

Eastern West Virginia Community and Technical College is committed to maintaining a learning and working environment that is free from sexual assault, sexual harassment and other sexual misconduct, remedying the effects of such misconduct when it occurs, and preventing its re-occurrence. The term “sexual misconduct” includes sexual assault, sexual harassment, sexual exploitation, stalking, dating violence and domestic violence, all of which have more complete definitions below derived from appropriate sources such as the United States Department of Education, the Clery Act, and the Office of Civil Rights. *Note:* For these definitions to apply to Title IX offenses, the circumstances must qualify as a Title IX matter including jurisdiction and must be processed in accordance with Title IX rules. Similar definitions can be found in the Code of Student Conduct for similar acts of misconduct which do not qualify as Title IX matters; they are processed pursuant to the Code of Student Conduct.

**AMNESTY:** Complainants and witnesses shall not be subject to disciplinary action for drug/alcohol violations *IF* (a) violation occurred during/near time of assault, (b) assault report/participation is in good faith, and (c) violation was “not an act that was reasonably likely to place the health or safety of another individual at risk.”

**BYSTANDER INTERVENTION:** “Everyone can play an active role in stopping domestic violence and sexual assault before it occurs by becoming an engaged bystander and helping to establish an environment where healthy and positive relationships are based on respect, safety, and equality. Moreover, taking steps to stop harassment or violence can make a significant difference in someone’s life, and send a powerful message to the perpetrator and society as a whole about which social norms are acceptable and which are unacceptable.” For more info, visit <https://nomore.org/learn/>.

**CLERY OFFENSES:** The U.S. Department of Education requires all colleges receiving federal education funding to annually report the incidence and location of specific crimes, hate crimes, arrests, and disciplinary action. Statistics must be submitted to the federal database, and a written report must be published.

**COERSION:** the use of pressure to compel another individual to initiate or continue sexual activity against an individual’s will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to “out” someone based on sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

**CONSENT:** a knowing, voluntary, and affirmatively communicated willingness to mutually participate in a particular sexual activity or behavior. It must be given by a person with the ability and capacity to exercise free will and make a rational and reasonable judgment. Consent may be expressed either by affirmative words or actions, as long as those words or actions create a mutually understandable permission regarding the conditions of sexual activity. Consent may be withdrawn at any time. Consent cannot be obtained by force, threat, coercion, fraud, manipulation, reasonable fear of injury, intimidation, or through the use of one’s mental or physical helplessness or incapacity. Consent cannot be implied based upon the mere fact of a previous consensual dating or sexual relationship. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. More details are available on the “Information: Consent” sheet on the Title IX webpage.

**CONFIDENTIALITY:** All complainant requests for confidentiality or requests not to initiate College action shall be considered; whether the complainant’s request can be honored shall be based upon the following factors: immediate safety and well-being of the complainant; immediate safety and well-being of the campus or local community (eg., prior history of accused, potential for repeated behavior, predatory behavior, weapon, ongoing threat, multiple accused persons,); whether the misconduct or discrimination can be eliminated and remedied via other means; whether other evidence is

available that permits action without the complainant's participation; and whether the complainant's concerns can be addressed (identify and resolve barriers). The process is confidential up to the point any allegations are contested.

**CONTACT** (for purposes of No Contact /No Negative Contact Orders): includes all forms of verbal, written, electronic, and non-verbal communications. Examples include (but are not limited to) face-to-face conversations, telephone conversations, texts, posts on social media (to or about the other person or the situation), notes, letters, conversations with other students to or about the other person or the situation), attempts to contact each other thru any medium, hand gestures, loitering where the other person is or expected to be, and any or attempted contact with the other person's family/household members. Such contact is negative if it is hostile, aggressive, insulting, embarrassing, or has the intent or effect of making the other person uncomfortable, embarrassed, or afraid. In short, you are each required to interact with each other courteously. If you cannot do so, then you must have no contact of any kind.

**FERPA: FAMILY EDUCATIONAL RIGHTS PRIVACY ACT (20 U.S.C.1232G):** This federal law outlines the rights of students regarding their educational record(s). Generally, FERPA does not allow a college or its employees to release certain information to third parties without either written permission from the student or a recognized exception to the law such as an emergency. Compliance with Title IX and the provisions of the College's Sexual Misconduct and Sex Discrimination Policy as well as accompanying procedures do not constitute a violation of FERPA.

**GENDER-BASED DISCRIMINATION:** Gender discrimination is unequal or disadvantageous treatment of an individual or group of individuals based on gender. Sexual harassment is a form of illegal gender discrimination.

Gender discrimination can be treating an individual differently based upon his/her gender in academia or extracurricular activities, academic programs, discipline, class assignments given in a classroom, class enrollment, physical education, grading, and/or athletics.

**HOSTILE ENVIRONMENT SEXUAL HARASSMENT:** Any unwelcome advance, unwelcome request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance (ie., it is sufficiently severe and pervasive to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment).

