

Board of Governor's Policy



POLICY NAME	Harassment and Discrimination Policy		POLICY NO.	BOG 1.2	
RESPONSIBLE OFFICE	Title IX Coordinator, Human Resources, President	EFFECTIVE DATE	07/01/2003	DATE APPROVED	09/03/2020
DATE OF LAST REVISION	07/20/2020	DATE OF NEXT REVIEW	07/20/2023		

SCOPE

This policy is applicable to all students, potential students, employees and employment applicants of New River Community and Technical College.

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.

Compliance – Legislative Rule

Title VII Human Rights Act of 1964, Title IX Education Amendments of 1972, Section 504 of the Rehabilitation Act, Americans with Disabilities Act, Equal Employment Opportunity Commission	
Title VII	Title VII of the Civil Rights Act of 1964 is a federal law that protects employees against discrimination based on certain specified characteristics: race, color, national origin, sex, and religion. Under Title VII, an employer may not discriminate with regard to any term, condition, or privilege of employment. Areas that may give rise to violations include recruiting, hiring, promoting, transferring, training, disciplining, discharging, assigning work, measuring performance, or providing benefits.
Title IX	Title IX, clause of the 1972 Federal Education Amendments, signed into law on June 23, 1972, which stated that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”
Section 504	Section 504 is an anti-discrimination, civil rights statute that requires the needs of students with disabilities to be met as adequately as the needs of the non-disabled are met.
Americans with Disabilities Act (ADA)	The Americans with Disabilities Act of 1990 (ADA) is a federal law that prohibits discrimination against qualified individuals with disabilities. The ADA requires that reasonable accommodation be made to provide individuals with disabilities equal access to services, programs, and opportunities, such as employment and housing. Several federal agencies and departments enforce the ADA, including the Equal Employment Opportunity Commission (EEOC) and the Department of Justice.
Equal Employment Opportunity Commission (EEOC)	The Equal Employment Opportunity Commission (EEOC) is a government agency that enforces federal laws against workplace discrimination, including Title VII of the Civil Rights Act, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967 (ADEA), the Equal Pay Act of 1963

(EPA), Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), Sections 501 and 505 of the Rehabilitation Act of 1973, and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA).

POLICY STATEMENT

Consistent with its comprehensive mission, New River Community and Technical College promotes an educational system that values cultural and ethnic diversity and understanding; that provides for the preparation of students for full and meaningful participation in a changing world; and that promotes equitable and fair treatment in every aspect of campus life and employment for all persons, regardless of race, color, national origin, sex, sexual preference, sexual orientation, age, religion, veteran status, or disability. New River Community and Technical College is committed to ensuring an educational and workplace environment free from all forms of harassment and discrimination of any employee, applicant, student, or vendor. New River prohibits discrimination, harassment, retaliation and sexual misconduct in any form.

PURPOSE

To ensure students and employees are provided an educational and work environment free from harassment and discrimination and to understand guidelines and reporting mechanisms.

GENERAL PROVISIONS

The Harassment and Discrimination policy governs all incidents where there has been an alleged violation of conduct. The process is meant to be educational in nature and is separate from any civil or criminal proceedings. The determination of responsibility will be made on whether there is a preponderance of evidence/information that the Respondent was in violation of such conduct.

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 Coordinator determines that the off campus conduct affects a substantial College interest. A substantial College interest includes, but is not limited to, the following:

1. 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;
2. Any situation that is detrimental to the educational interests of the College;
3. 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).
4. 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.

TERMS AND DEFINITIONS

TERM	DEFINITION
Advisor	The Reporting Party and the Respondent may each elect to be accompanied by an Advisor to any meeting or interview regarding the allegations. The Advisor may be anyone, including an attorney or in the case of the Reporting Party, a Sexual Assault Victim's Advocate, provided the Advisor is not a person with information relevant to the allegations who may be interviewed by the Investigators during the investigation. The Advisor may not answer questions regarding the subject matter of the investigation for the Reporting Party or the Respondent. However, the Advisor may observe and consult with the Reporting Party or Respondent and encourage them to take appropriate action to ensure that the investigation does not violate applicable laws or policies. Should an alleged violation appear to be a Title IX violation, each party will be required to have an Advisor present to

