/7/2014; Final Distribution 7/10/2014;

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