

EASTERN WEST VIRGINIA COMMUNITY & TECHNICAL COLLEGE

Board of Governors

Regulation No. AR 5.17

Harassment/Discrimination

Effective Date: April 30, 2013

Revised Date: April 30, 2014; June 6, 2019

Authority

- 1.1 W. Va. Code § 18B-1-6
- 1.2 W. Va. Code R § 133-4
- 1.3 Section 504: 34 CFR 104.7 (b)
- 1.4 Title IX: 34 CFR 106.8 (b)
- 1.5 Title II: 28 CFR 35.107(b)

Definitions

- 2.1 "Bullying" means repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt control or diminish another person, physically or mentally. Any bullying conduct or behavior may lead to progressive disciplinary action.
- 2.2 "Consent" to sexual activity may be communicated in a variety of ways, both verbal and nonverbal. Verbal communication prior to engaging in sexual activity certainly can help to clarify for the individuals involved whether or not there is consent. One should presume that there is no consent in the absence of a clear positive indication of consent.

Likewise, non-consent or lack of consent may also be communicated in a variety of ways both verbal and non-verbal. A verbal "no" (or its verbal or non-verbal equivalent) indicates an unwillingness to participate in sexual activity. Non-consent can also be communicated in a variety of other ways, depending on the circumstances or context. Even in the absence of a verbal "no," physical resistance is not necessary to communicate a lack of consent. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and gauging consent, and you are thus urged to seek consent in verbal form. Talking with sexual partners about desires and limits may seem awkward, but serves as the basis for positive sexual experiences shaped by mutual willingness and respect.

- 2.3 "Consent" requires the response of yes, not the absence of no. Consent requires conversation. The person who initiates sexual activity is responsible for asking for consent. The absence of a clear verbal signal means you do not have consent. Both parties must have unimpaired judgment (examples that may cause impairment include but are not limited to alcohol, drugs, and mental health conditions). Prior to sexual activity, both parties must disclose personal risk

factors such as any known STDs, and both parties must use safer sex practices. Consent means that both partners decide together to have sex. Regardless of your prior sexual history consent is required each time you have sexual activity. It is not your partner's job to resist; it is your responsibility to respect his/her boundaries. At any time when consent is withdrawn or not verbally agreed to, the sexual activity must stop. Silence is not consent. You cannot rely on assumptions on what your partner does or does not want. Incapacity of the victim does not constitute consent on the part of the victim. A person is determined incapable of consent when such person is less than sixteen years old; or mentally defective; or mentally incapacitated; or physically helpless. Mentally defective means that the person suffers from a mental disease or defect, which renders such person incapable of appraising the nature of his or her do conduct.

Mentally incapacitated means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to such person without his or her consent or as a result of any other act committed upon such without his or her consent. Physically helpless means that a person is unconscious or for any reason is physically unable to communicate unwillingness to an act. It is the positon of Eastern that a sexual assault also occurs against the victim who willingly takes a controlled or intoxicating substance if the sexual contact occurs after the victim becomes temporarily incapable of appraising or controlling his or her conduct as a result of the controlled or intoxicating substance.

2.4 "Disability Services Representative" means the Disability Services Office located in the Learner Support Services Department.

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

2.5.1 Sexual discrimination is any action that specifically denies opportunities, privileges, or rewards to a person (or a group) because of gender.

2.5.2 Disability discrimination occurs when an employer or any other entity covered by the Americans with Disabilities Act, as amended, or the Rehabilitation Act, as amended, treats a qualified individual with a disability who is an employee, student, or applicant unfavorably because he/she has a disability.

2.6 "Domestic Violence/Intimate Partner Violence/Abuse" means the occurrence of any of the following acts/conditions between those in or having previously been in an intimate relationship to each other, including dating, domestic and/or any other intimate relationship.

2.6.1 Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;