	participate in the hearing and conduct cross-examination on their behalf. If a party does not have an Advisor, one will be appointed by the College.
Affirmative Consent	<p>Affirmative Consent means an informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that s/he has the Affirmative Consent of the other participant(s) to engage in the sexual activity. Lack of protest or resistance does not mean consent nor does silence mean consent.</p> <p>Affirmative Consent can be withdrawn or revoked. Affirmative Consent cannot be given by a person who is incapacitated or a person with a medical or mental disability.</p> <p>Sexual activity with a minor is never considered consensual, because a minor is considered incapable of giving consent due to age (State of WV under age 16).</p>
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.
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.
Harassment	Harassment means unwelcome conduct, based on the Reporting Party's Protected Status, that is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Reporting Party, and is in fact considered by the Reporting Party, as limiting their ability to participate in or benefit from the services, activities or opportunities offered by the College.
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.
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.
Intimidation	Implied threats or acts that cause a reasonable fear of harm in another on the basis of actual or perceived membership in a Protected Category.
Investigators	<p>Investigators means the persons tasked by a Campus with investigating a Complaint. All Investigators shall receive training regarding such issues as the laws governing Discrimination, Harassment and Retaliation; Title IX; as well as other related state and federal laws prohibiting Discrimination, Harassment and Retaliation based on Gender or Sex, including Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking; Reporting Party, Respondent, Employee, and witness privacy rights; and the Family Educational Rights and Privacy Act of 1974 (FERPA).</p> <p>If delegated, the Title IX Coordinator (for Complaints alleging Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking) shall monitor, supervise, and oversee the investigation to ensure that it is conducted in accordance with the standards, procedures and timelines set forth in this policy.</p> <p>Complaints alleging Civil Rights or other misconduct violations will be directed to the appropriate College governing authority to monitor, supervise and</p>

	oversee the investigation to ensure that it is conducted in accordance with the standards, procedures and timelines set forth in this policy.
Preponderance of Evidence	Preponderance of the Evidence means the greater weight of the evidence; i.e., that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side. The Preponderance of the Evidence is the applicable standard for demonstrating facts and reaching conclusions in an investigation conducted pursuant to this policy.
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.
Retaliation	Any adverse action taken against a person for complaining about harassment, supporting a Reporting Party 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 Reporting Party involving harassment, or for assisting in providing information relevant to a claim of harassment.
Sexual Harassment	<p>Sexual Harassment, a form of Sex Discrimination, is unwelcome verbal, nonverbal or physical conduct of a sexual nature that includes but is not limited to sexual advances, requests for sexual favors, and any other conduct of a sexual nature that satisfies one or more of the following:</p> <ol style="list-style-type: none"> 1. An employee of the recipient conditioning the provisions of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct; 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or conduct that is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Reporting Party, and is in fact considered by the Reporting Party, as creating an intimidating, hostile or offensive environment. 3. Sexual assault, dating violence, domestic violence, or stalking <p>Sexual Harassment also includes acts of verbal, non-verbal or physical aggression, intimidation or hostility based on Gender or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.</p>
Sexual Misconduct	<p>All sexual activity between members of the College community must be based on Affirmative Consent. Engaging in any sexual activity without first obtaining Affirmative Consent to the specific activity is Sexual Misconduct, whether or not the conduct violates any civil or criminal law. Sexual activity includes, but is not limited to, kissing, touching intimate body parts, fondling, intercourse, anal or vaginal penetration by any body part, and oral sex.</p> <p>Sexual misconduct also includes any unwelcome physical sexual acts, such as unwelcome sexual touching, Sexual Assault, Sexual Battery, Rape, and Dating Violence when based on Gender, Domestic Violence or Stalking.</p> <p>Men as well as women can be victims of these forms of Sexual Misconduct.</p> <p>Sexual Misconduct may include using physical force, violence, threat, or intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through the use of drugs or alcohol, or</p>

taking advantage of the other person's incapacitation (including voluntary intoxication) to engage in sexual activity. Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

- Sexual Assault - An act in which a person intentionally sexually touches another person without that person's consent, or coerces or physically forces a person to engage in a sexual act against their will
- Sexual Battery/Fondling – The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- 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.
- Sexual Harassment – As defined above.
- Dating Violence - Abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim. For purposes of this definition, "abuse" means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. Abuse may include non-physical, emotional distress or injury.
- Domestic Violence - Abuse committed against someone who is a current or former spouse; current or former cohabitant; someone with whom the Respondent has a child; someone with whom the Respondent has or had a dating or engagement relationship;
- Rape - The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- Statutory Rape – Sexual intercourse with a person who is under the statutory age of consent. (State of WV under 16 years old)
- Stalking - Stalking means engaging in a repeated course of conduct directed at a specific person that would cause a Reasonable Person to fear for his/her or others' safety or to suffer substantial emotional distress.

SECTION 1: COMPLIANCE

1.1 Affirmative Action - The College subscribes to the principles and regulations pertaining to equal opportunity and affirmative action.

