

**EASTERN WEST VIRGINIA COMMUNITY & TECHNICAL COLLEGE
BOARD OF GOVERNORS
POLICY NO. BP – 5.17**

**TITLE: SOCIAL JUSTICE, EQUAL OPPORTUNITY/AFFIRMATIVE ACTION,
NONDISCRIMINATION/HARASSMENT/SEXUAL HARASSMENT,
ACCOMMODATIONS AND CONSENSUAL RELATIONSHIPS**

**BASED ON THE ATIXA 2022 ONE POLICY, TWO PROCEDURES MODEL.
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Approved by IET: 11/7/23
Approved by President's Cabinet: 11/13/23
Start of 30 day public comment period: 11/14/23 – No comments received.
Approved by the Board of Governors: 12/20/23

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SECTION 1. GENERAL

- 1.1 Scope - This policy states and reaffirms the college's position on equal opportunity/affirmative action, non-discrimination/harassment/sexual harassment, accommodations and social justice.
- 1.2 Authority - Authority - W. Va. Code §18B-1-6
- 1.3 Effective Date - December 20, 2023
- 1.4 Repeal of Former Rules/Regulations – Repeals and replaces Eastern West Virginia Community & Technical College (a) Board of Governors General Administrative Policy 6.6. Equal Opportunity, Nondiscrimination, and Affirmative Action [August 20, 2003] as revised April 2nd, 2019 and October 21st, 2020; (b) Board of Governors Personnel Policy 5.1 Sexual Harassment [2003]; (c) Personnel Administrative Regulation 5.17 - Harassment/ Discrimination [2013] as revised on June 6th, 2019, and (d) Board of Governor's Student Services Policy 4.6 Student Complaints

SECTION 2. NONDISCRIMINATION/AFFIRMATIVE ACTION STATEMENT

- 2.1 Various State and Federal laws prohibit discrimination and harassment of certain protected classes including but not limited to the following:
- 2.1.1 USC 1324 et seq., (Immigration Reform and Control Act of 1986).
 - 2.1.2 20 USC 1681 et. seq (Title IX of the Education Amendments of 1972)
 - 2.1.3 29 USC 206(d) et seq., (Equal Pay Act of 1963, as amended).
 - 2.1.4 29 USC 621, et seq., (Age Discrimination in Employment Act of 1967, as amended).
 - 2.1.5 29 USC 701 et seq., (Rehabilitation Act of 1973).
 - 2.1.6 29 USC 791 et seq., (Rehabilitation Act of 1992).
 - 2.1.7 West Virginia Code § 5.11.1, et seq. (West Virginia Human Rights Act)
 - 2.1.8 38 USC 4301 et seq., (Uniform Services Employment and Reemployment Rights Act of 1994).
 - 2.1.9 42 USC 1981 et seq., (Civil Rights Act of 1991).
 - 2.1.10 42 USC 12101 et seq., (Americans with Disabilities Act of 1990-ADA).
 - 2.1.11 42 USCA 12101 et seq., (Americans with Disabilities Act Amendments Act of 2008).
 - 2.1.12 42 USC 2000e(k) (Pregnancy Discrimination Act of 1978).
 - 2.1.13 42 USC 2000d-2000d-7, (Civil Rights Remedies Equalization Act of 1986).
 - 2.1.14 42 USC 2000e et seq., (Title VII of the U.S. Civil Rights Act of 1964, as amended).

2.1.15 42 USC 2000ff et seq., (Genetic Information Nondiscrimination Act of 2008-GINA).

- 2.2 Eastern WV Community & Technical College (Eastern or the college) is committed to social justice, equity, diversity and, ultimately, creating a community of belonging for all students, faculty, staff and visitors. We acknowledge that social justice is an ongoing process, not just a goal. By recognizing the dignity of each individual, we seek to build an educational environment void of violence, oppression, hatred, alienation and inequality. We seek to build a place where every individual feels welcome and respected.
- 2.3 Eastern is committed to equal opportunity and non-discrimination for all employees, students, prospective students and applicants for employment. Eastern West Virginia Community & Technical College provides opportunity to all prospective and current members of the student body, faculty, and staff on the basis of individual qualifications and merit without regard to race, color, sex sexual preference, religion, age, national origin, sexual orientation, marital or parental status, familial status, veteran status, disability or any other protected class status as defined by applicable laws and regulations. The college neither affiliates knowingly with nor grants recognition to any individual group or organization having policies that discriminate on the basis of protected class status as defined by applicable laws and regulations.
- 2.4 The Board concurs with the American Association of Community Colleges (AACC) that such a commitment to equal opportunity and non-discrimination "ensures and recommitts to open doors access, the cornerstone of the community of college mission. This fundamental commitment is critical to our democracy: a cherished principle of equal opportunity for every individual and to the social and economic vitality of our nation."
- 2.5 Insofar as is permissible by law, Eastern will take affirmative action measures to ensure the continued entry of qualified minorities, women, veterans and the disabled, as defined by applicable law and regulations into the staff and student bodies.
- 2.6 Nothing in this policy should be construed to extend "protected class" status or give rise to a cause of action beyond that otherwise provided by law.

SECTION 3. DELEGATION OF AUTHORITY AND AMENDMENTS

- 3.1 If not otherwise established by this policy and procedures, the President or President's designee may establish administrative regulations or other procedures and/or may modify existing procedures to implement this policy and procedures including, but not limited to, creating religious and disability accommodation request procedures and grievance procedures for the reporting and filing of Formal complaints and the investigation of conduct that violates this policy and procedures. Procedures may include rules applicable to Advisors.
- 3.2 Federal, State, County and Municipal laws, rules and regulations change. Any portion of this policy and procedures may be modified in practice to ensure due process rights and to conform to any current Federal, State, County and/or Municipal laws, rules and regulations. Subject to the college's rulemaking rule, Eastern will change this policy and

procedures to conform to the most current laws, rules and regulations within a reasonable time of discovering the change.

- 3.3 This policy and procedures may be amended without resorting to Eastern's rule making process to change names, links to information and/or contact information.

SECTION 4. PROHIBITED CONDUCT, DISCIPLINARY ACTION AND PROVIDING FALSE INFORMATION

- 4.1 Consistent with its comprehensive mission, and in recognition that the development of human potential is a fundamental goal in a democratic society, Eastern is committed to providing students, faculty, staff, and applicants for employment and admission and participants in its education and employment programs with a work and educational environment free from all forms of discrimination, hazing, bullying or harassment based on race, color, sex, national origin, religion, age, sexual orientation, gender identity, disability, or any other class protected by applicable federal, state, or local law. Unlawful discrimination and/or harassment, including but not limited to Title VII and Title IX Sexual Harassment, bullying and hazing based on Protected Class and sexual exploitation in any manner or form, toward Eastern students, faculty, staff, or applicants for employment or admission is a violation of this policy and is expressly prohibited. Engaging in hate crimes as defined by the Jeanne Clery Disclosure of Campus Security police and Campus Crime Statistics Act, 20 USC § 1092(f), is also prohibited by this policy.
- 4.2 **Retaliation** means punishing, intimidating, threatening, coercing or discriminating against any individual for the purpose of interfering with any right or privilege secured by this policy and its processes. Retaliation against any person requesting accommodations, who reports conduct prohibited by this policy and its procedures, files a formal complaint, participates in the investigation, adjudication (including testifying as a witness at any hearing) or disposition of a report made or formal complaint filed in accordance with procedures established in accordance with this policy is also prohibited. For the purposes of Title IX Sexual Harassment, retaliation against an individual for refusing to participate in any manner in an investigation, proceeding or hearing is also prohibited. Retaliation should be reported promptly pursuant to any established procedures. Retaliation may result in disciplinary action independent of the sanction or interim measures imposed, if applicable, in response to the underlying allegations of discrimination or harassment. Disciplinary actions may include but are not limited to employment suspension without pay, employment termination and/or for students, suspension or expulsion.
- 4.3 Violators of this policy, including those who fail to report witnessed incidents of discrimination, retaliation or harassment if required, may be subject to disciplinary action in accordance with any procedures established in accordance with this policy and/or any other applicable Eastern rule, regulation policy or procedure.
- 4.4 **Online Discrimination Harassment and/or Retaliation** - Eastern policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited in this policy, when those behaviors occur in or have an effect on the Eastern's education program and activities or when they involve the use of Eastern networks, technology, or equipment. Members of the campus community are encouraged to be good digital

citizens. Any online posting or other electronic communication by students, including cyberbullying, cyberstalking, cyberharassment, etc., occurring completely outside of an Education Program or Activity will only be subject to this policy when such online conduct can be shown to cause a hostile environment in an Education Program or Activity.

- 4.5 ***Providing False Information.*** Knowingly making a false report, filing a false formal complaint, providing false information evidence or testimony during any part of any procedures implemented in accordance with this policy is prohibited. A determination regarding responsibility, alone, is not sufficient to conclude that any individual made a materially false statement in bad faith. Individuals found responsible for violating this section may be subject to disciplinary action up to and including but not limited to employment suspension and/or termination and/or academic suspension and/or expulsion.
- 4.6 Nothing in this policy requires Eastern to restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution.
- 4.7 Nothing in this policy requires Eastern to . . . [d]eprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments or any other rights guaranteed by the U.S. Constitution.
- 4.8 Nothing in this policy should be read in derogation of any individual’s rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. or any regulations promulgated thereunder.

SECTION 5. DEFINITIONS

- 5.1 ***Actual Knowledge*** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of alleged harassing, discriminatory, and/or retaliatory conduct. Actual knowledge compels the Eastern to initiate action.
- 5.2 ***ADA/Section 504 Coordinator*** is the employee designated by the President responsible for monitoring and evaluating Easterns’ compliance with State and Federal laws prohibiting discrimination based on disability in Easterns’s employment, academic and other programs and activities including but not limited to the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). The ADA/Section 504 Coordinator is also responsible for receiving and evaluating student requests for reasonable accommodations. Eastern’s ADA/Section 504 Coordinator is:

Monica Wilson, Vice President of Academics and Student Services and
ADA Coordinator
316 Eastern Drive
Room 101B
Moorefield, WV 26836
Office Hours: 8:00 am – 4:15 pm. Monday through Friday
Phone: (304) 434-8000, ext. 9235
Fax: (304) 434-7004
E-mail: monica.wilson@easternwv.edu

- 5.3 **Advisor** means a person chosen by an individual or, if required, appointed by the institution, to accompany an individual during certain stages of a grievance procedure (set forth in Process A or B) or any other procedure implemented in accordance with this policy. An advisor may be legal counsel paid for at the expense each party. The role of an advisor may differ depending upon the procedure implemented in accordance with this policy.
- 5.4 **Appeal Officer** means the person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly.
- 5.5 **Bullying** means 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 class.
- 5.6 **Complainant** for the purposes of Title IX Sexual Harassment means an individual who is alleged to be the victim of conduct occurring in the United States within an Eastern education program or activity that could constitute Title IX Sexual Harassment or retaliation for engaging in an activity protected by Title IX. For all other conduct prohibited by this policy, complainant means an individual who reports conduct occurring anywhere within an education program or activity, including employment, that violates this policy who may or not may not be the alleged victim of the conduct.
- 5.7 **Confidential Reporting Resources** are defined in Section 9.
- 5.8 **Consent** is defined as permission that is clear, knowing, voluntary, and expressed prior to engaging in and during an act. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

Consent may not be given by an individual who has not reached the legal age of consent under applicable law.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back. It is the obligation of the person initiating the sexual activity to obtain consent.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonably immediate time.

Previous relationships or prior consent cannot imply consent to future sexual acts; this includes “blanket” consent (i.e., permission in advance for any/all actions at a later time/place).

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 intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected

Consent cannot be given by an individual who the respondent knows to be – or based on the circumstances should reasonably have known to be – substantially impaired (e.g., by alcohol or other drug use, unconsciousness, etc.). Substantial impairment is a state when an individual cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). This also covers individuals whose substantial impairment results from other physical or mental conditions including mental disability, sleep disorders, involuntary physical restraint, or from the consumption of alcohol or other drugs. Being impaired by alcohol or other drugs will never function as a defense for any behavior that violates this policy.

An individual cannot consent who has been coerced, including being compelled by force, threat of force, or deception; who is unaware that the act is being committed; or who is coerced by a supervisory or disciplinary authority.

A person who does not want to consent to sex is not required to resist or verbally object. Withdrawal of consent can be manifested through conduct and need not be a verbal withdrawal of consent (for example crying, pulling away, pushing away, not actively participating, lying there, uncomfortable or upset facial expression).

Consent in relationships must also be considered in context. When parties consent to bondage, discipline/dominance, submission/sadism, and masochism or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, thus the college’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to the policy that assumes non-kink relationships as a default.

Proof of consent or non-consent is not a burden placed on either party involved in a complaint. Instead, the burden remains on the college to determine whether this policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

- 5.9 **Day** means a business day when the college is in normal operation.
- 5.10 **Discrimination** is conduct of any nature based on protected class, actual or perceived, status that denies an individual the opportunity to participate in or benefit from an Eastern program or activity, or otherwise adversely affects a term or condition of an individual’s employment, education, or living environment, because of the individual’s actual or perceived age, race, color, ancestry, national origin, sex, sexual orientation, gender, gender identity, physical or mental disability, religion, creed, service in the uniformed services (as defined in state and federal law), veteran status, marital or family status, pregnancy, pregnancy-related conditions, genetic information or political ideas.

Religious discrimination involves treating an individual unfavorably because of the individual's sincerely held religious beliefs or is married to or associated with an individual of a particular religion. Disability discrimination includes treating an individual unfavorably based on the individual's relationship with (association with) a person with a disability.

- 5.11 ***Education Program or Activity*** means locations, events, or circumstances, including employment, where Eastern exercises substantial control over both the respondent and the context in which the sexual harassment and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by Eastern. Whether conduct occurred within an education program or activity is a fact specific inquiry. The key questions are whether Eastern exercised substantial control over the respondent and the context in which the incident occurred. Factors to consider include, but are not limited to, whether Eastern funded, promoted or sponsored the event or circumstances where the alleged conduct occurred. No single factor is determinative. "Program or activity" encompasses all operations of Eastern and operations may include computer and internet networks, digital platforms and computer hardware or software owned or operated by, or used by Eastern in its operations.
- 5.12 ***Final Determination*** is a conclusion based on a preponderance of the evidence that the alleged conduct did or did not violate the policy.
- 5.13 ***Finding or Findings of Fact*** mean the true facts the Decision Maker(s) find(s) to exist after the analysis of all of the evidence.
- 5.14 ***Formal complaint*** for the purposes of Title IX Sexual Harassment means a document submitted or signed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that Eastern investigate the allegation of sexual harassment. For the purposes of Title IX Sexual Harassment, at the time of filing a formal complaint, a complainant must be in the United States participating in or attempting to participate in the education program or activity of Eastern. For the purposes of all other conduct prohibited by this policy that is not Title IX Sexual Harassment, a formal complaint is a written statement signed by the individual making the complaint reporting conduct prohibited by this policy.
- 5.15 ***Grievance Procedure-Title IX Sexual Harassment Pool (Grievance Pool)*** includes any investigator(s), Hearing Officer(s), Appeal Officers), and advisor(s) as those terms are defined in this policy or in both processes who may perform any or all of these roles (though not at the same time or with respect to the same complaint).
- 5.16 ***Harassment*** is a form of discrimination based on protected class occurring within an Eastern education or employment program, activity or service, inside or outside the United States, including but not limited to harassment based on sex falling under Title VII and is conduct that creates a hostile environment. Harassment becomes unlawful where: (1) enduring the offensive conduct becomes a condition of continued employment or participation in an education program or activity, or (2) the conduct is severe or pervasive enough to create a working, learning or living environment that a reasonable person would consider intimidating, hostile, or abusive. Harassment may take various forms, including, but not limited to, name-calling, graphic or written/electronic statements (including the use of social media, text messages, e-mail, or other similar forms), offensive jokes, slurs, epithets or name calling, physical assaults or threats,

intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work and/or Education performance or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not necessarily have to include intent to harm, be directed at a specific target, or involve repeated incidents. The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct. In the employment context, the harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-Staff Employee and may occur without economic injury to, or discharge of, the victim.