2.6.2 Placing another in reasonable apprehension of physical harm;

2.6.3 Creating fear of physical harm by harassment, stalking, and psychological abuse or threatening acts;

- 2.6.4 Committing sexual assault, sexual abuse, domestic battery or domestic assault as those terms are defined under West Virginia criminal law;
- 2.6.5 Holding, confining, detaining or abducting another person against that person's will.
- 2.7 "EEO/Equity/AA/ADA/504 Coordinator" means the Executive Dean of Administrative Services, who serves as the Equal Employment Opportunity/Equity/ Affirmative Action Coordinator and oversees implementation of the Eastern's Affirmative Action and Equal Opportunity plan, disability compliance and the Eastern's policy on discrimination and harassment.
- 2.8 "Hazing" means acts likely to cause physical or psychological harm or social ostracism to any person within the Eastern community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity on the basis of actual or perceived membership in a Protected Category.
- 2.9 "Hostile Environment" means an environment created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent, or pervasive and objectively offensive so as to interfere with, limit, or deny the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits, or opportunities.
- 2.10 "Incapacitation" means 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).
- 2.11 "Intimidation" means implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a Protected Category.
- 2.12 "Minor" means a person under the age of 16 years.
- 2.13 "Non-Consensual Sexual Contact" means any intentional Sexual Touching, however slight, with any object, by a person upon another person, which is without consent and/or by force.
- 2.14 "Non-Consensual Sexual Intercourse" means any Sexual Penetration or intercourse (anal, oral or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force.
- 2.15 "Protected Category" means a category under which an individual falls or is perceived to fall that is protected under federal, state, or local anti-discrimination laws, including race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age, marital status, veteran or military status, disability, or genetic information.
- 2.16 "Retaliation" means any adverse employment or educational action taken against a person who complained about harassment, supported a complainant involving harassment, or who participated in the investigation of a claim of harassment because of that person's participation in filing the complaint of harassment, supporting a complainant involving harassment, or for participating in the investigation of a claim of harassment.
- 2.17 "Sexual Exploitation" means a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the

definitions of Sexual Harassment, Non-Consensual Sexual Intercourse, or Non-Consensual Sexual Contact. The term includes, but is not limited to, the following situations:

- 2.17.1 Sexual voyeurism, such as watching a person undressing, using the bathroom or engaging in sexual acts without the consent of the person observed;
 - 2.17.2 Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of 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;
 - 2.17.3 Prostitution;
 - 2.17.4 Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection; and
 - 2.17.5 Administering alcohol or drugs (such as date rape drugs) to another person without his or her knowledge or consent for the purpose of engaging in sexually-related activity with that person.
- 2.18 "Sexual Harassment" means any unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual/gendered-related nature. A form of sexual harassment occurs when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status, submission to or rejection of such conduct by an individual is used as the basis of employment or academic decisions affecting such individual, or such conduct creates a Hostile Environment.
 - 2.19 "Sexual Penetration" means vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.
 - 2.20 "Sexual Touching" means any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.
 - 2.21 "Stalking" means a course of conduct (i.e., repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of another) directed at a specific person that is unwelcome and would cause a reasonable person to feel fear.
 - 2.22 "Title IX Coordinator" means the Dean of Teaching and Learning.

General Provisions

- 3.1 Eastern is committed to promoting the goals of fairness and equity in all aspects of the educational enterprise.
- 3.2 This policy applies to behaviors that take place on campus, at Eastern sponsored events, and may also apply off-campus and to online actions when the EEO/Equity/AA/ADA/504 Coordinator or the Title IX (Disability) Coordinator determines that the off-campus conduct affects a

substantial Eastern interest. A substantial Eastern interest includes, but is not limited to, the following:

- 3.2.1 Any action that constitutes a criminal offense as defined by federal or state law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality where Eastern is located.
 - 3.2.2 Any situation where it appears that the accused individual may present a danger or threat to the health and safety of him/herself or others;
 - 3.2.3 Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder;
 - 3.2.4 Any situation that is detrimental to the educational interests of Eastern; and
 - 3.2.5 These provisions of this rule apply equally to and against vendors, contractors, suppliers and any other outsiders who may interact with Eastern or its employees or students.
- 3.3 Any online postings or other electronic communication, including cyber-bullying, cyber stalking, cyber-harassment, etc. occurring within Eastern's control (i.e. Eastern networks, websites or between Eastern email accounts). Any online postings or other electronic communication, including cyber-bullying, cyberstalking, cyber-harassment, etc. occurring outside of Eastern's immediate jurisdiction will be investigated when those online behaviors may have the effect of creating a Hostile Environment.
 - 3.4 Inquiries about this policy may be made internally to either the Title IX (Disability) Coordinator, Dean of Teaching and Learning, Dean of Student Access and Success or EEO/ADA Coordinator, Executive Dean of Administrative Services.
 - 3.5 All new students, newly hired employees and existing employees will be trained in primary prevention and awareness programs relating to sexual misconduct, domestic violence, and related offenses. At a minimum, that training will inform on the nature of prohibited conduct, the definitions of various prohibited behaviors, the definition of "consent" as applied by the institution, safe and positive options for bystander intervention in risky situations, means of recognizing signs of domestic violence and abusive behavior and on-going prevention and awareness of related issues. In addition, that training will inform attendees of the relevant provisions of this policy for purposes of recognizing and reporting instances of prohibited conduct.
 - 3.6 Inquiries may be made externally to the Office for Civil Rights, at <http://www.ed.gov/ocr>.