1.2 Nondiscrimination - 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.

1.3 Accommodation of Disabilities - 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.

1. Students with Disabilities

- a. 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.
- b. All accommodations are made on a case-by-case basis by the Director of Student Success. 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, provided that the accommodation does not create undue hardship. An undue hardship refers to any accommodation that would be unduly costly, substantially disruptive, or that would fundamentally alter the nature of the program.

2. Employees with Disabilities

- A. 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.
- B. 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 Human Resources Director to identify which essential functions are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.
- C. Employees requesting accommodation may be required to provide medical certification from the employee's health care provider that includes:
 - a. Identification of the health care provider;
 - b. The health care provider's diagnosis of the disabling condition;
 - c. Specific limitations and/or suggested restrictions and their relation to the disability; and
 - d. Suggested accommodations.

1.4 Discriminatory Harassment - 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. The College will not tolerate any type of Discriminatory and Bias-Related Harassment or Sexual Harassment.

1.5 Additional Misconduct Offenses – The College will not tolerate any behavior that is: 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; intimidation; hazing; bullying; domestic violence/intimate partner violence; stalking; and 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.

1.6 Consensual Relationships

- A. 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:
- B. 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.
- C. Relationships between a College employee holding a direct or indirect supervisory and/or evaluative role over the other person in the relationship; and

- D. 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.
- E. 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
 - a. the individuals in the relationship report the existence of the relationship as required in the above section before the power differential is created and
 - b. 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.
- F. 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.
- G. 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 Dean of Student Services; employees shall report to the Director of Human Resources.
- H. Once a relationship is reported under the above section, the Dean of Student Services and the Director of Human Resources working in consultation with the appropriate members of senior leadership, 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 may take other steps as appropriate.
- I. 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.

1.7 Sexual Misconduct

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.

All sexual activity between members of the College community must be based on Affirmative Consent. Engaging in any sexual activity without first obtaining Affirmative Consent to the specific activity is Sexual Misconduct, whether or not the conduct violates any civil or criminal law. For what constitutes Sexual Misconduct, refer to the definitions section of this policy.

1.8 Affirmative Consent

- A. 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.
- B. 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.

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

SECTION 2: PROCEDURE

2.1 Implementation of Policy

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.

2.2 Violations of Policy

All alleged violations of this policy will be investigated promptly and thoroughly. The course of investigation will follow the protocol required based on the type of alleged conduct violation. Refer to the Investigation Procedure Flowchart.

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

2.3 Retaliation

Retaliation against an individual for alleging harassment, supporting a Reporting Party 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.

2.4 Reporting of Violations

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

- A. Reports of discrimination, harassment, retaliation, sexual misconduct or other violations of this policy should be referred to the Title IX Coordinator. Reports may be filed by completing the [Investigative Complaint Form](#). Reports that do not meet Title IX criteria will be referred to the appropriate responsible office for investigation and/or resolution.
- B. The Title IX Coordinator may file a formal complaint should they be aware of an incident that was not reported otherwise.
- C. Reports of violations of this policy involving the Title IX Coordinator or Human Resources Director should be made to the President;
- D. Reports of violations of this policy involving the President should be made to the Chair of the New River CTC Board of Governors;
- E. 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.

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.

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.

2.5 Remedial Action

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.

Remedial actions are designed to prevent serious and immediate harm to the Reporting Party or others, prevent retaliation against anyone, end discriminatory or harassing behavior and prevent its occurrence. This may include, but is not limited to altering the Reporting Party or Respondent's work or academic environment, providing counseling and medical services, issuing no contact orders, transferring students or faculty to different courses, and other actions.

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.

2.6 Confidentiality of Reported Information

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.

The College maintains a listing of resources including counseling, advocacy and support in the Student Success Center.

2.7 Receipt of Notice

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 Title IX Coordinator as 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 Title IX Coordinator or designee will review the information contained in the notice to determine what sexual misconduct or other violation of this policy potentially occurred, if any, and respond appropriately.

Complaints alleging Civil Rights or other misconduct violations will be directed to the appropriate College governing authority to monitor, supervise and oversee the investigation to ensure that it is conducted in accordance with the standards, procedures and timelines set forth by the College.

2.8 Federal Timely Warning Obligations

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.

2.9 Filing a Complaint

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 an Investigative Complaint Form. An [Investigative Complaint Form](#) may be completed and submitted via the College website.