- 5.17 **Hazing** by an individual means to cause any action or situation which recklessly or intentionally endangers the mental or physical health or safety of another person or persons or causes another person or persons to destroy or remove public or private property for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in, any organization the members of which are primarily Students or alumni of an institution of higher education. The term includes, but is not limited to, acts of a physical nature, such as whipping, beating, branding, required consumption of any food, liquor, drug, or other substance, or any other required physical activity which could reasonably be deemed to adversely affect the physical health and safety of the person or persons so treated, and includes any activity which would subject the person or persons so treated to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, required conduct which could result in extreme embarrassment, or any other required activity which could reasonably be deemed to adversely affect the mental health or dignity of the person or persons so treated, or any willful destruction or removal of public or private property. Bullying and verbal or written abuse may also constitute hazing. The implied or expressed consent or willingness of a person or persons to hazing is not a defense to hazing.
- 5.18 **Hearing Officer(s)** means the person or panel who hears evidence, determines relevance, and makes the final determination of whether this policy has been violated and/or assigns sanctions. Appeal officer(s) means any person or panel who makes decisions on appeals of final determinations if an appeal is provided.
- 5.19 **Incapacitation** occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their interactions). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including due to alcohol or other drug consumption. Incapacitation may also result from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances. A respondent violates this policy if they engage in sexual activity with someone the respondent knew, or should have known is incapable of giving consent. Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including due to alcohol or other drug consumption. As stated above, a respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.
- 5.20 **Informal Resolution Process** means a process agreed to by the parties (and approved by the Title IX Coordinator if Process A is used) that occurs prior to a formal final

determination being reached and for conduct other than Title IX Sexual Harassment may occur in lieu of a formal investigation.

- 5.21 **Investigator** means the person(s) authorized by Eastern to gather facts about an alleged violation of this policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report and a file of directly related evidence.
- 5.22 **Mandatory Reporter** means an individual required to report Child Abuse or Neglect, including physical or sexual abuse in accordance with W. Va. Code §§ 49-2-801 to -814 (2017). All College employees (faculty, staff, and student employees) are considered mandatory reporters and are mandated to report disclosures of sexual violence, including sexual harassment and sex or gender-based discrimination, stalking, retaliatory harassment, child abuse and neglect and criminal behavior that they become aware of occurring on College property, at a College event, or allegedly involving a member of the college community (faculty, staff, or student). Visit <https://easternwv.edu/faculty-and-staff/human-resources/#TitleIX> for more information.
- 5.23 **Minor** means any individual under the age of eighteen (18) years.
- 5.24 **Official with Authority (OWA)** for the purposes of Title IX Sexual Harassment means an Eastern employee who has the authority to implement corrective measures for Title IX Sexual Harassment on behalf of Eastern. The mere ability or obligation to report discrimination, harassment or retaliation or to inform an individual about how to report discrimination, harassment, retaliation or having been trained to do so, does not qualify an individual as an Official with Authority. The imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute notice for the purposes of Title IX Sexual Harassment and the notice standard is not met when the only official of Eastern with notice or knowledge is the accused individual even if the accused individual is an Official with Authority. The Title IX Coordinator will maintain a list of employees designated as Officials with Authority which will be available in that office and online at <https://easternwv.edu/faculty-and-staff/human-resources/#TitleIX>.
- 5.25 **Party/Parties** means the complainant(s) and respondent(s), individually and collectively.
- 5.26 **Process A-Title IX Sexual Harassment Grievance Procedure** means the grievance procedure designated by Eastern to address Title IX Sexual Harassment and that complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45) and the Violence Against Women Act § 304 and as set forth in Appendix A.
- 5.27 **Process B-Code of Conduct/Alleged Violations Grievance Process** means the procedure set forth in Appendix B used to address conduct prohibited by this policy (not otherwise addressed in Process A) against a member of the college community
- 5.28 **Prohibited conduct** is a collective term used to describe illegal discrimination or harassment (including sex or gender) based on another person's protected characteristics or statuses. Retaliating against someone who reports discrimination or harassment, or participates in an investigation of prohibited conduct, is also included in the definition. Some forms of gender or sex-based misconduct are considered prohibited conduct if such behavior is so severe, persistent, or pervasive that it unreasonably affects an individual's

employment, work or educational performance, or creates an intimidating or hostile work or educational environment.

- 5.29 **Protected Class** means a group of people with common characteristics who are legally protected by law from discrimination and harassment on the basis of the characteristic.
- 5.30 **Remedies** are post-final determination actions designed to restore safety, prevent recurrence, and restore equal access to the Eastern's education program or activity including an employment program, benefit or activity. Such remedies may include the same individualized services described in the definition of supportive measures; however, remedies need not be nondisciplinary or non-punitive and need not avoid burdening the respondent.
- 5.31 **Resolution** means the result of an informal resolution or formal grievance process.
- 5.32 **Respondent** means an individual who has been reported to be the perpetrator of conduct that violates this policy including but not limited to conduct that could constitute Title VII and/or Title IX Sexual Harassment.
- 5.33 **Sexual Exploitation** is an act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. Examples of Sexual Exploitation include but are not limited to:
- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed);
 - Invasion of sexual privacy;
 - Taking pictures, video, or audio recordings of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the 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), including the making or posting of revenge pornography;
 - Prostituting another person;
 - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection;
 - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity;
 - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections;

- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity;
- Knowingly soliciting an individual under the age of 16 for sexual activity;
- Engaging in sex trafficking;
- Creation, possession, or dissemination of child pornography;
- "Revenge posting" in which a person threatens to post -- or actually does post -- images, audio, or video of their partner participating in sexual activity without permission.

5.34 ***Sexual Harassment*** is harassment on the basis of sex including gender identity, gender expression, sexual orientation, and sex stereotypes. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass an individual by making offensive comments about the individual's gender or sexual orientation in general. Both victim and the harasser can be the same sex. The law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious. The following are forms of legally prohibited harassment:

5.34.1 ***Title IX Sexual Harassment*** is a form of sex discrimination that violates Title IX and Title VII. Title IX Sexual Harassment is conduct within an education program or activity occurring against a person in the United States which satisfies one or more of the following:

- 5.34.1.1 An employee of Eastern conditioning the provision of an aid, benefit, or service of Eastern on an individual's participation in unwelcome sexual conduct (Quid Pro Quo).
- 5.34.1.2 Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Eastern's education program or activity regardless of the intent to cause harm. Severity, pervasiveness, and objective offensiveness is evaluated in light of the known circumstances and depend on the facts of each situation, and is determined from the perspective of a reasonable person standing in the shoes of the complainant. Unwelcome conduct so severe, pervasive, and objectively offensive that it denies a person equal educational opportunity is actionable sexual harassment regardless of the respondent's intent to cause harm.
- 5.34.1.3 Sexual assault, as defined by 20 U.S.C. 1092(f)(6)(A) means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

- **Rape** is defined as 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. This definition includes either gender of victim or offender. Sexual penetration means 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, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol). Physical resistance is not required on the part of the victim to demonstrate lack of consent.
- **Fondling** is defined as touching of the private body parts (buttocks, groin, breasts) of another person for the purpose of sexual gratification, without the consent of the person, including instances where the person is incapable of giving consent because of the person's age or because of the person's temporary or permanent mental incapacity.
- **Incest** is defined as nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by West Virginia Code Section 61-8-12.
- **Statutory Rape** is defined as nonforcible sexual intercourse with a person who is under the statutory age of consent. In the State of West Virginia, it is illegal for an adult (someone 18 or older) to have sex with anyone who is younger than 16, even if the sex is consensual. See West Virginia Code Section 61-8B-1 et seq.

5.34.1.4 **Dating Violence** as defined in 34 U.S.C. 12291(a)(10) means violence committed by a person –

- who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship.
 - The type of relationship.
 - The frequency of interaction between the persons involved in the relationship.

5.34.1.5 **Domestic Violence** as defined in 34 U.S.C. 12291(a)(8). To categorize an incident as domestic violence under this policy, the relationship between the alleged victim and the accused individual must be more than just two people living together as roommates. Domestic violence means any felony or misdemeanor crimes

committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the State of West Virginia set forth in West Virginia Code Section 61-2-283 and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who:

- is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
- is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- shares a child in common with the victim; or
- commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the State of West Virginia.

5.34.1.6 ***Stalking*** as defined in 34 U.S.C. 12291(a)(30) means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- fear for the individual’s safety; or
- the safety of others; or
- suffer substantial emotional distress.

For the purposes of this definition –

- **Course of conduct** means two or more acts, including, but not limited to acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

5.34.1.7 Sexual Exploitation as defined in this policy.

5.34.1.8 For the purposes of triggering Eastern’s obligations under the Title IX Grievance Procedure set forth in Process A, Eastern must have actual knowledge of the alleged Title IX Sexual Harassment.

- 5.34.2 **Title VII Sexual Harassment** is a form of sex discrimination that violates Title VII but may not violate Title IX and includes unwelcome sexual advances, requests for sexual favors, conditioning the provision of an aid, benefit, or service of Eastern on an individual's participation in unwelcome sexual conduct (Quid Pro Quo), and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. A hostile work environment exists when the workplace is permeated with discriminatory, intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. Title VII Sexual Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct. Unlawful harassment may occur without economic injury to, or discharge of, the victim. The law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of Eastern, such as a student. Title IX Sexual Harassment in the employment context constitutes Title VII Sexual Harassment. No formal complaint is required for Eastern to take action under Title VII.
- 5.35 **Sanction** means a disciplinary consequence imposed on a respondent who is found to have violated this policy. Sanctions may include any combination of punitive, educational or remedial consequences.
- 5.36 **Student** means any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing educational relationship with Eastern.
- 5.37 **Supportive measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, and other similar measures.
- 5.37 **Title IX** means Title IX of the Education Amendments of 1972. Title IX prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance.
- 5.38 **Title IX Coordinator/EEO/AA Officer (Title IX Coordinator)** is at least one official designated by Eastern (may be more than one) to ensure compliance with Title IX and Eastern's Title IX program. The Title IX Coordinator/EEO/AA Officer is also the employee or employees designated by the President to monitor and evaluate Eastern's compliance with equal opportunity laws, guidelines, and policies to ensure that employment practices and contracting arrangements provide equal opportunity. The Title IX Coordinator/EEO/AA Officer is also responsible for receiving and evaluating

employee requests for reasonable accommodations. The Title IX Coordinator/EEO/AA Officer is:

Jaennae Snyder, Title IX Coordinator/EEO/AA
Human Resources Representative/Payroll
316 Eastern Drive
Room 108F
Moorefield, WV 26836
Office Hours: 8:00 am – 4:00 pm. Monday through Friday
Phone: (304) 434-8000 ext. *9275
Fax: (304) 434-7000
Email: jaennae.snyder@easternwv.edu

- 5.39 ***Title IX Team*** refers to the Title IX Coordinator, any deputy coordinators, and any member of the grievance process pool.
- 5.40 ***Title VII*** means Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e Title VII, SEC. 2000e- 2. [Section 703] which states in pertinent part it shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. For the purposes of Title VII, no formal complaint is required.

SECTION 6 DISABILITY ACCOMMODATIONS AND ACADEMIC ADJUSTMENTS

- 6.1 Eastern is committed to compliance with the Americans with Disabilities Act of 1990 (“ADA”), Section 504 of the Rehabilitation Act of 1973, and State law which prohibit discrimination on the basis of disability. Under the ADA, a person has a disability if the person 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, and people who are regarded as having a substantially limiting impairment. To be protected under the ADA, an individual must have, have a record of, or be regarded as having a substantial, as opposed to a minor, impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, caring for oneself, learning or working. Accommodations are modifications to policy, procedure or practice that may include the provision of auxiliary aids and services designed to afford individuals with disabilities equal access to the college’s programs, activities and services. Eastern will provide reasonable accommodations and/or auxiliary aids if applicable to eligible qualified individuals that do not cause an undue financial or administrative hardship and that do not fundamentally alter Eastern’s educational and employment programs, activities, benefits or services. Eastern is not required to change the provide personal aids, attendants and individually prescribed devices and services including but not limited to tutoring, personal care attendants, out of class notetakers or readers, glasses, hearing aids and wheelchairs. Individuals seeking accommodations in the employment or student application and admissions process and/or seeking accommodations for academic courses and job accommodation are encouraged to submit

accommodation requests as early in the application and admissions process as possible otherwise services may be delayed. Accommodations are not granted retroactively.

- 6.2 **Students.** Federal and State laws prohibit discrimination on the basis of disability as well as prohibit retaliation against an employee for exercising the rights under federal and state law that prohibit disability discrimination. The ADA/Section 504 Coordinator is the individual responsible for assuring that Eastern's programs, services, and activities are accessible to students with disabilities. Students with disabilities who want to request reasonable accommodations are required to self-identify with the ADA/Section 504 Coordinator and follow all disability reasonable accommodations procedures. Information about the student disability reasonable accommodation request process is available at <https://easternwv.edu/student-services/disability-services/> and Eastern's College Catalog at <https://easternwv.edu/academics/catalog/>.
- 6.2.1 **Student Applicants for Admission.** Eastern will provide reasonable accommodations in the application process and technical admission standards that do not fundamentally alter the requirements, program or service and that do not cause an undue financial or administrative hardship. All applicants for admission to Eastern and or/to a selected program of study must meet the required academic requirements and technical admission standards as set forth in the current College Catalog. A prospective student with a disability is not required to disclose the individual's disability during the admission process, however, applicants seeking application and/or accommodations in technical standards required for admission to any program after being provisionally admitted based on academic qualifications are required to self-identify and to follow all accommodation request procedures.
- 6.2.2 **Current Students.** Eastern will provide reasonable accommodations to qualified individuals with disabilities that will provide equal access to Eastern's programs, services and activities that do not fundamentally alter the requirements, program, service or activity and that do not cause an undue financial or administrative hardship. Students requesting accommodations are required to self-identify and to follow all accommodation request procedures.
- 6.3 **Employees with Disabilities.** Federal and State law make it unlawful to discriminate based on disability in all employment practices such as recruitment, pay, hiring, firing, promotion, job assignments, training, leave, lay-off, benefits, and all other employment related activities. Federal and State law also prohibits an employer from retaliating against an applicant or employee for asserting disability rights. The protected by the same laws. Federal and State law also makes it unlawful to discriminate against an applicant or employee, whether disabled or not, because of the individual's family, business, social or other relationship or association with an individual with a disability. An individual with a disability must be qualified to perform the essential functions of the job with or without reasonable accommodation, in order to be protected by the ADA. This means that the applicant or employee must satisfy the job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job related and be able to perform those tasks that are essential to the job, with or without reasonable accommodation.
- 6.3.1 **Accommodations.** Eastern will provide reasonable accommodations to applicants or employees with disabilities that do not cause an undue

administrative or financial burden or hardship and that do not alter the essential functions of the job or application process. A reasonable accommodation is any change or adjustment to a job or work environment or policy that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. Eastern will provide reasonable accommodations to enable an individual with a disability to enjoy the benefits and privileges of employment equal to those available to other nondisabled employees.