Eastern's Affirmative Action Manual

- 4.1 Eastern subscribes to the principles and regulations pertaining to equal opportunity and affirmative action.
- 4.2 In compliance with these regulations, Eastern shall maintain an affirmative action manual in the Office of Human Resources.

Nondiscrimination

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

Accommodation of Disabilities

- 6.1 Eastern is committed to compliance with the Americans with Disabilities Act of 1990 ("ADA") and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against qualified persons 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 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.
- 6.2 The EEO/Equity/AA/ADA/504 Coordinator is responsible for coordinating efforts to comply with the disability laws set forth in Section 6.1, including investigation of any employee or student complaint alleging noncompliance.
- 6.3 Students with Disabilities
 - 6.3.1 Pursuant to the ADA, Eastern will provide reasonable accommodations and support to all students who have a qualifying disability to ensure equal access to the programs and activities of Eastern.
 - 6.3.2 All accommodations are made on a case-by-case basis by the Executive Dean of Administrative Students requesting any accommodation should contact the appropriate Dean, Title IX (Disability) Coordinator, 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.
- 6.4 Employees with Disabilities
 - 6.4.1 Pursuant to the ADA, Eastern 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.
 - 6.4.2 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 EEO/Equity/AA/ADA/504 Coordinator to identify which essential functions are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

6.4.3 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.

Discriminatory Harassment

7.1 Eastern is committed to providing a work and educational environment free from discriminatory harassment. The College will take steps to prevent the recurrence of any harassment/discrimination. This harassment policy is not meant to inhibit or to prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters.

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

7.2.1 Discriminatory and Bias-Related Harassment

(i) Harassment constitutes a form of discrimination that is prohibited by law. This policy explicitly prohibits any form of harassment on the basis of actual or perceived membership in a Protected Category, by any member or group of the Eastern community or any outsider to the Eastern community who interacts with the Eastern 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 Eastern Office of Human Resources. Harassment that does not rise to the level of creating a Hostile Environment is still a concern to Eastern and should be reported so that appropriate intervention and remedies can be implemented, if needed.

(ii) Eastern 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.

7.2.1 Sexual Harassment

(i) 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.

Additional Misconduct Offenses

8.1 Threatening or causing physical harm, extreme verbal abuse, or other conduct that threatens or endangers the health, safety or peace of mind of any person on the basis of their actual or perceived membership in a Protected Category;

8.2 Intimidation;

8.3 Hazing;

- 8.4 Bullying;
- 8.5 Domestic Violence/Intimate Partner Violence /Abuse;
- 8.6 Stalking; and
- 8.7 Violating any other Eastern policies or procedures, when such violation is motivated by the actual or perceived membership of the victim in a Protected Category.

Consensual Relationships

- 9.1 There are inherent risks in any romantic or intimate relationship between individuals in unequal positions. Thus, except as otherwise provided in Section 9.2, any romantic or intimate relationships in which power differentials are inherent are prohibited, which include, but are not limited to, the following:
 - 9.1.1 Relationships between students or applicants for admission and administrators, faculty, preceptors, standardized patients, coaches, athletic trainers, or any Eastern employee where a direct power differential exist between the student or applicant for admission and the employee;
 - 9.1.2 Relationships between an Eastern employee holding a direct or indirect supervisory and/or evaluative role over the other person in the relationship; or
 - 9.1.3 Any other romantic or intimate relationship between students or applicants for admissions and employees or between employees where any employment-related power differential exists between the persons in the relationship.
- 9.2 Notwithstanding the prohibitions in Section 9.1, any romantic or intimate relationship prohibited in Section 9.1 that exists prior to the creation of a power differential between the individuals involved in the romantic or intimate relationship shall not violate this policy if (i) the individuals in the relationship report the existence of the relationship as required in Section 9.4 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 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 pre-existing relationship with that student.
- 9.3 Issues may also arise in the educational setting or workplace from romantic or intimate relationships between students or applicants for admission and Eastern employees or between Eastern 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.
- 9.4 If a relationship develops that falls under Sections 9.2 or 9.3, the student, applicant for admission, and the employee involved in the relationship must timely report the existence and termination, if any, of such relationship as follows: applicants for admission and students (Immediate supervisor or Executive Dean of Administrative Services

- 9.5 Once a relationship is reported under Section 9.4, the Executive Dean of Administrative Services respectively, shall inform the persons involved in the relationship of Eastern's standards concerning consensual relationships, may set parameters while the persons are on campus, and may take other steps as appropriate.
- 9.6 Persons who engage in any relationship prohibited by Section 9.1 or who engage in any relationship listed in Sections 9.2 and 9.3 and who fail to timely report shall be subject to administrative action, up to and including termination of employment or dismissal from Eastern, as applicable.