- A. The completed form will be submitted to the Title IX Coordinator for review and intake interview with Reporting Party to determine the type of alleged violation and investigative course of action. The Title IX Coordinator may consult with the Human Resources Director and/or the President to make this determination.
 - a. If there is insufficient information for investigation the case will be closed.
 - b. If the allegations do not show this to be a potential Title IX complaint it will be dismissed as a Title IX complaint, and referred to the appropriate process for resolution.
 - c. The Reporting Party may request no further investigation. In this case they will still be offered supportive services.
 - d. If a complainant is reluctant or unwilling to pursue investigation, and the Title IX Coordinator believes the alleged perpetrator may pose a threat to others, the Title IX Coordinator may choose for the case to still move forward.
- B. If the complaint is determined to be a possible Title IX violation then;
 - a. Supportive measures will be discussed and implemented as applicable. The Title IX Coordinator may issue a no-contact order between the Reporting Party and Respondent. This order may also include restrictions to campus, campus activities or possible suspension during the investigation. In addition, reasonable accommodations to increase the Reporting Party's safety and well-being on campus will be considered. If an individualized safety and risk analysis determines that the Respondent poses an immediate threat to the physical health or safety of a student or other individual, an "emergency removal" will occur (interim suspension/administrative leave). The Respondent will be given written notice, including the option to challenge the decision.
 - b. Investigators will be assigned to begin an investigation consistent with this policy. Investigations will be conducted by college officials who receive training on issues related to domestic violence, dating violence, stalking, sexual exploitation and sexual assault, as well as on conducting investigations that protect victim safety and promote accountability.
 - c. The Reporting Party and the Respondent will be notified in writing of the investigation and the charged policy violations. Unless eventually determined otherwise, it is assumed the Respondent is not responsible for the alleged conduct. The Respondent will also be provided information about the policy, procedural protections, support resources, and appropriate referrals.
 - d. The designated Investigators shall conduct a prompt, thorough, reliable, and impartial investigation of all complaints. The College will bear the burden of gathering evidence and proving a violation of policy, although the parties to a complaint may present witnesses and other evidence during the investigation. Parties are free to discuss the allegations and to gather and present relevant evidence. Parties will be informed, on an ongoing basis, of the status of the investigation.
 - e. The Reporting Party and the Respondent may each elect to be accompanied by an Advisor to any meeting or interview regarding the allegations. The Advisor may be anyone, including an attorney or in the case of the Reporting Party, a Sexual Assault Victim's Advocate, provided the Advisor is not a person with information relevant to the allegations who may be interviewed by the Investigator(s) during the investigation. The Advisor may not answer questions regarding the subject matter of the investigation for the Reporting Party or the Respondent. However, the Advisor may observe and consult with the Reporting Party or Respondent and advise appropriate action to ensure that the investigation does not violate applicable laws or policies.

- f. The Investigators will take primary statements from the Reporting Party and Respondent, ask follow up questions, reach out to and collect statements from others who have evidence/information relevant to the question of violation of the code of conduct, and ask follow-up questions as needed. The Reporting Party and Respondent may each suggest questions to the Investigators to be asked of others, and may also suggest others with which the Investigators should speak. Final decisions about with whom to speak and what to ask will be made by the Investigator(s). The Investigators will also pull together any additional evidence available. The Investigators may consult with the Title IX Coordinator in decisions regarding the investigation process.
- g. Students, staff, and faculty have the responsibility to participate fully and truthfully in college investigations.
- h. The Investigators will produce a report of their findings, which will include a list of those interviewed and copies of any additional material referenced. The Investigators will present the report to the Title IX Coordinator who will ask for feedback and comment from both the claimant and Respondent. The Reporting Party and Respondent each have ten (10) days following the receipt of the report to write a response to it, if they so wish. Responses will be included with the final report. Upon receiving feedback and comment, the Title IX Coordinator will review the report and supplemental information to determine whether or not there is adequate information available to proceed to a conduct hearing. The Title IX Coordinator may request that additional information be gathered in order to make an appropriate determination. The determination of the complaint is based on a preponderance of the evidence.
- i. Should a determination be made that the information gathered warrants a hearing, the complete report, with participant responses, will be sent forward to the Director of Human Resources, who will serve as the Hearing Officer for adjudication. The Reporting Party and Respondent will have ten (10) days to prepare for the hearing to provide any additional information for review.