- 6.3.2 The Title IX/EEO/AA Officer is responsible for receiving and evaluating employee requests for reasonable accommodations. Employees may contact the Title IX/EEO/AA Officer for information about the reasonable accommodation request process.

SECTION 7 CONSENSUAL RELATIONSHIPS

- 7.1 In the work and academic environment, such a relationship that might be appropriate in other circumstances is inappropriate if one of the individuals in the relationship has a professional responsibility toward, or is in a position of authority with respect to, the other, such as in the context of supervision, instruction, coaching, counseling or advisement. An element of power is present in such a context and it is incumbent upon those with authority not to abuse that power. In addition, consensual relationships may yield to third parties the appearance that unfair bias or favoritism towards the student or supervisee is taking place.
- 7.2 ***Consensual Relationships involving Members of the college Community.*** The following provisions govern consensual relationships involving members of the college community where members engage in a consensual relationship involving:
- persons in inherently unequal and closely related employment positions at the college;
 - employees within the same reporting line; or
 - where one individual has influence or is in a position to direct, evaluate, or influence the employment of an employee the individuals involved in the consensual relationship.
- 7.2.1 (a) The supervisor shall notify the Title IX Coordinator of the reported consensual relationship.
- (b) The Title IX Coordinator in consultation with the appropriate departmental head will attempt to implement a Mitigation Plan. The Mitigation Plan will:
- Provide an alternative means for managing, supervising, teaching, evaluating and/or advising of the supervisee or otherwise mitigate the conflict of interest and the potential for exploitation or the appearance of exploitation or favoritism created by the consensual relationship;
 - Give priority to the interest of the subordinate;
 - Provide the individuals with notice of this policy; and

- Be reassessed by Title IX Coordinator in consultation with Academic and Student Services departments if applicable on an annual basis (or sooner if circumstances warrant) by the parties, and the applicable department/unit for necessary modification.
- (c) If no suitable way to eliminate or mitigate the conflict is reasonably feasible, one or both individuals may be separated from employment with the college and/or any other relationship with the college (if either party is not an Employee) may be terminated.
- (d) Failing to disclose a consensual relationship or to comply with a Mitigation Plan is prohibited and may result in disciplinary action up to and including termination of employment.
- (e) Any member of the college community who becomes aware of a violation of this section should report it to their supervisor and/or Title IX Coordinator.

7.3 ***Relationships Involving Students.*** Members of the college community are prohibited from or attempting to initiate, pursue, or engage in a relationship with a student whom the individual evaluates, advises, grades, or otherwise has control or influence over the academic progress of the student.

- 7.3.1 (a) ***Pre-existing Relationships Involving Students.*** Where there is a pre-existing consensual relationship with a student, the member of the college community involved in the relationship shall notify the immediate supervisor. The supervisor shall notify the Title IX Coordinator of the reported consensual relationship.
- (b) The Title IX Coordinator in consultation with the appropriate departmental head will attempt to implement a Mitigation Plan to eliminate or mitigate any conflict of interest or other educational or occupational interest. The Mitigation Plan will:
- Provide an alternative means for managing, supervising, teaching, evaluating and/or advising of the Student or otherwise mitigate the existing conflict of interest and the potential for exploitation or the appearance of exploitation or favoritism created by the consensual relationship;
 - If a preexisting teacher/student consensual relationship exists, provide instructions on avoiding any future conflict of interest and the potential for exploitation or appearance of exploitation or favoritism created by consensual relationship.
 - Give priority to the interest of the student;
 - Be in writing and signed by both parties to the consensual relationship;
 - Provide notice of this policy; and
 - Be reassessed by the Title IX Coordinator in consultation with the Academic and Student Services departments if applicable on an annual basis (or sooner if circumstances warrant) by the parties, and the applicable department/unit for necessary

modification.

- 7.3.2 If no suitable way to eliminate or mitigate the conflict is reasonably feasible, the member of the college community may be separated from employment with the college and/or any other relationship with the college may be terminated.
- 7.3.3 Failing to disclose a pre-existing consensual relationship with a student or not complying with a Mitigation Plan is prohibited and may result in disciplinary action up to and including termination of employment or termination of any other relationship with the college.
- 7.3.4 Any member of the college community who is notified, or becomes aware of, an alleged violation of this section should timely report the violations to the Title IX Coordinator.

SECTION 8 GRIEVANCE PROCEDURES, REPORTING VIOLATIONS AND FILING FORMAL COMPLAINTS

- 8.1 Any individual may report conduct that violates this policy, including but not limited to discrimination and Title IX Sexual Harassment, (whether or not the person reporting is the person alleged to be the victim), in person, by mail, by telephone, or by electronic means to the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours). Formal complaints are filed in the same manner.
- 8.2 Any individual may make an anonymous report of conduct that violates this policy to the Title IX Coordinator, or to the United States Department of Education Office for Civil Rights without disclosing their name, without identifying the respondent or accused, and/or without requesting any action. Because the accused individual is entitled to certain due process rights including but not limited to the right to confront the individual's accuser, Eastern's ability to administratively address alleged misconduct reported by anonymous sources is significantly limited. Eastern's ability to administratively respond to an anonymous report of a violation of this policy also may be limited depending on the level of information available regarding the incident or individuals involved. Eastern will adopt and publish grievance procedures that provide for the prompt and equitable resolution of reports and formal complaints alleging conduct prohibited by this policy including grievance procedures for reporting and filing Title IX Sexual Harassment formal complaints that comply with 34 C.F.R. Part 106 (2020), specifically 34 C.F.R. §§ 106.44, 106.45 (applicable to reports and formal complaints against employees and students) and that provide immediate and appropriate corrective action in response to harassment based on protected class including based on sex occurring in the workplace. The grievance procedures may include informal and formal resolution options, as applicable and allowed by law, and shall include supportive measures for reporting parties, complainants and respondents as applicable and required by law.
- 8.3 Reports/formal complaints of conduct that constitute Title IX Sexual Harassment will be addressed using the procedures set forth in Process A.

- 8.4 Reports/complaints of all other conduct prohibited by this policy that is not Title IX Sexual Harassment will be addressed using the procedures set forth in Process B.
- 8.5 Reports of all other conduct prohibited by this policy against students or student organizations will be addressed using the Student Conduct Code.
- 8.6 The Title IX Coordinator is responsible for evaluating Reports/Formal complaints and determining which procedure applies to the alleged conduct.
- 8.7 For the purposes of Title IX Sexual Harassment, Eastern's response obligations are not triggered until Eastern has Actual Knowledge of the alleged Title IX Sexual Harassment.
- 8.8 ***External Complaint Procedures.*** External reports or complaints, including but not limited to Title IX Sexual Harassment, may be made at any time by contacting external agencies responsible for enforcing Federal and State anti-discrimination laws.

- 8.8.1 The U.S. Department of Education's Office for Civil Rights (OCR) enforces several federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the United States Department of Education, including but not limited to, Title IX. Information about OCR, the laws it enforces and the OCR external complaint process is available by contacting:

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>

- 8.8.2 The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate or harass staff employees or applicants for employment on the basis of, among other things, sex. Information about the EEOC and its external complaint process is available online or by contacting:

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/>

- 8.8.3 The West Virginia Human Rights Commission (WHRC) is responsible for enforcing the West Virginia Human Rights Act. Information about the WVHRC and its external complaint procedures is available online or by contacting:

West Virginia Human Rights Commission
1321 Plaza East, Room 108
Charleston, WV 25301
Telephone: (304) 558-2616
Toll Free: (888) 676-5546
Fax: (304) 558-0085
Website: <https://hrc.wv.gov/>

- 8.8.4 Eligible employees may use the statutory grievance procedure to challenge actions that meet the definition of grievance under West Virginia Code Section 6C-2-2, et seq. Information about the statutory grievance procedure is available in the Human Resources Office or by contacting:

WV Public Employees Grievance Board
1701 5th Avenue, Suite 2
Charleston, WV 25387
Telephone:(304) 558-3361
Toll Free: (866) 747-6743
Fax: (304) 558-1106
Website: wvgb@wv.gov

- 8.8.5 The State of West Virginia Equal Employment Opportunity Office (WV-EEOO) provides guidance to State employers and employees about discrimination and harassment. Information about the WV-EEOO and its complaint procedures is available online and by contacting:

State of West Virginia
Equal Employment Opportunity Office
1900 Kanawha Blvd., East
Building 5, Room
A-125 Charleston,
WV 25305
Phone: (304) 558-0400
Website: <https://eeo.wv.gov/Pages/aboutus.aspx>

SECTION 9 Initial Reports, Confidential Reporting Resources, Anonymous Reporting, Clery Act Reporting, Reports to Law Enforcement and Amnesty for Students

- 9.1 **Initial Reports.** Any person may report Prohibited conduct including Title IX Sexual Harassment (whether or not the person reporting is the person alleged to be the victim), in person, by mail, by telephone, facsimile or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-hours) by using the telephone number or electronic mail address, or by mail or facsimile to the office address, listed for the Title IX Coordinator at the beginning of Process A or by using any online portal created by the college. Any written report submitted by an individual who is the person alleged to have been victimized by Title IX Sexual Harassment requesting that the college investigate the

allegation will be treated as a Formal complaint.

9.2 **Confidential Reporting Resources.** Students or employees who have experienced discrimination, harassment or retaliation including Title IX Sexual Harassment or seeking complete confidential assistance without sharing information with, or making a report to the Title IX Coordinator may do so by speaking with a confidential reporting resource. Professional, licensed counselors and pastoral counselors who provide mental health counseling to members of the college community (including those who act in that role under the supervision of a licensed counselor) are not required to report discrimination, harassment or retaliation, including Title IX sexual harassment to Eastern, including but not limited to the Title IX Coordinator, without the individual's permission, unless otherwise required or permitted to do so by law. Eastern does not offer on campus personal counseling services, however, suggestions and resources are listed below. The Title IX section on the college's webpage will include this information.

9.2.1 Off campus personal counseling is available by contacting:

- Family Crisis Center Outreach (Grant, Hardy, Hampshire, Mineral and Pendleton Counties) at (800) 698-1240
- Women's Aid in Crisis - Tucker County (at 304) 636-8433
- 24-Hour Domestic Violence Hotline at 1-888-880-7884
- National Domestic Violence Hotline at 1-800-799-SAFE

9.2.2 Off campus health services are available at:

- Grant Memorial Hospital
117 Hospital Drive, Petersburg, WV 26847
(304) 257-1026
- Hampshire Memorial Hospital
363 Sunrise Boulevard, Romney, WV 26757
(304) 822-4561
- Potomac Valley Hospital
100 Pin Oak Lane, Keyser, WV 26726
(304) 597-3610
- Davis Medical Center
812 Gorman Avenue, Elkins, WV 26241
(304) 636-330

9.3 **Anonymous Reporting.** Any individual may make an anonymous report of Title IX Sexual Harassment to the Title IX Coordinator, to law enforcement including the Department of Public Safety or to the United States Department of Education Office for Civil Rights without disclosing their name, without identifying the respondent, and/or without requesting any action. Because the individual who has been reported to be the perpetrator of conduct that could constitute prohibited conduct including Title IX Sexual Harassment is entitled to certain due process including but not limited to the right to confront the individual's accuser, the college's ability to address alleged misconduct reported by anonymous sources is significantly limited. The college's ability to respond

to an anonymous report also may be limited depending on the level of information available regarding the incident or individuals involved and the college's ability to investigate and gather evidence related to the report.

9.4 **Reports to Law Enforcement.**

9.4.1 Prohibited conduct may also constitute violations of criminal law. Any individual may, but is not required, to report an incident alleging criminal conduct to law enforcement. Any individual who wishes to pursue criminal action in addition to, or instead of making a report under this policy (if not required to report prohibited conduct under the policy), should call 9-1-1 in an emergency or contact law enforcement directly:

WV State Police
5153 US Highway 220 S
Moorefield, WV 26836
(304) 538-2925

Moorefield Police Department
206 Winchester Avenue
Moorefield, WV 26836
(304) 530-6142

Petersburg Police Department
21 Mountain View Street
Petersburg, WV 26847
(304) 257-1100

9.5 **Clery Act Reporting.**

9.5.1 The Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act, 20 USC § 1092(f), (commonly known as the Clery Act; formerly the Campus Security Act) is a federal law that requires the college to disclose campus security information including crime statistics for the campus and surrounding areas. It was first enacted by Congress in 1990 and most recently amended in 2013 by the Violence Against Women Reauthorization Act. Pursuant to the Clery Act, Campus Security Authorities as defined by 34 CFR 668.46(c)(2) who have witnessed or been informed of an alleged incident that constitutes a crime for the purposes of the Clery Act including but not limited to a forcible or non-forcible sex offense as defined by the Clery Act, whether a criminal or Formal complaint has been filed, must follow WVSU's procedures for making a report for the annual Clery Act Crime Statistics and Fire Safety Report. Employees may be obligated to report to law enforcement or other college employee the fact that an alleged Clery Act Crime has been reported, but the name or other personally identifiable information about the person making the report and/or alleged victim will be provided only with their permission except as may be required or otherwise permitted by law. Clery Act reporting does not require the institution to initiate an investigation or disclose personally identifiable information about the victim.

9.5.2 The Clery Act requires Eastern to timely notify/warn students and employees

when a Clery Act crime, occurring within Clery geography, poses a serious or on-going threat to the campus community. The issuing of a timely warning notice is decided on a case-by-case basis in light of all of the facts surrounding a crime, including factors such as the nature of the crime, the continuing danger to the campus community and the possible risk of compromising law enforcement efforts. Generally, the warning will specify the type of reported crime, the time and location at which the reported crime occurred, and specific advice to the campus community regarding steps to take to avoid becoming a victim. Reports of violations of this policy may constitute Clery Act crimes and require a timely warning depending upon the circumstances.