Sexual Misconduct

- 10.1 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:
- 10.1.1 Sexual Harassment, as set forth in Section 7.2.2 of this policy;
 - 10.1.2 Non-Consensual Sexual Intercourse;
 - 10.1.3 Non-Consensual Sexual Contact; and
 - 10.1.4 Sexual Exploitation.
- 10.2 Consent
- 10.2.1 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.
- 10.2.2. A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the individual initiating or furthering the sexual misconduct was intoxicated and, therefore, did not realize the incapacity of the other.
- 10.2.3 This policy also covers a person whose incapacity results from mental disability, age, involuntary physical restraint, and/or from the taking of incapacitating drugs.
- 10.2.4 Consent to some sexual contact, such as kissing or fondling, cannot be presumed to be consent for other sexual activity, such as intercourse. A current or previous dating 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.

10.2.5 In the State of West Virginia, a minor cannot consent to sexual activity. Thus, sexual contact by an adult with a person younger than 16 years old is a crime as well as a violation of this policy, even if the minor wanted to engage in the act.

10.3 Filing of Complaints

10.3.1 To file a complaint of sexual misconduct and/or disability discrimination or other violation of this policy falling under Title IX, an employee, student or applicant may complete a Sexual Misconduct/Discrimination Complaint Form. Forms may be obtained from the Executive Dean of Administrative Services or Title IX (Disability) Coordinator's office and Eastern's website. Executive Dean of Administrative Services Title IX (Disability) Coordinator will provide assistance in completing the form.

10.3.2 Anonymous complaints will be accepted, however, the College may be limited in its options in investigating and/or resolving anonymous complaints because of the unique challenges they present. There is no way to assess the author's veracity and no ability to obtain additional information for the complainant if the complaint is unclear or confusing. However, if the anonymous complaint contains sufficiently detailed information which, if true, would constitute: (a) a crime, then the complaint will be forwarded to the appropriate law enforcement agency for appropriate action; (b) or a violation of this policy, the complaint will be investigated to the best of the Coordinator's ability given the anonymous nature of the complaint. A record will be kept of all anonymous complaints.

10.3.3 Eastern will ensure that any person designated to conduct an investigation into allegations raised under this policy is fully and adequately trained in the conduct of such investigations, the dynamics of domestic and sexual violence and other matters significant to an understanding of the issues underlying the investigation. Eastern will also ensure that the conduct of such investigations is done in such a manner as to protect the safety of victims and to promote accountability.

10.3.4 Completed Sexual Misconduct/Discrimination Complaint Forms shall be submitted to the Title IX Coordinator as soon as possible after the incident. If a complaint is against the Title IX (Disability) Coordinator, the Sexual Misconduct Complaint Form shall be filed with the Executive Dean of Administrative Services who will immediately designate a person to begin an investigation consistent with this policy.

10.3.5 The Title IX (Disability) Coordinator shall conduct a prompt, thorough, reliable, and impartial investigation of all complaints. Interim corrective measures may be taken during the investigation process. Parties will be informed, on an ongoing basis, of the status of the investigation. Parties will also be informed of their right to have others present during any part of the institutional disciplinary process.

10.3.6 At the victim's discretion, Eastern will employ measures designed to ensure the confidentiality of the fact, contents and findings of an investigation. Such measures may include, among other things, a coding system for complaints so as to hide any personally identifiable information on victims and internal controls on access to information so as to ensure the dissemination of such information on a need-to-know basis.

10.3.7 The standard of evidence to be applied in the investigation of a complaint is that of a preponderance of the evidence. In other words, to substantiate a complaint filed under this rule the evidence collected and considered during the investigation must demonstrate that it is more likely than not that the complained of conduct occurred.

10.3.8 Upon completion of the investigation, the Title IX (Disability) Coordinator shall provide a written report of investigation, which will set forth the final determination of the complaint on the basis of a preponderance of the evidence. Parties will be notified simultaneously and in writing of the disposition of the complaint and the process for appeal.