**INCEST:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**QUID QUO PRO SEXUAL HARASSMENT:** Any unwelcome advance, unwelcome request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when (1) submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of an ACM program or activity; (2) submission to or rejection of such conduct by an individual is used as the basis for academic, employment, or activity or program participation related decisions affecting an individual

**NON-CONSENSUAL SEXUAL INTERCOURSE:** Any sexual penetration (anal, oral or vaginal), however slight, with any body part or object, by any person upon any other person, without effective consent.

**NON-CONSENSUAL SEXUAL CONTACT:** Any sexual touching, however slight, with any body part or object, by any person upon any other person, without effective consent.

**PREPONDERANCE OF EVIDENCE:** The standard of proof that the College uses in adjudicating cases of alleged sexual misconduct. It means "more likely than not." Where a person is alleged to have committed a particular act of

sexual misconduct, the allegation is established by a preponderance of the evidence when the evidence is such that it is more likely true than not true that the person committed the act.

## **RAPE:**

Per the Office of Civil Rights/Department of Education:

- Rape (Except Statutory): The carnal knowledge of a person, 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 or physical incapacity.
- Sodomy: Oral or anal sexual intercourse with another person, 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 or physical incapacity.
- Sexual Assault With An Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, 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 or physical incapacity.
- Statutory Rape: Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Per Uniform Crime Report by Federal Bureau of Investigation as required for the annual Clery Crime Report:

“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.”

**RELATIONSHIP VIOLENCE:** dating violence and domestic violence

~**DATING VIOLENCE:** violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based upon a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

~**DOMESTIC VIOLENCE:** violence committed by a current or former spouse or intimate partner of the complainant by a person with whom the complainant shares a child in common, by a person who is cohabiting with or has cohabited with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant, or by any other person against an adult or youth complainant protected from those acts by domestic or family violence laws of West Virginia.

**RESPONSIBLE EMPLOYEE:** Any employee who has the authority to take corrective action regarding sexual harassment or sex discrimination. Responsible employees are required to report sexual harassment or sex discrimination to the Title IX Coordinator. Reporting must be prompt.

**RETALIATION:** Vengeful, negative, harassing, or discriminatory acts against any individual for the purpose of interfering with any right or privilege secured by law or Eastern policy or because an individual has made a report, assisted, provided information, or participated in any manner with any proceeding related to this policy. Examples of retaliation include (but are not limited to) acts of violence, threats of any kind, intimidation, coercion to change/conceal testimony or evidence, spreading rumors/false information, interfering with work or education, interfering with personal or professional relationships, damaging personal or professional reputation, attempts to commit such acts, and directing such acts toward family members or associates of an individual who participated in a proceeding related to this policy.

Title IX: “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.”

**SEXUAL ASSAULT:** Any non-consensual sexual intercourse or other non-consensual sexual contact, including all behaviors that are defined as sexual assault under Title IX.

**SEXUAL EXPLOITATION:** This occurs when a person takes nonconsensual, unjust or abusive advantage of another for his/her own advantage or benefit or to benefit or advantage anyone other than the one being exploited and that behavior does not otherwise constitute sexual misconduct. Examples of sexual exploitation include prostituting another person, nonconsensual video or audiotaping of sexual activity, going beyond the boundaries of consent (such as letting your friends watch you have consensual sex), engaging in peeping tommy, knowingly transmitting STD or HIV to another person, and inducing incapacitation with the intent to sexually assault another person.

**SEXUAL MISCONDUCT:** Any form of sexual assault, sexual harassment, sexual exploitation, dating or domestic violence, or stalking.

**STALKING:** engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

**SUBSTANTIALLY IMPAIRED:** This means an individual lacks the ability to make informed, rational judgments and/or to coherently communicate those judgments. Substantial impairment may result from illness or from the use of alcohol and/or other drugs. Substantial impairment is a state beyond drunkenness or intoxication. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person is or may be approaching substantial impairment may include (but are not limited to) slurred speech, vomiting, unsteady gait, combativeness, or unusual emotional volatility.

**TITLE IX SEXUAL HARASSMENT:** Title IX sexual harassment is conduct on the basis of sex that satisfies one or more of the following: (1) An employee, student, or parent of the college conditioning the provision of an aid, benefit, or service of the college 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 college’s education program or activity; or (3) Sexual assault, dating violence, domestic violence, or stalking, as defined in this section. To be considered Title IX sexual harassment, the conduct must occur in an education program or activity of Eastern West Virginia Community and Technical College within the United States. An Eastern “education program or activity” is a location, event, or circumstance over which the college exercises substantial control over both the respondent and the context in which the Title IX sexual harassment occurs. All conduct that occurs abroad and much conduct that occurs off campus will fall outside the definition of Title IX sexual harassment and may instead be covered by the misconduct defined in this section or by other portions of the Student Code of Conduct.

**VIOLENCE:** unjust or unwarranted exercise of physical force, usually accompanied by anger or heightened passions.