9.5.3 Information about the college's Clery Act Reporting and timely warning procedures can be found at <https://easternwv.edu/about-eastern/consumer-information/campus-safety-information/>

- 9.6 **Amnesty for Students.** Eastern encourages individuals to report Title IX Sexual Harassment and acknowledges that some individuals may be reluctant to make reports or to fully cooperate in a Formal complaint or grievance process. So long as a student's conduct did not result in a threat to the safety or health of others, a student involved in Process A and Process B as a reporting party, complainant, respondent, or witness typically will not be subject to discipline as a result of his or her personal consumption or use of drugs or alcohol at the time the incident occurred. The college may determine that a complainant, respondent, or witness who has been involved in other *Student Code of Conduct* violations at the time the incident occurred should not be subject to discipline, at the college's sole discretion, if the other violations are non-discriminatory and non-violent. This amnesty does not extend, however, to other potential violations of the *Student Code of Conduct* that may have been committed, even if the individual was under the influence of drugs or alcohol when the alleged violations were committed. Regardless of the aforementioned amnesty, Eastern may impose educational remedies related to a student's use or consumption of drugs or alcohol or involvement in non-discriminatory and non-violent *Student Code of Conduct* violations.
- 9.7 **Requests for Confidentiality.** Eastern attempts to balance the needs of the Parties for privacy with the institutional responsibility of ensuring a safe educational environment and workplace and its obligations under State and Federal law. Keeping a Reporting Party's information private is an aspiration, but is not always possible or appropriate. An individual's request regarding the confidentiality of information will be considered in determining an appropriate response; however, such requests will be considered in the dual contexts of the institution's legal obligation to ensure a working and learning environment that is free from discrimination and/or harassment and the due process rights of the individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation and to ensure that the institution meets its obligations under Title IX and other state and federal laws. The institution may be limited in its response and investigation if confidentiality is requested. Federal law prohibits the college from keeping confidential from a respondent the identity of a complainant who has filed a Title IX Sexual Harassment formal complaint. The college must keep confidential the identity of any individual who has made a report or formal complaint of Title IX Discrimination on the basis of sex, including any individual who has made a report or filed a formal complaint of Title IX Sexual Harassment, any complainant, any individual who has been reported to be the

perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Federal Educational Rights and Privacy Act (FERPA), statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising under this Process A. Nothing in this provision prohibits Eastern from defending against claims filed against the college.

SECTION 10 DUTY TO REPORT POLICY VIOLATIONS AND PROCEDURES BY EMPLOYEES

- 10.1 All Officials with Authority (OWA) who witness or receive a verbal or written report of Title IX Sexual Harassment and/or retaliation or who receive a verbal or written report of discrimination, harassment and/or retaliation are required to provide the reporting party with information on where to obtain/access this policy at the time of the report and are also required to notify the Title IX Coordinator of the alleged Title IX Sexual Harassment within one business day of the report.
- 10.2 All other Eastern staff employees and faculty except any staff employee or faculty designated as a confidential reporting resource as defined in Section 9 who witnesses or receives a verbal or written report of Title IX Sexual Harassment or any other conduct prohibited by this policy are required to provide the reporting party with information on how to access this policy at the time of the report and are required to notify the Title IX Coordinator of the report within one business day. Notice of Title IX Sexual Harassment to individuals not designated as an Official with Authority regardless of whether the individual reports the alleged conduct to the Title IX Coordinator does not constitute actual knowledge for the purposes of triggering Eastern's Title IX obligations.
- 10.3 Failure to notify the Title IX Coordinator as required by this section may result in disciplinary action up to and including termination of employment.
- 10.4 Any other member of the college community who has witnessed or is aware of any conduct prohibited by this policy is strongly encouraged to report any concerns to the Title IX Coordinator and should advise individuals of where to find this policy.
- 10.5 Eastern will provide discrimination, harassment and retaliation, including but not limited to Title IX Sexual Harassment, training to employees and staff in general, the Title IX Coordinator, the Grievance Pool, the EEO/AA Officer and the ADA/Section 504 Coordinator and any another member of the college community if required that complies with applicable discrimination, harassment and retaliation laws, rules, regulations and policies. Training will include, but may not be limited to the, the definitions of discrimination and Title IX Sexual Harassment and for the grievance pool, bias, prejudice and conflicts of interest.

SECTION 11 CHILD ABUSE REPORTING

- 11.1 Eastern is committed to protecting children on its premises or involved in Eastern's sponsored programs. Employees who observe, receive a written or verbal report or has reasonable cause to suspect, any type of child abuse or neglect, including physical or sexual abuse, of a child in an Eastern program or activity and/or on the campus of

Eastern, the employee is required to immediately report the circumstances to the Title IX Coordinator and to local law enforcement. Employees who fail to report may be subject to disciplinary action including but not limited to employment suspension without pay and termination. All others of the campus community are encouraged to report witnessed or suspected incidents of child abuse or neglect, including physical or sexual abuse, of a child in an Eastern education program or activity on Eastern's campus to local law enforcement and to the Title IX Coordinator.

- 11.2 West Virginia Code § 49-2-803 requires certain individuals to report child abuse and neglect. Pursuant to this code section, any individual named as a mandatory child abuse and neglect reporter, "who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Health and Human Resources. In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person required to report [under the code section] who is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility, or agency shall also immediately notify the person in charge of the institution, school, entity that provides organized activities for children, facility, or agency, or a designated agent thereof, who may supplement the report or cause an additional report to be made: Provided, That notifying a person in charge, supervisor, or superior does not exempt a person from the mandate to report suspected abuse or neglect [to the Department of Health and Human Resources and/or law enforcement]."
- 11.3 In cases involving a Mandatory Reporter, reports of child abuse or neglect should be immediately reported to each of the following:
- West Virginia Department of Health and Human Resources or by contacting the Child Abuse and Neglect Hotline (1-800-352-6513), seven days a week, twenty-four hours a day see also:
<http://www.dhhr.wv.gov/bcf/Services/Pages/Centralized-Intake-for-Abuse-and-Neglect.aspx>;
 - West Virginia State Police at 304-293-6400 (Crimes Against Children Unit);
- 11.4 West Virginia Code § 49-2-810 states the following in its entirety: "Any person, official, or institution participating in good faith in any act permitted or required by [Article 2 of Chapter 49] is immune from any civil or criminal liability that otherwise might result by reason of those actions, including individuals making good faith reports of suspected or known instances of child abuse or neglect, or who otherwise provide information or assistance, including medical evaluations or consultations, in connection with a report, investigation or legal intervention pursuant to a good faith report of child abuse or neglect."
- 11.5 The college's reporting requirements under this policy do not supersede the requirements placed on individuals by West Virginia Law to report child abuse or neglect including Sexual Abuse. West Virginia's mandatory reporting obligations can currently be found

at W. Va. Code §§ 49-2-801 to -814 (2017), available online at:

<http://www.legis.state.wv.us/WVCODE/Code.cfm>

- 11.6 Child abuse or neglect” for the purposes of this section means sexual abuse, physical injury, mental or emotional injury, sale or attempted sale, negligent treatment or maltreatment of a child by an adult, any other act that endangers or attempts to endanger the health, safety, or well-being of a child, or anything else that is otherwise prohibited by a West Virginia law intended to protect children. “Sexual abuse” for the purpose of this section is a form of child abuse or neglect and means any wrongful or otherwise illegal act that involves the sexual molestation or exploitation of child or is otherwise sexual in nature, whether physical injuries are sustained or not.

SECTION 12 TIME LIMITS ON REPORTING.

- 12.1 There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the respondent is no longer subject to Eastern’s control and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.
- 12.2 Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.
- 12.3 When a report/complaint is affected by a significant time delay, Eastern will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

SECTION 13 RELATION TO OTHER BOARD OF GOVERNORS POLICIES, ADMINISTRATIVE REGULATIONS, THE STUDENT CONDUCT CODE, EMPLOYEE HANDBOOKS, FACULTY HANDBOOKS AND ANY OTHER INSTITUTION, POLICIES, RULES, REGULATIONS OR HANDBOOKS

- 13.1 Conduct prohibited by this policy including but not limited to Title IX Sexual Harassment, hazing by individuals and stalking based on protected class are also prohibited by and/or may be defined in other policies, the Student Conduct Code and various other employee, faculty, and student academic and athletic program handbooks and/or other policies and procedures.
- 13.2 Unless otherwise stated, this policy supersedes all other policies, administrative regulations, student, employee, faculty and/or academic program handbooks for the defining, reporting, investigation and disposition of any conduct prohibited by this policy including but not limited to Title IX Sexual Harassment. The Grievance Procedure-Title IX Sexual Harassment set forth in Process A is the only procedure used to address Title IX Sexual Harassment reports and formal complaints. The procedure set forth in Process B supersedes any other procedures set forth in any other policies, administrative regulations, student, employee, faculty and/or academic program handbooks for

addressing reports and formal complaints that are determined not to fall under Title IX Sexual Harassment.

APPENDIX A

PROCESS A-TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCEDURE

CALL 9-1-1 IN AN EMERGENCY OR CONTACT LOCAL LAW ENFORCEMENT IF YOU HAVE IMMINENT CONCERNS ABOUT YOUR PERSONAL SAFETY

The college encourages anyone who experiences or becomes aware of an incident of conduct prohibited by BP –X.XX: Social Justice, Equal Opportunity/Affirmative Action, Non-Discrimination/Harassment/Sexual Harassment, Accommodations and Consensual Relationships (“the policy”) to *immediately* report the incident. Any person may report conduct prohibited by the policy (whether or not the person reporting is the alleged victim of the alleged conduct), in person, by mail, by telephone, facsimile or by electronic mail to:

Jaennae Snyder, Title IX Coordinator/EEO/AA
Human Resources Representative/Payroll
316 Eastern Drive
Room 108F
Moorefield, WV 26836
Office Hours: 8:00 am – 4:00 pm. Monday through Friday
Phone: (304) 434-8000 ext. *9275
Fax: (304) 434-7000
Email: jaennae.snyder@easternwv.edu

Reports and formal complaints may also be made online at: <https://easternwv.edu/faculty-and-staff/human-resources/#TitleIX>

Reports or complaints against the Title IX Coordinator should be reported to and filed with:

Dr. Thomas Striplin, President
316 Eastern Drive
Room 108A
Moorefield, WV 26836
Office Hours: 8:00 am – 4:00 pm. Monday through Friday
Phone: (304) 434-8000 ext. *9227
Fax: (304) 434-7000
Email: thomas.striplin@easternwv.edu

If the complaint is against the Title IX Coordinator, the President will assign the report/complaint to a trained individual who will take the place of the Title IX Coordinator in this procedure. The individual will be instructed not to discuss or disclose the report or complaint with the Title IX Coordinator except as permitted by this procedure and in accordance with provisions of this procedure applicable to respondents.

Any individual may at any time pursue a complaint, as applicable with the United State Equal Employment Opportunity Commission, the West Virginia Equal Employment Opportunity Office, the

West Virginia Human Rights Commission or the United States Department of Education Office for Civil Rights (responsible for enforcing Title IX). Information about external agencies and their complaint processes is available in Section 6 of this process.

SECTION 1. PURPOSE.

- 1.1 The purpose of Title IX Sexual Harassment Grievance Procedure (“Process A”) is to provide a procedure for addressing Title IX Sexual Harassment as that term is defined in 34 CFR Part 106 and the policy. Because current procedures and/or definitions set forth in student, employee, and faculty handbooks may not comply with 34 CFR Part 106, Process A supersedes and replaces any other rule, regulation, or handbook procedures addressing the definitions of, reports and/or formal complaints of Title IX Sexual Harassment, prohibited by policy. This Process A and the definitions set forth herein and in the policy are the only procedures and definitions that will be used by Eastern WV Community and Technical College (“the college”) to address reports and formal complaints Title IX Sexual Harassment.
 - 1.1.1 This procedure applies to students, faculty, staff, applicants for admission to or employment with the college, visitors or any third party who otherwise has some relationship with the college.
 - 1.1.2. This Process A does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.
 - 1.1.3 The college will provide, to a party or other participant whose participation is invited or expected, written notice of the date, time, location, participants insofar as is permissible by law and policy, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

SECTION 2. GENERAL.

- 2.1 The Title IX Coordinator is responsible for coordinating the college’s efforts to comply with its responsibilities under Title IX and for implementing Process A. The Title IX Coordinator may not have a conflict of interest or bias for or against individuals who report alleged prohibited conduct, respondents, complainants or respondents generally or specific individuals in any of the aforementioned capacities. The Title IX Coordinator’s responsibilities include but are not limited to:
 - 2.1.1 Communicating with all members of the college community regarding Title IX, the policy, Title IX Sexual Harassment, protected class discrimination and harassment, and providing information about the Process A;
 - 2.1.2 Reviewing applicable college policies to ensure institutional compliance with Title IX;
 - 2.1.3 Responding to general inquiries regarding Title IX Sexual Harassment and other prohibited conduct;

- 2.1.4 Monitoring the college's compliance with and administration of its own applicable policies, including record keeping, timeframes, and other procedural requirements.
 - 2.1.5 Conducting compliance assessments of the effectiveness of Title IX programs, the campus safety and security environment, and compliance with Federal and State law. Assessments may include site visits, record reviews, surveys, reviews of the applicable law(s) and interviews with students and personnel;
 - 2.1.6 Conducting and/or providing training regarding Title IX and prohibited conduct as defined in this Process A and posting all Title IX training materials as described in Section 20 of this process;
 - 2.1.7 Coordinating the college's response to Title IX Sexual Harassment;
 - 2.1.8 Any responsibility outlined in this Process A; and
 - 2.1.9 Any other duties that may be assigned by the President or designee.
- 2.2 The President may appoint more than one Title IX Coordinator and the Title IX Coordinator may appoint Deputy Title Coordinators.
- 2.3 All applicants for admission and employment; students; off-campus program participants; dual credit students; parents or legal guardians of elementary and secondary school students participating in a college education program or activity; and employees, will be provided with the college's Notice of Nondiscrimination and with information on how to report or file a Title IX Sexual Harassment formal complaint. The college will provide all of the aforementioned individuals with either a copy of the policy and this Process A or will provide them with information on how to obtain copies and/or will include the same in all employee/faculty/student handbooks, the college's catalog and materials provided to high school students participating in a college education program or activity. The college will also post the same on campus in a conspicuous location. The college will notify all of the aforementioned via these means that any person may report or file a formal complaint alleging prohibited conduct including Title IX Sexual Harassment, (whether or not the person reporting is the person alleged to be the victim of prohibited conduct regardless of the specific type), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator above.
- 2.4 The college will prominently display the name, title, office address, electronic mail address, and telephone number of the Title IX Coordinator, as well as the its Notice of Nondiscrimination, on its website, and in each applicable handbook, application materials (either on the application or as a separate document) and/or catalog and that it makes available to the persons listed above.
- 2.5 Waiver of the right to an investigation and adjudication of formal complaints of Title IX Sexual Harassment consistent with this Process A will not be required as a condition of enrollment or continuing enrollment; or employment or continuing employment; or

enjoyment of any other college right and/or education, program or activity.

- 2.6 During the implementation of Process A, the College will treat reporting parties, complainants and respondents equitably. For Title IX Sexual Harassment, the college will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for Title IX Sexual Harassment has been made against the respondent, by providing supportive measures as appropriate to the complainant and the respondent and by following this Process A before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies for Title IX Sexual Harassment formal complaints will be designed to restore or preserve equal access to the college's education program or activity. Such remedies may include the same individualized services as described in the policy as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. Remedies for all other prohibited conduct may be designed to meet the same goals but also will be consistent with State or Federal Law. Disciplinary sanctions may also be imposed on respondents found responsible for prohibited conduct consistent with this Process A. Individuals reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment are presumed not responsible for any alleged conduct until a determination regarding responsibility is made at the conclusion of the formal grievance process.
- 2.7 The burden of gathering evidence sufficient to reach a determination regarding responsibility and the burden of proof rests on the college and not on the complainant or respondent.
- 2.8 The administrative investigation of reports and complaints in accordance with this Process A 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 report or complaint filed in accordance with this Process A and the results of a law enforcement investigation or adjudication are not determinative of whether an individual is responsible for violating college policy. The procedures set forth in this Process A may be carried out prior to, simultaneously with, or following 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 (3) to ten (10) 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 it has completed its evidence gathering process.