10.3.9 If the Title IX (Disability) Coordinator find the student responsible for sexual misconduct and/or disability discrimination and recommends the sanction of expulsion, the matter will be forwarded to the Judicial Board for a hearing on the merits of the charges. The Title IX Coordinator will notify the complainant and the accused student that the matter has been referred to the Judicial Board for a hearing on the merits and will provide each with a copy of the investigation report. The complaint will serve as the formal written notice of charges. The accused student will be given sufficient opportunity to prepare to rebut the charges; the opportunity to have retained counsel or other representative of his/her choice at any hearing on the charges; to confront his/her accusers, and to present evidence on his/her behalf. The accused student will also be given an opportunity to challenge the Judicial Board for bias. The hearing will be recorded. The complainant is entitled to appear at the hearing if he/she chooses and will be afforded all of the same rights as the accused student. Alternate arrangements for providing testimony such as video conferencing may be made available upon written request to the Judicial Board within five (5) working days prior to the hearing date. Five working days prior to the hearing date, the parties must provide the Judicial Board with the name and contact information of his/her representative.

10.3.9.1 Receipt of Notice

Regardless of whether a complaint is filed under section 10.3, if an employee of Eastern receives notice concerning alleged sexual misconduct and/or disability discrimination or other violation of this policy falling under the Title IX, then that employee shall report to the Title IX (Disability) 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 Title IX (Disability) Coordinator shall investigate the information contained in the notice, determine what sexual misconduct or other violation of this policy occurred, if any, and respond appropriately. The Title IX (Disability) Coordinator's response may vary, depending on the information contained in the particular notice, including initiation of the formal investigation process set forth in Sections 10.3.3 and 10.3.4 above.

10.3.10 Appeal

10.3.10.1 Appeal: Any party who wishes to appeal the recommendations contained in the report of investigation, as they relate to violations of this policy falling under Title IX, including the sanctions imposed by the investigators, may do so by submitting that party's appeal in writing to The President of Eastern (hereinafter "Appeals Officer"). Signed appeals should be hand-delivered or emailed in pdf format to the Appeals Officer within five (5) business days of the issuance of the final report of investigation. The Appeals Officer 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 Appeals Officer within five (5) business days of receiving the copy of the appeal from the Appeals Officer.

10.3.10.2 Recommendations not related to the sexual misconduct/disability discrimination or other violations of this policy falling under Title IX shall be addressed through applicable Eastern policies and procedures, including handbooks, concerning employee and student conduct, as set forth in Section 16.

10.3.10.3 All appeals and responses are then reviewed by the Appeals Officer to determine if the appeal request meets the limited grounds and is timely. The original recommendations and sanctions will stand if the appeal is not timely or does not fall within the grounds for appeal set forth below, and the decision is final. The original recommendations and sanctions will also remain in effect pending the outcome of any appeal. 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:

10.3.10.3.1 A procedural or substantive error occurred that significantly impacted the outcome of the investigation, such as substantiated bias or material deviation from established procedures.

10.3.10.3.2 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

10.3.10.3.3 The sanctions imposed are substantially disproportionate to the severity of the violation.

10.3.10.4 Within ten (10) business days of receiving the response(s) to the appeal(s), if any, the Appeals Officer will provide to both parties a Memorandum of Decision.

10.3.10.5 If the Appeals Officer determines that a material procedural or substantive error occurred, the Appeals Officer may return the matter to the original investigators 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 Appeals Officer may order a new investigation on the complaint

with new investigators. The results of a new investigation can be appealed, once, on the applicable grounds for appeals.

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

10.3.10.7 If the Appeals Officer determines that the sanctions imposed are disproportionate to the severity of the violation, the Appeals Officer will return the matter to the investigators, who will modify the sanctions according to the directions of the Appeals Officer. The modified decision of the investigators is final.