2.10 Hearing

- A. The Hearing Officer will preside over the hearing and must review the Title IX Investigator's Report containing all pertinent information regarding the incident in question prior to the date of the Hearing. The Hearing Officer will hear the case and determine, based on the preponderance of the evidence, whether there has been a sexual misconduct violation by the Respondent.
- B. The Hearing is a closed hearing; it is not open to the public. Notes may be taken by the participants in the hearing solely for their personal use. There will be a single verbatim recording made of the hearing which shall be the sole property of the Title IX Coordinator, and this recording will be available only for review by the Reporting Party, Respondent, or the College for the purpose of an appeal. The recording will not be released to any party nor will the Title IX Coordinator make copies. If copies are requested, the party interested must supply a transcriber at their cost to transcribe at the College under the supervision of Title IX Coordinator or his/her designee. The recording will be maintained with the investigation record. It will be discarded with the entirety of the record following the institution's record retention guidelines.
- C. The individuals who may appear before the Hearing Official are: the Reporting Party; the Respondent; any individual serving as an approved Advisor; the Title IX Investigator(s); the Title IX Coordinator; and any individuals appearing as witnesses. Due to the sensitive nature of these cases, either party participating in the hearing may request to not physically face the other party. This will be done through the use of a conference call and/or video call system with the concerned party having the ability to call-in from an alternate on-campus location.

- D. The hearing will be called to order by the Hearing Officer. The Hearing Officer will orally explain the hearing process and will provide an opportunity for all parties to ask procedural questions prior to initial statements and the presentation of information.
- E. Both parties must have an Advisor present during the hearing. If either party does not have an Advisor they must give the College advance notice, and the College will provide an Advisor for them at no cost. The Advisor will cross-examine the other party, as well as witnesses. Only the Advisor may conduct cross-examination; the parties themselves may not. Questions they wish to ask must first be approved by the Hearing Officer. If the Hearing Officer rejects a question, they will explain why for the record.
- F. If any party or witness does not attend the hearing and/or does not submit to cross-examination, previous statements made by them will not be considered.
- G. The Reporting Party may supplement the information provided to the Hearing Officer with a brief statement. Should the Respondent want to ask a follow up question, they must submit the question in writing to the Hearing Officer for approval during the hearing.
- H. After the Reporting Party is finished, the Respondent will be given an opportunity to make a brief statement. Should the Reporting Party want to ask a follow up question, they must submit the question in writing to the Hearing Officer for approval during the hearing.
- I. The Hearing Officer may hear from witnesses on behalf of the Reporting Party and the Respondent. Each witness will be questioned by the Hearing Officer, the Reporting Party and the Respondent. Questions from the Reporting Party and Respondent must be asked to the Hearing Officer, who will then ask the witness directly.
- J. At the conclusion of the presentation of all witnesses, the reporting Party and Respondent will each be given a brief final opportunity to address any outstanding issues of fact and submit additional written questions to the Title IX Coordinator. Title IX Coordinator will determine the appropriateness and relevance of the questions. If any questions are approved, the Reporting Party and Respondent will be permitted to ask their questions in the same questioning format as previously used in the hearing.
- K. At the conclusion of this process, the Hearing Officer will excuse everyone from the room. The Hearing Officer will deliberate in a timely manner and provide a written decision to the Respondent, Reporting Party, and Investigators simultaneously.
- L. If determined responsible, possible sanctions for a student Respondent include dismissal, suspension, disciplinary probation, official censure, restitution, or discretionary sanctions. Employee respondent found responsible may receive disciplinary action up to and including termination of employment.

2.11 Appeal

Any party who wishes to appeal an initial dismissal of a case as not a potential Title IX violation, or 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. Any party who wishes to appeal the decision of any other violation outlined in this policy may also do so by submitting the appeal in writing to the President. Signed appeals should be hand-delivered or emailed in pdf format to the President within ten (10) 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 ten (10) business days of receiving the copy of the appeal from the President.

- A. The President will 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:

- a. A procedural or substantive error occurred that significantly impacted the outcome of the investigation, such as substantiated bias or material deviation from established procedures.
- b. 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
- c. The sanctions imposed are substantially disproportionate to the severity of the violation.

EXCEPTIONS/EXCLUSIONS

REVIEW

This policy shall be reviewed on a regular basis with a time frame for review to be determined by the President or the President's designee. Upon such review, the President or President's designee may recommend that the policy be amended or repealed.

APPROVAL SIGNATURES

	9/14/2020
Board of Governors Chair	Date
<small>DocuSigned by:</small>	
	
President	Date

RELATED POLICIES, OTHER REFERENCES AND ADDITIONAL NOTES

ASSOCIATED FORMS

Investigative Complaint Form

HISTORY		
REVISION DATE	DESCRIPTION OF CHANGE	Vice President Approval
7/14/2020	Revision and consolidation of Policy 13 Social Justice, Operating Rule 13 Equal Employment and Affirmative Action, Operating Rule 17 Sexual Harassment and Procedure 27 Equal Opportunity, Non Discrimination, Sexual Misconduct and Other Forms of Harassment.	7/15/2020

New River Community and Technical College expects all faculty, staff and students to be familiar with and adhere to all applicable college policies.