SECTION 3. JURISDICTION AND DISMISSAL OF FORMAL COMPLAINTS.

- 3.1 **Title IX Jurisdiction.** Title IX applies to persons in the United States with respect to the college's education programs or activities. Jurisdiction extends to electronic discrimination and harassment if it occurs within an education program or activity.
- 3.1.1 **Mandatory Title IX Dismissal.** The college is required to dismiss a formal complaint of Title IX Sexual Harassment if the alleged conduct:

- Would not constitute Title IX Sexual Harassment even if proven;
- Did not occur in an education program or activity; or
- Did not occur against a person in the United States; or
- The complainant was not participating in or attempting to participate in an education program or activity of the college.
- Dismissal for the purposes of Title IX does not preclude the college from addressing the alleged conduct under the college's general jurisdiction and/or other college rules, regulations or policies including but not limited to Process B.

3.2 **General Jurisdiction.** General jurisdiction applies to all other conduct prohibited by the policy or any other college policy occurring within an education program or activity against an individual inside or outside the United States, regardless of citizenship, not included in Title IX Sexual Harassment jurisdiction. Jurisdiction extends to electronic discrimination and harassment if it occurs within an education program or activity.

3.2.1 **Title VII General Jurisdiction.** Prohibited conduct occurring in the workplace against a citizen of the United States inside or outside the United States, including conduct that but for the location would constitute Title IX Sexual Harassment falls under Title VII General Jurisdiction. The college is required to address Title VII discrimination and harassment, including but not limited to discrimination and harassment based on sex, if the college knew or should have known about the harassment; no formal complaint is required for the college to address alleged conduct, investigate reports or initiate the formal grievance process or to facilitate an informal resolution for alleged Title VII discrimination and harassment.

3.2.2 Prohibited conduct occurring outside the context of an education program or activity may be addressed at the college's discretion under general jurisdiction if it (a) occurs off-campus and would unreasonably interfere with the education or orderly operation of the college community, its mission, or its objectives as determined by a reasonable person; or (b) occurs off-campus and in light of all of the facts and circumstances, would endanger the health and safety of the college community; or (c) the conduct affects a substantial college interest. Conduct occurring outside the context of an education program or activity may also constitute misconduct under other college rules, regulations, policies or procedures and may at the college's discretion be addressed using Process B or any other applicable college policy or procedure.

3.3 **Formal Grievance Process.** The college is prohibited by federal law from initiating the formal grievance process or facilitating an informal resolution in without a formal complaint alleging Title IX Sexual Harassment. The college is also prohibited by federal law from taking any punitive action against an individual who has been reported to be the perpetrator of Title IX Sexual Harassment until after the conclusion of the formal grievance process.

- 3.4 **Discretionary Dismissal.** The college may dismiss a formal complaint alleging Title IX Harassment at any time if:
- 3.4.1 A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein.
 - 3.4.2 The respondent is no longer enrolled or employed by the college. If a complaint is dismissed based upon this reason and a respondent seeks reemployment or readmission, the formal complaint may be reinstated and the investigation may be resumed in accordance with this Process A at the point in the process at time of the withdrawal or employment termination.
 - 3.4.3 Specific circumstances prevent the college from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- 3.5 Dismissals under this section may be appealed in accordance with Section 13.

SECTION 4. SPECIAL CONSIDERATIONS FOR MEDICAL RECORDS.

- 4.1 The college will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the college obtains that party's voluntary, written permission. If a party has not reached 18 years of age or the individual is not attending the college, the college must obtain the voluntary, written permission of a parent.

SECTION 5. ROLE AND APPOINTMENT OF ADVISORS.

- 5.1 Both parties have the right to have one advisor of their choice, including legal counsel at the expense of the party, present during any step of the process including but not limited to the opportunity to be accompanied by an advisor to any related meeting, interview, informal resolution proceeding or emergency removal appeal. If either the complainant or respondent are consulting with more than one advisor, each must designate one person as the advisor for purposes of these procedures. The parties should select an advisor whose schedule allows attendance at scheduled meetings and hearings. Title IX Coordinator must be advised at least twenty-four (24) hours before the meeting, interview, informal resolution proceeding or hearing that that an advisor will be present and the name and contact information of the advisor.

The college will not limit the choice or presence of an advisor for either the complainant or the respondent; however, an individual selected by a party and an advisor who may also be a witness may have a conflict of interest. The college may establish restrictions regarding the extent to which the advisors may participate in the proceedings. Any restrictions imposed will apply equally to the advisors of both parties with the exception of restrictions imposed because of conflicts of interest. A party who chooses an advisor who is also a witness can anticipate that issues of potential bias will be explored by hearing decision-maker(s) and/or the Investigator.

- 5.2 Both parties have the right to have one advisor of their choice, including legal counsel at the expense of the party, to be present at any live hearing. If a party does not have an advisor present at the live hearing, the college will provide, without fee or charge to that party, an advisor of the college's choice only for the purpose of conducting cross-examination. The college provided advisor may, but is not required to be, an attorney even if the opposing party is represented by an attorney. Advisors not appointed by the college may serve in an advisory capacity or may represent either party during the live hearing; each party may determine whether a party selected advisor will serve as an advisor only or as a representative and each party is required to notify the Title IX Coordinator if the party selected advisor will serve as a representative or will serve in an advisory capacity and conduct cross-examination only at least four (4) days prior to any hearing. The college is not obligated to provide either party with an advisor to represent and/or advise either party during the entire formal grievance process or during any informal resolution facilitated by the college.
- 5.3 Advisors are not permitted to respond to questions during interviews, the informal resolution process or live hearings on behalf of any witness or party. Each party and/or witness who chooses to participate is expected to personally respond to questions posed by an investigator or by any individual authorized to ask questions during a live hearing or by any informal resolution process facilitator.
- 5.4 Advisors are expected to act in a respectful and non-abusive manner during all steps of the grievance process, including but not limited to during informal resolution proceedings, are expected follow the rules set forth in this Process A for each step of the process as well as are required to follow any rules of decorum established by investigators and/or the review board during the live hearing. Advisors are expected to follow all college rules, regulations and policies. Investigators or informal resolution process facilitators may remove advisors from any prehearing investigation interview/meeting/informal resolution proceeding and/or may end any meeting, or informal resolution process at the investigator's or informal resolution facilitator's discretion for disruptive and/or disrespectful behavior, for failure to follow the rules set forth in this Process A and/or any other rules established in accordance with this Process A. If an investigator is removed from an interview/meeting/informal resolution proceeding, the party will be given the option to either end the interview/meeting/informal resolution processing and reschedule, or to proceed without the advisor. Advisors may be removed from a live hearing by the review board's discretion for disruptive behavior and/or for violating any hearing rules of decorum established in accordance with this Process A.
- 5.5 If a party requests that all communication be made through their advisor who is also an attorney, the college will comply with that request at the college's discretion; each party will be copied on any communication to their respective advisor.
- 5.6 The college will provide the parties with a consent form that authorizes the college to share documentation and evidence related to the formal grievance process with their selected and/or college appointed advisors. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to release of information to the advisor before the college is able to share records, documents and/or other information related to the allegations under investigation with an advisor. Advisor's may be asked to sign a Nondisclosure Agreement. The Nondisclosure Agreement will not restrict an advisor's or party's ability to discuss the allegations under investigation or to gather and present relevant evidence.

5.7 **External Resources.** The college does not endorse any of the following external organizations or any external organizations included in online information; the information is provided solely as external resources for the parties. Individuals may seek advocacy, support and/or other services by contacting:

1. Complainants:

REACH
The Counseling Connection
1021 Quarrier Street, Suite 414
Charleston, WV 25301
Phone: 304-340-3676
Fax: 304-340-3688
24 Hour Hotline: 1-800-656-HOPE (4673)
www.tccwv.org

The Victim Rights Law Center (<http://www.victimrights.org>)

2. Respondents:

Families Advocating for Campus Equality
(FACE) 3 West George St
PO Box 71
Batesville, IN 47006-9998
Telephone: (701) 491-8554
<http://www.facecampusequality.org>

SAVE (<http://www.saveservices.org>)

3. Both:

West Virginia Bar Association Legal Referral Service
2000 Deitrick Blvd
Charleston, WV 25311
Telephone: 304-553-7220
<https://wvlawyerreferral.org/>

Legal Aid Law Line: 1-866-985-2948
www.legalaidwv.org

SECTION 6. INITIAL RESPONSE TO REPORTS.

6.1 Upon receipt of an initial report, the Title IX Coordinator will conduct an initial assessment to determine if the report alleges conduct that if proven would constitute Title IX Sexual Harassment. If the report alleges Title IX Sexual Harassment, the Title IX Coordinator will initiate the procedures set forth in this Process A. If the report does not allege conduct that if proven would not constitute Title IX Sexual Harassment, the Title IX Coordinator will refer the initial report to the proper procedure.

6.2 **Title IX Sexual Harassment Report.** Within five (5) days of receipt of an initial report,

if the Title IX Coordinator concludes that the report constitutes Title IX Sexual Harassment, the Title IX Coordinator will contact the person alleged to have been victimized by the prohibited conduct to discuss the availability of supportive measures, consider the person's wishes with respect to supportive measures, advise the individual about the procedures for filing a formal complaint, inform the person of the availability of supportive measures with or without the filing of a formal complaint and explain the formal grievance process and this Process A in general. The contact may occur in any number of ways including but not limited to in person, virtually, email, letter or telephone. The Title IX Coordinator's determination of appropriate supportive measures in a given situation are determined on an individual basis depending upon the facts and circumstances of each situation. If the individual reported to be the victim of Title IX Sexual Harassment does not file formal complaint, the Title IX Coordinator at the Title IX Coordinator's discretion may file a formal complaint in accordance with the policy. The individual reported to be the victim of prohibited conduct may decide to pursue a formal complaint at a later date.

- 6.3 **Supportive Measures.** The college may offer supportive measures to any person reported to be the alleged victim Title IX Sexual Harassment, even if no formal complaint is filed. The Title IX Coordinator's determination of appropriate supportive measures in a given situation are determined on an individual basis depending upon the facts and circumstances of each situation. If the college does not provide supportive measures to the victim of prohibited conduct, the complainant or the respondent if requested by the respondent after a formal complaint is filed, the college will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

SECTION 7. FILING AND WITHDRAWING A FORMAL COMPLAINT.

- 7.1 Formal complaints are filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator at the beginning of this Process A, and by any additional method designated by the college. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the college. Any writing, electronic submission (such as by electronic mail, facsimile or through an online portal provided for this purpose by the college) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint and requesting an investigation will be considered a formal complaint. For Title IX purposes, the complainant cannot remain anonymous or otherwise prevent the complainant's identity from being disclosed to the respondent. Complainants are encouraged, but are not required to use any formal complaint form that the college may develop.
- 7.2 Within five (5) days of receipt of a formal complaint, the Title IX Coordinator will contact the person alleged to have been victimized by the conduct to discuss the availability of supportive measures, consider the person's wishes with respect to supportive measures, inform the person of the availability of supportive measures with or without the filing of a formal complaint, explain the Process A including the formal and informal resolution processes, and identify the person's wishes related to the pursuit of an informal resolution if appropriate and if a formal complaint has been filed. The contact may occur in any number of ways including but not limited to in person, virtually, email, letter or telephone. The Title IX Coordinator's determination of appropriate supportive measures in a given situation are determined on an individual basis depending upon the

facts and circumstances of each situation.

- 7.3 **Title IX Coordinator Filed Formal complaints.** If the individual reported to be the victim of prohibited conduct does not file and/or withdraws a formal complaint, the Title IX Coordinator at the Title IX Coordinator’s discretion may file a formal complaint.
- 7.3.1 When making a decision to initiate a formal complaint, the Title IX Coordinator may consider a variety of factors, including, but not limited to whether a non-deliberately indifferent response to the allegations requires an investigation; a pattern of alleged misconduct by a particular respondent; whether violence or use of a weapon is alleged, and the wishes of the person alleged to have been victimized regarding the college’s response. If an alleged victim does not want to proceed with an investigation, the Title IX Coordinator will also evaluate whether the college can honor the request while still providing a safe and non-discriminatory environment for all students.
- 7.3.2 If the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this Process A.
- 7.3.3 Where a grievance process is initiated because the Title IX Coordinator, and not the complainant, signed the formal complaint, the complainant who did not wish to initiate a grievance process remains under no obligation to then participate in the grievance process. The complainant remains eligible to receive supportive measures protecting the complainant’s equal access to education.
- 7.4 Eastern may consolidate Title IX Sexual Harassment formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party (counterclaim), where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances and are so intertwined that the allegations directly relate to all of the parties for investigation and hearing. Where a grievance process involves more than one complainant or more than one respondent, references in this Process A to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.
- 7.5 **Withdrawing a Formal complaint.** A complainant may submit a written request to withdraw a formal complaint at any time to the investigator. The investigator will evaluate the request for discretionary withdrawal under Section 4.4. The investigator will notify the Title IX Coordinator of the decision within four (4) days of receipt of the request. The decision will include the reason(s) for the dismissal and the procedure for appealing the dismissal. The Title IX Coordinator will notify the complainant, the respondent, their advisors and any review board members, if applicable, of the dismissal decision simultaneously within two (2) days of receipt of the investigator’s decision. If applicable, the Title IX Coordinator will also notify any witnesses who were expected to appear at a scheduled hearing that the hearing has been cancelled but will not include any reasons for the cancellation.

SECTION 8. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE

- 8.1 An individual may be removed from an education program or activity on an emergency basis if the individual poses an immediate threat to the physical health or safety of any student or anyone and the threat arises from the allegations of Title IX Sexual

Harassment. Emergency removal does not authorize the college to impose an interim suspension or expulsion on a respondent *because* the respondent has been accused of sexual harassment. Rather, emergency removal is appropriate when an individualized safety and risk analysis determines that an imminent threat to the physical health or safety of any person, *arising from* sexual harassment allegations, justifies removal.