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

Reporting of Violations

- 11.1 Reports of violations of this policy should be made promptly as follows:
 - 11.1.1 Reports of discrimination, harassment, retaliation, or other violations of this policy should be made to Executive Dean of Finance and Operations Services;
 - 11.1.2 Reports of sexual misconduct or other violations of this policy falling under Title IX should be made to the Title IX (Disability) Coordinator;
 - 11.1.3 Reports of violations of this policy involving the EEO/Equity/AA/ADA/504 Coordinator or the Title IX (Disability) Coordinator should be made to the President, of Eastern;
 - 11.1.4 Reports of violations of this policy involving the President of Eastern should be made to Eastern WV CTC's Board of Governors Chair and;
 - 11.1.5 Reports of violations of this policy involving the Chair of Eastern Board of Governors should be made to the West Virginia Higher Education Policy Commission.
- 11.2 If a reporting individual believes that an immediate threat of harm exists to self or others or that an individual has violated federal, state, or local law, the reporting individual should immediately contact law enforcement.
- 11.3 Upon receiving a report of an alleged violation of this policy, the appropriate administrator listed in Section 11.1 shall promptly investigate the alleged violation contained in the report.
- 11.4 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 Eastern jurisdiction. Individuals responsible for receiving and investigating complaints made under this rule shall ensure victims are notified of their option to seek-or not to seek-assistance from law enforcement and/or campus authorities and the potential consequences of any such election. In addition, victims shall be provided with contact information for the local domestic violence shelter and the magistrate court for purposed of determining whether to seek civil relief from the complained of conduct.

FAMILY CRISIS CENTER IN PETERSBURG, WV OR KEYSER, WV (304-257-4606; 304-788-6061)

- 11.5 Additional information on health care treatment facilities can be found on Eastern's website, at <http://easternwv.edu>, under "Current Students" link, click on "Student Services" link.

Criminal Conduct

Alleged conduct reported under this policy including but not limited to, hazing, sex, discrimination and/or acts of sexual violence, sexual assault and other sexual misconduct, may also constitute criminal conduct. Any individual may report an incident alleging criminal conduct by call 9-1-1 in an emergency or by contacting the Moorefield Sherriff Department (304-538-2920).

Pursuant to the federal law known as the *Jeanne Clery Act* (20 USC § 1092 (f)), as amended, any campus security or law enforcement personnel or any Glenville State College employee who has significant responsibility for student and campus activities (including but not limited to faculty advisers to student groups, coaches and a student activities director) who has witnessed or been informed of an alleged incident that constitutes a crime for the purpose of the *Jeanne Clery Act* including but not limited to a forcible or non-forcible sex offense or a hate crime, whether a criminal or administrative complaint has been filed, must:

- a. Follow Eastern's procedures for making a report for the annual crime statistics report; and
- b. Notify the appropriate college authority as asset forth in this policy so that any applicable administrative, investigative or other resolution procedures may be initiated.

Employees may be obligated to report to law enforcement the fact that an alleged *Jeanne Clery Act* crime has been reported, but the name or other personal identifiable information about the complainant will be provided only with the consent of the complainant, except as may be required or otherwise permitted by law.

The administrative investigation of complaints filed pursuant to this policy is different from a law enforcement investigation. The technical rules of evidence and procedure do not apply. A law enforcement investigation will not take the place of an investigation or disposition of a complaint filed under this policy and the results of a law enforcement investigation or adjudication are not determinative of whether an individual is responsible for violating College Policy. An investigation conducted pursuant to this policy may be carried out prior to, simultaneously with, or following a law enforcement investigation and/or civil or criminal proceedings. The College will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campus or that affects the campus community and such cooperation may require the institution to temporarily suspend the fact-finding aspect of the administrative investigation while the law enforcement agency is in the process of gathering information. Suspensions of investigations typically last from three to ten days but may be extended depending upon the circumstances of each case. The College will promptly resume its administrative investigation as soon as notified by the law enforcement agency that is has completed the evidence gathering process.

Retaliation

Retaliation against an individual for alleging harassment, supporting a complainant or for participating in the investigation of 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 as set forth in Section 11.1. Eastern will take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Remedial Action

Eastern 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 Eastern community, guest, or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. The nature of the remedial action will necessarily depend on the nature of the conduct, the results of the investigation and the totality of the circumstances. The remedial action, however, may encompass actions as minor as a verbal reprimand and as significant as termination of employment or dismissal from the institution. 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.

Confidentiality of Reported Information

Individuals wishing to report violations of this policy must be aware that Eastern 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. Some Eastern resources may be able to maintain confidentiality, offering options and advice without any obligation to inform an outside agency or individual unless the reporting person requested information to be shared or the information indicates an immediate threat of harm to self or others.

The accused has a due process right to know his/her accuser. If the complainant requests confidentiality, the College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation taking into consideration and consistent with the College's state and federal obligations including but not limited to Title IX. The College will also consider its responsibility to protect the safety and welfare of the campus community.

If a complainant insists that his or her name or other identifiable information not be disclosed to the accused or asks that the complaint not be investigated, the College will respond to the Complaint consistent with its state and federal obligations including but not limited to its Title IX obligations. The College's ability to respond, however, may be limited.

The College will evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The College may weigh the request for confidentiality against the following factors: the seriousness of the alleged conduct; whether there have been other harassment complaints about the same individual; the College's responsibility to provide a

safe working and learning environment and the accused's right to receive information about the allegations if the information is maintained by the school as an "education record" under FERPA.

The College cannot ensure confidentiality or that a complaint will not be investigated because of the complainant's confidentiality request.

Federal Timely Warning Obligations

Victims of sexual misconduct should be aware that Eastern administrators must issue timely warnings to the Eastern 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.

Violations of Policy

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

16.2 Except as provided in Section 10 of this policy concerning sexual misconduct or other violations of this policy falling under Title IX, violations of this policy shall be addressed as follows:

16.2.1 Violations by students shall be addressed through Eastern policies and procedures on student conduct.

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

Implementation of Policy

This policy will be implemented using applicable West Virginia Higher Education Policy Commission's rules and procedures, Eastern policies and procedures, and Eastern 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 Eastern may revise such information within this policy without resubmittal of this policy through the rulemaking process.

Additional

The United States Department of Education Office of Civil Rights is responsible for enforcing Title IX. Additional information about Title IX and the Office of Civil Rights' complaint procedure which may be utilized in addition to the procedures set forth in this policy, is available at:

Office of Civil Rights
U.S. Department of Education
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: 215-656-8541
Fax: 215-656-8605
TDD: 877-521-2172

Email: OCR_Philadelphia@ed.gov

Website: <http://www2.ed.gov/about/offices/list/ocr/index.html>

Additional information about federal anti-discrimination/harassment/retaliation laws and complaint procedures may be directed to the Coordinator or to:

United States Equal Employment Opportunity Commission

801 Market Street, Suite 1300

Philadelphia, PA 19107-3127

Telephone: 866-408-8075

Fax: 215-440-2606

TTY: 800-669-6820

Website: <http://www.eeoc.gov/Page23of24>

<http://www.eeoc.gov>

Additional information about State anti-discrimination/harassment and retaliation laws and complaint procedures is available from:

The West Virginia Human Rights Commission

1321 Plaza East-Room 108A

Charleston, WV 25301

Telephone: 304-558-2616

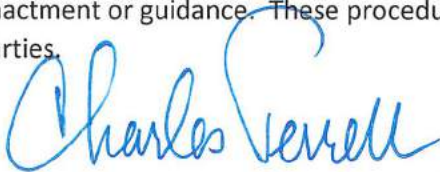
Toll Free: 888-676-5546

Fax: 304-558-0085

Website: <http://www.wvf.state.wv.us/wvhrc/>

Application/Authority and Amendments

This policy defines and prohibits discrimination, harassment, retaliation, sexual harassment and sex discrimination including acts of sexual violence on the basis of federal and state law as interpreted by the courts and the agencies responsible for enforcing the laws. To assure continued compliance with Title IX and/or any other state or federal anti-discrimination/harassment/retaliation laws, if state or federal statutory provisions, regulatory guidance, or court interpretations or guidance provided by any authorized regulating agency change, or conflict with College policy and/or procedure, the College's policy and/or procedure will be deemed amended as of the time of the decision, ruling, legislative enactment or guidance. These procedures may be modified to protect the due process rights of the parties.



President



Date

Sexual Misconduct or Discrimination or Harassment Complaint Form

Eastern West Virginia Community and Technical College

INSTRUCTIONS: This complaint form should be filed with the Equal Employment Opportunity/Equity/Affirmative Action Coordinator and the Americans with Disabilities Act/504 Coordinator (EEO/Equity/ AA/ADA/504 Coordinator) who is the Executive Dean of Finance and Operations in RM 108E- EWWCTC Main Campus