- 8.2 If the Title IX Coordinator determines the individual should be removed from an education program or activity on an emergency basis, the individual may be removed without written notice. Emergency removal may include a no-trespass or other no-contact order. The Title IX Coordinator will then notify the individual in writing of its emergency removal decision within two (2) days following the decision. Written notice may be made by email.
- 8.3 Within two (2) days of receipt of the written notice, the individual may appeal the emergency removal in writing to the Title IX Coordinator and schedule a meeting. The purpose of the meeting is to provide the individual with the opportunity to rebut the reasons for the emergency removal. The individual is encouraged to submit any documentation the individual wants to consider when making a decision on the appeal prior to the meeting. The meeting may occur in person, virtually or remotely. Failure to contact the Title IX Coordinator to schedule a meeting within four (4) days without good cause constitutes a waiver of any right to challenge the emergency removal.
- 8.4 The Title IX Coordinator will notify the individual of the appeal decision in writing within two (2) days of the meeting. The decision is final and not appealable.
- 8.5 If a student-employee respondent is removed under this section, the college may also remove the student-employee respondent from any employment opportunity that is part of the college's education program or activity.
- 8.6 Nothing in this Process A precludes the college from placing a non-student employee respondent on administrative leave, with or without pay, pending the outcome of the Process A procedures; administrative leave is not considered an emergency removal.
- 8.7 This section may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 (ADA) or the ADA Amendments Act of 2008.

SECTION 9. INVESTIGATION OF REPORTS AND FORMAL COMPLAINTS, REVIEW OF EVIDENCE, INVESTIGATIVE REPORT.

- 9.1 Within five (5) days of meeting with the person alleged to be the victim of the prohibited conduct, and/or filing a complaint if the Title IX Coordinator signs the complaint, the Title IX Coordinator will assign the formal complaint to an investigator. The Title IX Coordinator will vet the assigned investigator to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases that would materially affect the outcome of the investigation. The Title IX Coordinator will notify the complainant and the respondent simultaneously of the assignment to an investigator. Investigators who cannot serve impartially, or have a known conflict of interest or disqualifying bias that would materially affect the outcome should notify the Title IX

Coordinator in writing. Either party may challenge any investigator for bias or conflict of interest that would affect the outcome of the investigation by submitting written reasons for the challenge and any supporting documentation to the Title IX Coordinator. The Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, the challenging party must submit the challenge and any supporting documentation to:

Dr. Thomas Striplin, President
Room 108A
316 Eastern Drive
Moorefield, WV 26836
Phone: (304) 434-8000 ext. *9227
Fax: (304) 434-7000
Email: thomas.striplin@easternwv.edu

- 9.2 The Title IX Coordinator may reassess the impartiality of the investigator if any party selects and/or changes advisors during the investigation.
- 9.3 The investigator is responsible for conducting the investigation of Title IX Sexual Harassment formal complaints.
- 9.4 Investigations typically will be completed within sixty (60) days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement involvement, etc.
- 9.5 The purpose of the investigation is to gather directly related evidence, to determine the name of respondent if not known at the time of the filing of the formal complaint and to determine jurisdiction. The investigator will conduct a prehearing investigation of a formal complaint even if the complainant does not know the identity of the respondent and/or if upon initial review the college does not have jurisdiction to address the complaint under the policy and Process A because a pre-hearing investigation might reveal either the respondent's identity and/or other facts to determine if the college has jurisdiction to address the complaint using this Process A.
- 9.6 As part of the prehearing investigation, the Investigator may conduct in-person, telephone or virtual interviews of the parties and/or witnesses; obtain law enforcement records and/or medical records subject to the policy and this Process A; request that the parties submit evidence at any time, visit the site(s) of the alleged misconduct; and/or take any other action that could lead to evidence directly related to the allegations. The investigator may not seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The investigator may record meetings and/or interviews. The investigator may also provide each interviewed party and witness an opportunity to review and verify the investigator's summary notes (or transcript) of the relevant evidence/testimony from any of their respective interviews and meetings.
- 9.7 Within five (5) days of receipt of the formal complaint from the Title IX Coordinator, or from the date the Title IX Coordinator or investigator discovers the identity of the respondent if unknown at the time the formal complaint was filed, the investigator will

provide a written notice of the complaint and allegations to the complainant and known respondent(s) that includes the following:

Notice of the college's formal grievance process (providing the parties with a copy of this Process A and/or any other procedures will satisfy this provision).

- Notice of the allegations/charges including sufficient details about the alleged misconduct known at the time. Sufficient details include but are not limited to, the identities of the parties involved in the incident, any witnesses, if known, dates and the specific alleged conduct. A copy of the complaint will also be included.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process and the standard of proof that will be used to determine responsibility.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney (at the expense of the party), present during any step of the formal grievance process and during any informal resolution procedures, including but not limited to during any meetings, and/or the live hearing and that the parties are required to provide their selected advisor with this Process A and the policy and/or advise them how to find both online.
- A statement that each party and/or the advisor of their choice, if either party has named an advisor, will be provided an equal opportunity to inspect and review any evidence obtained as part of the prehearing investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the college does not intend to rely in reaching a determination regarding responsibility and inculpatory (evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish responsibility) or exculpatory evidence (opposite of inculpatory evidence, evidence favorable to the individual who has been reported to be the perpetrator of conduct that could constitute prohibited conduct including Title IX Sexual Harassment that exonerates or tends to exonerate the individual of responsibility) whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation
- A statement all parties will have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide directly related evidence and expert witnesses, and to fully review and respond to all evidence.
- Present directly related evidence to the investigator including fact and expert witnesses, and/or any other inculpatory and/or exculpatory evidence and that evidence may include, but is not limited to, witness lists, documents, medical records subject to the policy and this Process A, photographs and/or recordings. The request will include the date the Investigator must receive the evidence.
- A statement that if any party has not selected an advisor of choice, an advisor will be assigned to any party who does not have one during the live hearing stage only for the purpose of conducting cross-examination

- Notice that if, in the course of an investigation, the college decides to investigate allegations about the complainant or respondent that are not included in the initial notice the college will provide notice of the additional allegations to the parties whose identities are known.
- Notice that during the prehearing investigation the parties do not have the right to depose opposing parties or witnesses, or to compel parties or witnesses to appear at meetings or any subsequent live hearing.
- Notice that the ability of either party to discuss the allegations under investigation or to gather and present directly related evidence will not be restricted but that as a supportive measure, the parties may be subject to a mutual directive not to have any direct contact with each other, in person, electronically or through third parties other than the other party's advisor.
- A statement about the availability of supportive measures and how to request them.
- A statement about whether the informal resolution process as set forth in the policy and this Process A is available for resolving the complaint and if so, the procedure for requesting informal resolution.
- Notice that attempting to alter a statement of a witness or prevent a witness from participating in the investigation or adjudication of a formal complaint or the informal complaint resolution process is prohibited and if proven will result in separate disciplinary action and the procedure for filing a complaint.
- Notice that providing false statements during any part of the process is a violation of the policy that any individual found responsible for providing false statements may be subject to separate disciplinary action up to and including employment termination or expulsion and that a responsibility determination alone is not sufficient to support a finding that an individual made a statement in bad faith.
- Notice that retaliation is prohibited and the procedure for filing a retaliation complaint.
- Advisor consent and/or consent to record forms if not already provided.
- Instructions to the parties to preserve any directly related evidence.
- Provide each party the opportunity to suggest questions they wish the investigator to ask the other party and witnesses.
- Any other information at the discretion of the investigator.

9.8 Within twenty-five (25) to thirty (30) days of receipt of the formal complaint and after conducting a thorough and impartial investigation, the investigator will simultaneously provide the complainant and the respondent and their advisors, if any, in electronic format or a hard copy, any evidence that is directly related to the allegations raised in the formal complaint, including, but not limited to any inculpatory or exculpatory evidence, whether obtained from a party or other source. The complainant and the respondent each may submit a written response to the directly related evidence. Any written response

must be received by the investigator on or before five (5) days after each parties' receipt of the evidence. The parties and their advisors are not prohibited from discussing the allegations set forth in the complaint but are prohibited from disseminating and/or or disclosing any documents provided to either by the investigator in accordance with this section. If recordings of interviews are not provided to the parties, the parties will have the ability to review the transcript(s) of the interview(s). *If the complaint proceeds to a hearing, the parties are expected to bring any directly related evidence provided pursuant to this section to the hearing.*

- 9.9 The investigator may at the investigator's discretion continue the prehearing investigation based upon the information received in the parties' responses. The investigator will notify the parties in writing either electronically or by hard copy if the Investigator chooses to continue to investigate the complaint based upon the responses of the parties.
- 9.10 If the investigator does not continue the prehearing investigation, within seven (7) days of the expiration of the five-day time frame set forth in the policy and this Process A, the investigator will write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all evidence. Appendices including physical or documentary evidence will be included, a final prehearing investigation report that fairly summarizes the evidence and the responses of the parties, if any, and will include a list of witnesses who will be asked to appear and provide testimony that includes evidence at the hearing. The investigator will incorporate elements of the parties' written responses into the final prehearing investigation report, include any additional evidence, make any necessary revisions, and finalize the report. The investigator should document all rationales for any changes made to the initial report. If a complaint involves multiple complainants, multiple respondents, or both, the investigator may issue a single investigative report. The prehearing investigation report will include a description of the procedural steps taken from the receipt of the formal complaint through the prehearing investigation report including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence and documents/evidence collected/received by the Investigator. The investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence.
- 9.11 One day after receipt of the prehearing investigation report, the Title IX Coordinator will provide the complainant and the respondent and their advisors, if any, with a secured electronic copy or hard copy of the prehearing investigation report. The complainant and the respondent each may submit to the Title IX Coordinator a written response to the prehearing investigation report. The response may include arguments that evidence or witnesses identified in the final investigation report as relevant are, in fact, not relevant and similarly, evidence identified and witnesses identified as directly related but not relevant by the investigator(s) may be argued to be relevant. Any response must be received by the Title IX Coordinator on or before three (3) days after a party's receipt of the prehearing investigation report.

SECTION 10. HEARINGS.

- 10.1 **Hearing Officer.** Within five (5) days of receipt of the prehearing investigation report, the Title IX Coordinator will notify the Hearing Officer. The Hearing Officer will not be the Title IX Coordinator or the Investigator. The Title IX Coordinator may elect to have an alternate from a pool sit in throughout the hearing process in the event that a substitute

is needed for any reason. The Title IX Coordinator will vet the Hearing Officer and any alternate to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases that would affect the outcome of the hearing.

- 10.2 The Title IX Coordinator will notify the Hearing Officer and/or alternate in writing of each of the parties names, their advisors, if known, and witnesses who will appear at the hearing that were named by the investigator in the final prehearing investigation report. If the Hearing Officer or alternate cannot serve impartially, or has a known conflict of interest or disqualifying bias that would materially affect the outcome of the hearing, they should notify the Title IX Investigator in writing.
- 10.3 At least ten (10) days prior to the hearing, the Title IX Coordinator will provide the Hearing Officer with an electronic or hard copy of the formal complaint, the prehearing investigation report, the responses of the parties to the directly related evidence, the responses of the parties to the prehearing investigation report and the directly related evidence collected by the investigator. The Hearing Officer or alternate are prohibited from disseminating or otherwise disclosing any of the information provided by the Title IX Coordinator. Disclosure and/or dissemination of any of the information provided by the Title IX Coordinator is considered gross misconduct. Employees found responsible for gross misconduct may be dismissed immediately without progressive discipline in accordance with the policy. Disclosure or dissemination of information provided by the Title IX Coordinator by a faculty member is considered insubordination and conduct which directly and substantially impairs the individual's fulfillment of institutional responsibilities. Faculty found responsible for disseminating or disclosing information may be dismissed in accordance with West Virginia Higher Education Policy Commission Procedural Rule Title 133, Series 9, Academic Freedom, Professional Responsibility, Promotion and Tenure, Section 12.
- 10.4 **Notice and Timing of Hearing.** Typically, a hearing will be scheduled at least ten (10) and not more than twenty (20) days after the parties receive the prehearing investigation report. No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties, witnesses and the Hearing Officer or alternate. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notice of hearing to the parties and the Hearing Officer or alternate will include:
- Date of the hearing;
 - Names(s) of the Hearing Officer or alternate and any other attendees including but not limited to any individual responsible for the audio-visual or audio recording of the hearing and/or any hearing facilitator;
 - Procedure for challenging the Hearing Officer or alternate for bias or conflict of interest that would materially affect the outcome of the hearing;
 - Notification that the parties may have the assistance of an advisor of their choosing, including legal counsel of their choice at their expense at the hearing and will be required to have one present for the purposes of cross-examination;
 - An invitation to contact the Title IX Coordinator to request any reasonable disability accommodations, language assistance, and/or interpretation services that

may be needed at the hearing, at least seven (7) business days prior to the hearing. The Title IX Coordinator will consult with the ADA Coordinator when addressing requests for reasonable disability accommodations;

- Procedure for requesting the hearing to occur with the parties located in separate rooms with technology enabling the Hearing Officer and parties to simultaneously see and hear the party answering questions;
- Notice that each party's advisor will have the opportunity to ask the other party and any witnesses relevant questions and follow-up questions, including relevant questions challenging a party's or witness' credibility and that cross-examination at the live hearing must be conducted orally, directly, and in real time by the party's advisor, and never by a party personally;
- Notice that both parties may present evidence including witnesses subject to the policy and this Process A on their behalf;
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's or party's statements given prior to the hearing will not be considered by the Hearing Officer or alternate and that for compelling reasons, they may reschedule the hearing;
- List of witnesses that will be asked by the Hearing Officer to appear and testify at the live hearing;
- Whether the party's, advisors or witnesses are permitted to bring mobile phones or other electronic devices to the hearing;
- Notice that the parties each are required to provide the Title IX Coordinator with the name and contact information of any party selected advisor if they have not already done so and that if the Title IX Coordinator does not receive notice of the name and contact information of a party selected advisor on or before five (5) days before the hearing, the Title IX Coordinator will assign a college advisor to the party without one at no charge to the party for the purposes of conducting cross-examination only;
- Any another necessary information at the discretion of the Title IX Coordinator.

10.5 **General Hearing Guidelines.**

10.5.1 The hearing will be closed to all members of the campus and outside community except those directly involved with the complaint. The hearing may be conducted with all participants physically present in the same geographic location, or at the college's discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants/witnesses simultaneously to see and hear each other and to see and hear, if applicable, any evidence referred to during the hearing. At the written request of either party submitted to the Title IX Coordinator, the college will provide for the hearing to occur with the parties located in separate rooms with technology enabling the Hearing Officer and parties to simultaneously see and hear the party or the witness answering questions. Written requests must be

submitted to the Title IX Coordinator on or before ten (10) days prior to the hearing. The Title IX Coordinator will notify the Hearing Officer of the request. The Title IX Coordinator may be responsible for coordinating the technology with the Information Technology Department, the complainant, the respondent and each party's respective advisor may be present during the testimony of all witnesses.