1. Name	2. Department	3. Telephone (work):
4. Job Title	3. Division/Office	4. Telephone (home):
7. Home Address	Sa. Full name, title, and telephone number of person(s) you believe discriminated against you:	
8. Date(s) of discriminatory Actions		
Sc. Complainant's Status (Check applicable box): <input type="checkbox"/> Employee <input type="checkbox"/> Job Applicant <input type="checkbox"/> Other [please specify]:		
9. Basis of Discrimination:		
<input type="checkbox"/> Age	<input type="checkbox"/> Familial Status	<input type="checkbox"/> National Origin
<input type="checkbox"/> Sexual Orientation	<input type="checkbox"/> Gender Identity or Expression	<input type="checkbox"/> Race
<input type="checkbox"/> Ancestry	<input type="checkbox"/> Genetic Information (including refusal to submit to or provide results of a genetic test)	<input type="checkbox"/> Religion
<input type="checkbox"/> Atypical Hereditary Cellular or Blood Trait	<input type="checkbox"/> Liability for Military Service	<input type="checkbox"/> Sex/Gender (including pregnancy)
<input type="checkbox"/> Color	<input type="checkbox"/> Marital/Civil Union Status	<input type="checkbox"/> Sexual Harassment
<input type="checkbox"/> Creed	<input type="checkbox"/> Nationality	<input type="checkbox"/> Retaliation (for having filed a discrimination complaint, participating in a complaint investigation, or for opposing a discriminatory practice)
<input type="checkbox"/> Disability		
<input type="checkbox"/> Domestic Partnership Status		
10a. Explain why you feel you have been discriminated against: <input type="checkbox"/> CHECK IF ADDITIONAL SHEETS ARE ATTACHED		
10b. Were the actions or behavior you are complaining about directed at, or said to, you <input type="checkbox"/> and/or another party <input type="checkbox"/> (third party harassment)?		
10c. Was the incident reported to anyone? <input type="checkbox"/> Yes <input type="checkbox"/> No		
10d. What remedy or resolution are you seeing?		
10e. If appropriate, as determined by the EEO Officer, are you willing to attempt to resolve your complaint through mediation or another conflict dispute resolution process? <input type="checkbox"/> YES <input type="checkbox"/> NO		
10f. Complainant's Signature: _____ Date: _____		
11. Have you filed a discrimination complaint with the: <input type="checkbox"/> WV Human Rights Commission <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> U.S. Equal Employment Opportunity Commission? <input type="checkbox"/> Yes <input type="checkbox"/> No		12. Have you filed a grievance on the issues/personnel actions described? <input type="checkbox"/> Yes <input type="checkbox"/> No
13. Completion of this part is voluntary. The information is to be used only for State and Federal record keeping and reporting requirements: Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female Race: <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian/Other Pacific Islander <input type="checkbox"/> White Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino		
Note: In addition to filing an internal complaint, a complainant has a right to use external complaint filing procedures available under state law [with the WV Human Rights Commission] and federal law (with the US Equal Employment Opportunity Commission).		
FOR EEO/Equity/AA/ADA/504 Coordinator ONLY		

Reviewed by BOG: 8/28/19 Approved by PC: 7-9-19 Approved by IEL: 6-6-19

EEO/Equity/AA/ADA/504 Coordinator Signature: _____
Date Received: _____



Procedures for Complaints Alleging Sexual Misconduct or Discrimination in the Workplace Eastern West Virginia Community and Technical College

1. Employees and applicants for employment with Eastern West Virginia Community and Technical College are encouraged to immediately report suspected discrimination or harassment of any kind.
2. Complaints may be submitted verbally or in writing to your Supervisor, the Title IX (Disability) Coordinator or EEO/Equity/AA/ADA/504 Coordinator.
3. Any manager or supervisor that receives a complaint should file it within 24 business hours to the Human Resources office.
4. In order to help facilitate a prompt, thorough and impartial investigation, all complainants are encouraged to complete the Sexual Misconduct or Discrimination or Harassment Complaint Form. However it is not mandatory when making a complaint.
5. When the complaint is received the Title IX Coordinator or EEO/Equity/AA/ADA/504 Coordinator or authorized designee will perform a prompt, thorough and impartial investigation into the alleged harassment or discrimination. The IX Coordinator or the EEO/Equity/ AA/ADA/504 Coordinator will determine if interim corrective measures must be taken during the investigation and all concerned parties will be notified.
6. The investigation of a complaint shall be completed and a final letter of determination should be issued no later than 90 days from the initial complaint. The final determination will include: a summary of the complaint, a summary of all concerned parties' positions, and a summary of the facts developed through the investigation. The final determination will also include an explanation of the final determination which will include whether the allegations were either substantiated or not substantiated and if there was or was not a violation of EWWCTC policies. If violation of a state or federal law or EWWCTC policy has been determined the Title IX Coordinator or EEO/Equity/AA/ADA/504 Coordinator will continue to step 7 immediately.
7. If further actions are necessary the Title IX Coordinator or EEO/Equity/AA/ADA/504 Coordinator will complete a report that contains: a summary of the complaint, a summary of both parties' positions, a summary of the facts developed through the investigation and an analysis of the allegations and facts. This report will be submitted to the EWWCTC President to determine what further actions will be taken.



DR. CHARLES TERRELL, PRESIDENT



DATE