- 10.5.2 The Title IX Coordinator will provide the Hearing Officer with the evidence collected during the prehearing investigation, including but not limited, to the prehearing report, the responses of the parties to the evidence, if any, provided in accordance with the policy and this Process A and the responses of the parties to the prehearing report, if any, provided in accordance with the policy and this Process A. Each party and their advisors will have equal opportunity to refer to the same evidence during the hearing, including but not limited to during cross-examination.
- 10.5.3 Each party or advisor will have the opportunity to ask the other party and any witnesses relevant questions and follow-up questions, including relevant questions challenging a party's or witness' credibility. Cross-examination at the live hearing must be conducted orally, directly, and in real time by the party's advisor, and never by a party personally. Advisors and parties will remain seated during questioning. Only one person may question any witness. For example, if a party begins asking a witness questions, the party's advisor is not permitted to also question the same witness at any time thereafter.
- 10.5.4 If a party appears at a hearing without an advisor or if an advisor is removed from the hearing by the Hearing Officer, the hearing temporarily will be delayed until the party without an advisor selects an advisor or one is appointed by the college. On or before three (3) days after the day of the continued hearing, the party without an advisor must provide the Title IX Coordinator with written notice of how the party wishes to proceed. The party without an advisor may:
- Provide the name and contact information of the party's new advisor; or
 - Request that the Title IX Coordinator appoint an advisor for the sole purpose of conducting cross-examination.
 - The Title IX Coordinator will notify the Hearing Officer and the opposing party of the response and will reschedule the hearing within a reasonable time after the advisor issue is resolved.
- 10.5.5 The Hearing Officer has the discretion to determine the specific hearing format and may allow for breaks for advisors to confer with the party the advisor is advising or representing. Advisors may not consult with the party they are advising or representing during their party's testimony.
- 10.5.6 Formal rules of evidence and court procedures are not used and do not apply. Hearings are not court proceedings; the procedures used in civil or criminal trials, motions, or other proceedings before a court or administrative agency do not apply. For example, discovery procedures and requirements for pleadings, do not

- apply. The parties do not have the right to depose opposing parties or witnesses.
- 10.5.7 The parties and the college do not have subpoena powers and neither can compel parties or witnesses to appear at any live-hearing.
 - 10.5.8 The Hearing Officer has the discretion to exclude irrelevant questions and/or to limit questions that are unduly repetitious or abusive.
 - 10.5.9 A party-selected advisor who has been designated as a representative and/or each party may ask any non-party witness presented by the party all relevant questions and follow-up questions, including questions challenging credibility subject to the single questioner rule set forth in the policy and this Process A
 - 10.5.10 Questioning of any party or witness will be conducted directly, orally, and in real time.
 - 10.5.11 The investigator may appear at the hearing for the sole purpose of summarizing the prehearing investigation report.
 - 10.5.12 Questioning of any witness, including but not limited to, cross-examination of the opposing party, must at all times occur in a respectful and non-abusive manner.
 - 10.5.13 Hearing participants, are expected to treat everyone, including the opposing party and all witnesses, with respect. Abusive and/or disrespectful behavior and yelling are prohibited. The Hearing Officer or alternate may remove any hearing participant at their discretion.
 - 10.5.14 Only relevant cross-examination and other questions are permitted. Before a party or witness answers a question, the Hearing Officer will determine whether the question is relevant and explain any decision to exclude a question as not relevant.
 - 10.5.15 Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
 - 10.5.16 The Hearing Officer or alternate may consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not submit to cross-examination at the live hearing. The Hearing Officer or alternate may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.
 - 10.5.17 The Hearing Officer or alternate may ask questions of any witness including the parties.
 - 10.5.18 Any witness scheduled to participate in the hearing must have been first interviewed by the investigator(s) or have proffered a written statement or

answered written questions, unless all parties and the Hearing Officer or alternate assent to the witness's participation in the hearing. The same applies to any evidence that is first offered at the hearing. If the parties and the Hearing Officer or alternate do not assent to the admission of evidence including witness testimony newly offered at the hearing, the Hearing Officer or alternate may delay the hearing and refer the complaint back to the investigator to be reopened the investigation to consider the new evidence and/or witness and to allow the opposing party to respond to the witness or evidence.

10.5.19 The Hearing Officer will question the parties/witnesses who will then be questioned by the parties through their Advisors ("Cross-Examination"). With the exception of the parties, a witness may be present only for the witness' own testimony.

10.6 **Recording.** The college will create an audio-visual or audio recording of the hearing at its expense. An employee from the IT or other department may attend the hearing for the purposes of assisting with or making the audio-visual or audio recording. The college may at its discretion employ a court reporter to create the audio-visual or audio recording or transcript of the hearing. Upon written request to the Title IX Coordinator, the college will make any audio-visual recording, audio recording or transcript available to either party for review and inspection. The college may create a transcript of the live hearing at its own expense. Copies of any audio-visual recording, audio recording or transcript will be made available to either party upon written request to the Title IX Coordinator and at the expense of the party making the request. Transcripts prepared by a court reporter must be obtained from the court reporter. No recordings of the hearing shall be made by any person other than the college. All original formal hearing recordings and any evidence provided to the Hearing Officer by the investigator or by the parties during the hearing will be maintained by the Title IX Coordinator and will be referred to as the hearing record. The parties are not permitted to record the hearing.

10.7 **Facilitator.** At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process may be managed by a hearing facilitator appointed by the Title IX Coordinator and/or by/with the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

10.8 During the course of the hearing, the Hearing Officer may consult with legal counsel by telephone or in person regarding procedural matters.

SECTION 11. DELIBERATIONS AND RESPONSIBILITY DETERMINATION.

11.1 After the presentation of all witnesses and evidence, the Hearing Officer or alternate will end the hearing and begin deliberations. The Hearing Officer or alternate will deliberate in closed session to determine whether by a preponderance of the evidence the respondent is responsible for prohibited conduct. The deliberation period is not to exceed five (5) days. If the Hearing Officer or alternate determines the respondent is responsible for prohibited conduct, the Hearing Officer or alternate will also determine the recommended sanctions and/or remedies consistent with the policy and this Process A. Responsibility is determined by the Hearing Officer or alternate. Deliberations are not

recorded.

- 11.2 When making a responsibility determination, the Hearing Officer:
- Will objectively evaluate all evidence – including both inculpatory and exculpatory evidence;
 - Will not base credibility decisions on a person’s status as a complainant, respondent, or witness.
- 11.3 Within two (2) days of the end of deliberations, the Hearing Officer or alternate will provide an electronic or printed copy of the written responsibility determination to the Title IX Coordinator unless the Title IX Coordinator grants an extension in writing. The Hearing Officer or alternate may consult with legal counsel when writing the determination. Within five (5) days of receipt, the Title IX Coordinator will provide an electronic or hard copy of the written responsibility determination to the parties simultaneously. The written responsibility determination will include:
- The identification of the allegations potentially constituting Title IX Sexual Harassment.
 - A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, meeting dates, interviews with parties and witnesses, site visits, methods used to gather other evidence, date(s) of the hearing and dates of deliberations.
 - Findings of fact supporting the determination and conclusions regarding the application of the policy and this Process A to the facts.
 - Any disciplinary sanctions imposed on the respondent made in accordance with the policy and this Process A if disclosure of sanctions to the complainant is permitted by law, and whether remedies designed to restore or preserve equal access to the college’s education program or activity will be provided to the complainant.
 - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility.
 - Notice that supportive measures will continue to be offered and/or maintained if previously provided, throughout the appeal period (unless failing to do so would not be clearly unreasonable).
 - The procedure and grounds for the complainant and respondent to appeal the responsibility determination.
 - Remedies that only impact the complainant will be provided to the complainant separately.
 - If more than one formal complaint has been consolidated into one complaint, all complainants and respondents will receive the same responsibility determination.

- 11.4 The Federal Educational Privacy Act (FERPA) generally prohibits the nonconsensual disclosure of personally identifiable information from a student's "education record." However, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.
- 11.5 A responsibility determination becomes final either on the day after the date for filing an appeal passes and no appeal is received, or if a timely appeal is filed, the date of the written appeal determination required by the policy and this Process A whichever comes first. Unless the college community is threatened, imposition of sanctions or remedies provided is suspended pending the determination of the appeal or the expiration of the appeal period if no appeal is received. Supportive measures that do not burden either party will continue pending the outcome of the appeal.
- 11.6 The Title IX Coordinator is responsible for effective implementation of any remedies and the imposition of sanctions.

SECTION 12. APPEALS.

- 12.1 **Right to Appeal.** Any party may appeal a responsibility determination or dismissal of a formal complaint in writing to the Title IX Coordinator. Appeals must be received by the Title IX Coordinator on or before five (5) days of a party's receipt of the responsibility determination or notice of dismissal. Appeals must include the grounds for appeal and a copy of the written responsibility determination. The Title IX Coordinator will notify the Appeal Officer. The Appeal Officer will not be the Title IX Coordinator, the investigator or Hearing Officer or alternate and may not have served as the Appeal Officer in any dismissal appeal that may have been heard earlier in the process.
- 12.1.1 The Title IX Coordinator will vet the Appeal Officer to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases that would materially affect the outcome of the investigation. If the Appeal Officer cannot serve impartially, or has a known conflict of interest or disqualifying bias that would materially affect the outcome of the appeal, he or she should notify the Title IX Investigator in writing.
- 12.1.2 Either party may challenge the Appeal Officer for bias or conflict of interest that would materially affect the outcome of the investigation by submitting written reasons for the challenge and any supporting documentation to the Title IX Coordinator with a copy to the other party. The Title IX Coordinator will review the challenge and simultaneously notify the parties of the decision. The decision of the Title IX Coordinator is final. Factors and definitions the Title IX Coordinator may use to make a determination are set forth in the policy and this Process A.
- 12.2 **Grounds for Appeal.** Dissatisfaction with the dismissal notice decision or responsibility determination alone is not grounds for appeal. Appeals must be based on one or more of the following grounds:

- A procedural irregularity that affected the outcome of the matter.
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter. The new information must be included with the appealing party's request for appeal. In addition, the appealing party must show that the new information was not known or otherwise available to the person appealing at the time of the live hearing. The appealing party also must provide an explanation as to why the evidence was unknown or unavailable and how the evidence could have affected the outcome of the matter.
- The investigator, or the Hearing Officer or alternate, had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter and such bias and/or conflict of interest that affected the outcome of the investigation or hearing was not known prior to the dismissal or live-hearing. The appeal must include an explanation of how the conflict or interest or bias affected the outcome of the investigation or hearing and why the bias or conflict of interest was not known at the time of the prehearing investigation or hearing. Factors and definitions the used to make a determination are set forth in the policy and this Process A.

12.3 **Notice to Opposing Party.** Within two (2) days of receipt of any party's appeal, the Appeal Officer will provide the party who did not file the appeal with a copy of the appeal and any supporting documentation. The party who did not appeal may submit a response to the appeal that may include a statement in support of the Hearing Officer's or alternate's determination on responsibility or dismissal of the complaint. Any response to an appeal must be received by the Appeal Officer on or before three (3) days of the responding party's receipt of the appeal and supporting documentation.

12.4 **Burden of Proof.** In any appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction(s) are presumed to have been decided reasonably and appropriately. The appeal is not a new review of the underlying matter and is not intended to be a full rehearing of the complaint on the merits (referred to as a *de novo* review). In most cases, appeals are confined to a review of the written documentation or underlying record of the original hearing and pertinent documentation regarding the grounds for appeal.

12.5 **Decision.** In reaching its decision, the Appeal Officer may consider the underlying record, including the investigator's report, the Hearing Officer's or alternate's written responsibility decision if the appeal involves the appeal of a responsibility determination, and the evidence and testimony collected during the prehearing investigation and presented at the live hearing (the underlying record) and the parties' written statements on appeal. Within five (5) days of the expiration of the appeal response timeframe, the Appeal Officer will simultaneously provide the parties with a written or electronic copy of the appeal decision describing the result of the appeal for each ground raised and the rationale for the result. The decision of the Appeal Officer is final. The Appeal Officer may:

- Affirm the dismissal or responsibility decision;
- Modify the original decision and/or sanctions;

- Void the original decision and order a new hearing.

SECTION 13. INFORMAL RESOLUTION PROCEDURES.

- 13.1 **Title IX Sexual Harassment.** Informal resolution is only available for resolving Title IX Sexual Harassment formal complaints. If appropriate and both parties agree, the college may facilitate an informal resolution process for resolving a formal complaint of Title IX Sexual Harassment. *The college may not offer to facilitate or accept requests from either party to engage in an informal resolution process to resolve Title IX Sexual Harassment and formal complaints filed by students against employees.*
- 13.2 **Options.** Informal resolution may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, negotiated resolution or administrative disposition of a formal complaint wherein the respondent accepts responsibility. Informal resolution may result in disciplinary measures designed to punish the respondent if a formal complaint has been filed, will be facilitated or conducted by trained individuals from the college community or external to the college and if the respondent waives the right to the live hearing.
- 13.3 **Withdrawal from Informal Resolution.** The complainant or respondent may withdraw from the informal resolution process and resume the formal grievance process set forth in the policy and this Process A with respect to the formal complaint at any time prior to the party signing a final written resolution.
- 13.4 If informal resolution is appropriate and both parties agree to pursue informal resolution, the Title IX Coordinator will:
- Provide to the parties a written notice disclosing the allegations; the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared and notice that either party may withdraw from the informal resolution process at any time and resume the formal resolution process set forth the policy and this Process A.
 - Obtain the parties' voluntary, written consent to engage in the informal resolution process.
- 13.5 Informal resolution agreements are considered contracts and are binding. An informal resolution agreement entered into by both parties ends the grievance process.
- 13.6 Any individual engaged to facilitate or participate in the informal resolution process including but not limited to a mediator may not be called as a witness during any hearing.
- 13.7 Informal resolution agreements will be kept confidential insofar is permissible by law.

SECTION 14. SANCTIONS AND REMEDIES.

- 14.1 If the Hearing Officer or alternate finds the respondent responsible for prohibited conduct, the Hearing Officer or alternate is responsible for determining the appropriate sanctions and remedies designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting The college's educational mission and Title IX obligations. Sanctions or interventions may also serve to promote safety and education or deter individuals from similar future behavior. The Hearing Officer or alternate may consult with the supervisor of an employee respondent, the Vice-President of Student and Academic Services for a student respondent and/or legal counsel when making a decision on sanctions and remedies as well as may obtain and consider any prior student conduct disciplinary record(s) or work disciplinary record(s) of the respondent. Prior student and employee disciplinary actions and conduct records may be considered when making a sanctioning decision. Repeated violations, including of differing conduct or any other college rule, regulation, policy or procedure, may result in progressively severe sanctions.
- 14.2 **Student Sanctions.** For students, the sanctions may include disciplinary action up to and including expulsion. Any single sanction or combination of sanctions set forth in the college Student Code of Conduct, may be used as sanctions for students found responsible for Title IX Sexual Harassment. Educational sanctions may also be imposed. A student may be required to attend a class, program, or lecture or be involved with the community in a way that brings about a new understanding of the community and how their behavior may have impacted others. This is not an exhaustive list but should serve as a reference for the types of educational sanctions that may be imposed. Educational sanctions may be imposed in combination with other disciplinary actions. A mutual No Contact Directive also may be issued which is a directive to refrain from any intentional contact, whether direct or indirect, with one or more designated persons or group(s) through any means, including, but not limited to, personal contact, e-mail, telephone, social media or third parties.
- 14.3 **Employee Sanctions.** Title IX Sexual Harassment is considered gross misconduct. Any employee found responsible for gross misconduct may be dismissed immediately without progressive discipline including but not limited to faculty members. Faculty may be dismissed in accordance with West Virginia Council for Community and Technical College Education Procedural Rule Title 133, Series 9, Academic Freedom, Professional Responsibility, Promotion and Tenure, Section 12. Sanctions that may be imposed on any employee, including but not limited to faculty members, found responsible for Title IX Sexual Harassment include but are not limited to (this list is not meant to be exhaustive):
- Written warning. Formal documentation regarding the infraction/violation and expected corrected or improved behavior will be provided in the form of a written warning;
 - Demotion;
 - Suspension without pay;
 - Dismissal;
 - Performance Improvement Plan;
 - Educational Sanctions: An employee may be required to attend a class, program,

or lecture or be involved with the community in a way that brings about a new understanding of the community and how their behavior may have impacted others. This is not an exhaustive list but should serve as a reference for the types of educational sanctions that may be imposed. Educational sanctions may be imposed in combination with other disciplinary actions.

- No Contact Directive: A no contact directive may be issued, to the extent practical within the employment context, which is a directive to refrain from any intentional contact, whether direct or indirect, with one or more designated persons or group(s) through any means, including, but not limited to, personal contact, e-mail, telephone, social media or third parties
- Any other sanction permitted by any college employee Board of Governors policy, employee/faculty/adjunct faculty handbook or any other college administrative employee disciplinary policy or procedure.

14.4 Sanctions for any respondent found responsible for Title IX Sexual Harassment may be issued individually, or a combination of sanctions may be imposed. All disciplinary sanctions will be determined on a case-by-case basis, and may be based upon a number of factors, including the harm suffered by the complainant; any ongoing risk to either the complainant or the community posed by respondent; the impact of the violation on the community, its members, or its property; any previous conduct violations; a student's prior student conduct disciplinary record, an employee's prior disciplinary record, and any mitigating or aggravating circumstances including but not limited to use of or display of a weapon, the involvement of multiple perpetrators and/or intentional incapacitation caused by respondent through alcohol, drugs, or by other means. Mitigating circumstances may be taken into account to reduce a sanction for prohibited conduct. Mitigating factors do not constitute a justification or excuse for the prohibited conduct.

14.5 In addition to any sanctions, the Title IX Coordinator may also implement long-term remedies that are intended to stop discrimination, harassment including but not limited to Title IX Sexual Harassment, and/or retaliation, remedy the effects and prevent recurrence of all. Even if a finding of no responsibility is issued, the Title IX Coordinator may at the Title IX Coordinator's discretion, and if requested by either party, provide long-term support measures. Long-term remedies or support measures will not result in denial of respondent or complainant access to an education program or activity. The college will maintain the privacy of any long-term remedies/actions/supportive measures as long as privacy does not impair the college's ability to provide these services.

SECTION 15. TIME FRAMES.

15.1 The college will make every effort to complete the grievance process within a reasonable time frame and in a timely manner while balancing the principles of thoroughness and fundamental fairness with promptness. Typically, the formal grievance process is completed within sixty (60) days.

15.2 Circumstances may arise that require the expedition or extension of Process A time frames. Such circumstances may include, but are not limited to, the severity or complexity of the allegations; the number of witnesses involved; the absence of a party, a party's advisor, or a witness; the effect of a concurrent criminal investigation; the

replacement of the Hearing Officer or alternate who has been challenged for bias or conflict of interest; the need for language assistance or accommodation of disabilities; intervening college breaks; the need for a witness to secure transportation or other good cause. The college may delay or expedite the grievance process at any level or may allow the limited extension of time frames for good cause with written notice to the complainant and the respondent of the expedited time frame, delay or extension, and the reasons for the action. If a deadline in this Process A falls on a day the college is closed, the deadline is moved to 8:00 a.m. on the next day the college is open for business.

SECTION 16. PROVIDING MATERIALLY FALSE INFORMATION IN BAD FAITH REPORTING AND INVESTIGATION PROCEDURES.

- 16.1 Knowingly making a false report, filing a false formal complaint, providing false information, or testimony during the prehearing investigation, live hearing or at any stage of the formal or informal resolution process is prohibited.
- 16.2 Individuals found responsible for violating this section may be subject to disciplinary action up to and including employment suspension and/or termination and/or academic suspension and/or expulsion as determined by Process B (Appendix B).

SECTION 17. RETALIATION REPORTING PROCEDURE.

- 17.1 Reports and formal complaints alleging retaliation are filed with the Title IX Coordinator and are investigated and adjudicated in accordance with the procedures set forth in the policy and both Process A and Process B (Appendix B) where applicable.
- 17.2 Individuals found responsible for retaliation are subject to disciplinary sanctions consistent with the policy and both Process A and Process B (Appendix B) where applicable.

SECTION 18. INTERSECTION OF THE PROCESS A WITH OTHER LAWS AND RIGHTS.

- 18.1 Nothing in this Process A shall be read to: (1) restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution; or (2) deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution; or (3) restrict any other rights guaranteed against government action by the U.S. Constitution.
- 18.2 Nothing in this Process A may be read in derogation of any individual's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* or any regulations promulgated thereunder.
- 18.3 Nothing in this Process A may be read in derogation of any legal right of a parent or guardian to act on behalf of a "complainant," "respondent," "party," or other individual, under this Process A, including but not limited to filing a formal complaint insofar as is permissible by law.
- 18.4 The college's obligation to comply with Title IX and this Process A is not obviated or alleviated by the Federal Educational Rights and Privacy Act.

SECTION 19. TRAINING REQUIREMENTS.

- 19.1 The Title IX Coordinator, investigator, Hearing Officer or alternate, the Appeal Officer and any person who facilitates an informal resolution process, as applicable, will receive training on the definition of Title IX Sexual Harassment, the scope of the college's education program or activity, how to conduct an investigation and this Process A, including hearings, appeals, and informal resolution processes, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- 19.2 The Hearing Officer or alternate responsible for making determinations on responsibility will receive training on:
- How to conduct questioning;
 - How to assess credibility;
 - Impartiality and objectivity;
 - How to render findings and generate clear, concise, evidence-based rationales;
 - The definitions of all prohibited conduct;
 - How to apply definitions used by the college with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy);
 - How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes;
 - How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
 - Any technology to be used at a live hearing;
 - Issues of relevance of questions and evidence including but not limited to including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant;
 - Issues of relevance to create an investigation report that fairly summarizes relevant evidence;
 - How to determine appropriate sanctions in reference to all forms of prohibited conduct and;
 - Recordkeeping.
- 19.3 Any materials used to train the Title IX Coordinator, the investigator, Hearing Officer or alternate, Appeal Officer, and any person who facilitates an informal resolution process,

must not rely on sex or other protected class stereotypes and must promote impartial investigations and adjudications of reports and formal complaints of prohibited conduct and formal complaints of Title IX Sexual Harassment.

- 19.4 Up to date training materials that reflect the latest Title IX training required by the Final Rule are available online at <https://easternwv.edu/faculty-and-staff/human-resources/#TitleIX>.

SECTION 20. RECORD KEEPING.

- 20.1 The Title IX Coordinator will maintain for a period of at least seven (7) years, or longer under applicable Federal and State law:
- All materials used to train the Title IX Coordinator, investigator, Hearing Officer or alternate, Appeal Officer and any person who facilitates an informal resolution process. The college must make these training materials publicly available on its website, or if the college does not maintain a website the college must make these materials available upon request for inspection by members of the public;
 - Each sexual harassment investigation including any determination regarding responsibility;
 - Any live-hearing audio or audiovisual recording and/or transcript;
 - Any disciplinary sanctions imposed on the respondent;
 - Any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
 - Any appeal and the result;
 - Any informal resolution and the result therefrom.
- 20.2 For each report of Title IX Sexual Harassment that is not resolved through the completion of the Title IX complaint resolution process, the college must create, and maintain for a period of seven (7) years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the college must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the college's education program or activity. If the college does not provide a complainant with supportive measures, then the college must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain basis or measures does not limit the college in the future from providing additional explanations or detailing additional measures taken. The person responsible for creating the record(s) required by this section is dependent upon the stage of the Process A where the creation of the record is required.
- 20.3 The date of the creation of a record described in this section begins the record's retention period.

- 20.4 The college will maintain all other record related to federal anti-discrimination laws records for at least the minimum time required for each record under the applicable federal law.
- 20.5 Maintenance of any record set forth in this section does not automatically create a right of access to the record by any party.
- 20.6 The Title IX Coordinator is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Clothing, forensic, and other physical evidence should be stored with the campus law enforcement entity *if* collected in accordance with a campus law enforcement investigation. All physical evidence will be maintained in a facility that is reasonably protected from flood and fire. A catalogue of all physical evidence will be retained with the case file if collected as part of the administrative investigation; physical evidence and/or any other evidence collected as part of campus law enforcement investigations will be maintained in accordance with campus law enforcement procedures. The Title IX Coordinator is responsible for maintaining all records related to Title IX Sexual Harassment reports and formal complaints.
- 20.7 Records, including but not limited to electronic records, shall be retained for longer periods of time if the college is required to do so as part of a litigation hold/duty to preserve evidence for external complaints/litigation including but not limited to complaints filed with the US EEOC.

SECTION 21. NON-DISCLOSURE AGREEMENTS.

- 21.1 The Title IX Coordinator may require the parties and their advisors to enter into Non-Disclosure Agreements not to disseminate any of the information provided to them in accordance with this procedure.
- 21.2 The Non-Disclosure Agreement will not impose prior restraints on an individual's ability to discuss any allegations under investigation, with an advisor, parent, friend, or other source of emotional support, or with an advocacy organization

SECTION 22. IMPARTIALITY, CONFLICTS OF INTEREST AND BIAS.

- 22.1 This section governs decisions set forth in this process related to conflicts of interests and bias determinations. In all cases, the bias or conflict of interest must materially affect the outcome of the decision within which the bias or conflict of interest is alleged.
- 22.2 The Title IX Coordinator, the investigator, Hearing Officer or alternate, any informal resolution facilitators and Appeal Officer (referred to collectively as "Title IX Roles") must impartially fulfil their roles. Impartially means serving without prejudgment of the facts at issue, conflicts of interest and bias that would materially affect the outcome of an investigation or hearing. Prejudgment means to pass judgment prematurely or without sufficient reflection or investigation. Individuals serving in a Title IX role should keep an open mind throughout the process, wait to hear all of the facts, view all relevant evidence objectively and avoid protected class stereotypes
- 22.3 Whether bias exists requires an examination of the particular facts of a situation and the

application of an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased.

22.4 A conflict of interest occurs when personal or private interests may compromise an individual's judgment, decisions, or actions. Conflict of interests may arise from family, friendships, faculty member and/or employee relationships, financial investments, or other social factors. A conflict of interest exists that disqualifies an individual from the Process A is one that prevents the individual from being able to impartially participate. Conflicts of interest can be "actual," "perceived," or "potential".

22.4.1 An actual conflict of interest is a direct conflict between one's official duties and responsibilities, and a competing personal interest or obligation.

22.4.2 A perceived conflict of interest is a situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities.

22.4.3 A potential conflict of interest arises where a personal interest or obligation could conflict with one's official duties and responsibilities in the future.

22.4.4 The individual serves as an advisor to any recognized student organization to which any of the parties, witnesses, or advisors belong.

22.5 A bias is a tendency, inclination, or prejudice toward/against someone. Biases are often based on stereotypes, rather than actual knowledge of an individual or a particular circumstance. They are frequently based on a person's gender, race, sexual orientation or other protected class.

SECTION 23. CLERY ACT PERMISSIBLE DISCLOSURE OF FINAL RESULTS OF STUDENT DISCIPLINARY PROCEEDINGS

23.1 The college may disclose to the public the final determination s of any student disciplinary proceedings including final outcome of the formal grievance process described herein if the student is found responsible for a forcible or non-forcible sex offense or intimidation. Final determination means a decision or determination made by the Hearing Officer if not appealed and the decision of any appeal if the responsibility decision is affirmed. The college is permitted to disclose only the name of the student(s), the violation(s) committed and the sanction(s) imposed.

APPENDIX B

PROCESS B-CODE OF CONDUCT/ALLEGED VIOLATIONS GRIEVANCE PROCESS

- “Process B” is applicable when the Title IX Coordinator determines “Process A” is inapplicable, or offenses subject to “Process A” have been dismissed.
- If “Process A” is applicable, “Process A” must be applied in lieu of “Process B”

Eastern WV Community and Technical College (hereafter referred to as “Eastern” or “the college”) will act on any formal or informal allegation or notice of violation of BP X.XX: Social Justice, Equal Opportunity/Affirmative Action, Non-Discrimination/Harassment/Sexual Harassment, Accommodations and Consensual Relationships (“the policy”) that is received by the Title IX Coordinator or a member of the administration, faculty, or other employee, with the exception of confidential resources.

SECTION 1. PURPOSE

- 1.1 This procedure provides for the prompt and equitable resolution of discrimination and harassment complaints brought by any individual against a member of the college community that is based on membership in a “protected class/category” not otherwise addressed in the Title IX Sexual Harassment Grievance Procedure – “Process A”. This includes race, color, religion, national origin, citizenship status (including document abuse), sex (including pregnancy and sexual harassment (not including those cases under Process A), sexual orientation, gender identity, age, veteran status, physical or mental disability, or genetic information.
 - 1.1.1 All members of the college community should act promptly upon receipt of an allegation of conduct that might constitute harassment and/or discrimination. Any member of the college community should refer a person who might be a victim of such conduct to the college’s Title IX/EEO/AA Coordinator *or* to the ADA/504 Coordinator who are both responsible for resolving complaints of unlawful harassment/discrimination.
 - 1.1.2 Eastern will provide reasonable accommodations and disability-related services to students and employees with a documented disability. See Section 6 of the policy for more details.

Students who wish to file a complaint related to disability accommodations should contact Monica Wilson, ADA/504 Coordinator.

Employees who wish to file a complaint related to disability accommodations should contact Jaennae Snyder, Title IX/EEO/AA Coordinator.

- 1.1.3 Students who feel they have been treated unfairly or unjustly by a faculty member regarding instruction or a grade *not* involving discrimination/harassment based on membership in a protected group (as outlined above) should discuss the issue first with the faculty member involved. If the problem is not resolved, the student may continue the process by filing a written grievance with the Department/Division Chairperson. Upon receipt of a written grievance, the Department/Division Chair will work with the parties in an attempt to resolve the conflict.

If the grievance is not resolved at this level, the student should forward to the Vice President of Academics and Student Services, a copy of the original written grievance with an explanation regarding any action taken at each prior level. A meeting will be scheduled with all parties to resolve the issue. This level will be the final step in any grievance process regarding grades.

- 1.2 College officials should take all necessary steps to ensure the prompt and equitable resolution of any complaint of harassment/discrimination. The typical time period to resolve allegations under this policy is sixty (60) business days. The college will make a good faith effort to complete the resolution process within this period. Any extenuating circumstances that extend this time period will be communicated to the complainant and respondent and noted in the investigative file.
- 1.3 The term ‘complainant’ refers to an individual who has experienced the alleged prohibited conduct. Only the person who has experienced the alleged prohibited conduct may file a complaint under this policy. The term “respondent” refers to an individual who has been accused of engaging in prohibited conduct.

The written complaint must identify the action, decision, conduct, or basis that the individual believes constitutes prohibited discrimination or harassment. Please refer to <https://easternwv.edu/wp-content/uploads/TitleIXReportForm022123.pdf>. If the complaint does not contain the above-referenced information, the Title IX/EEO/AA Coordinator along with the ADA/504 Coordinator will request clarification.

Every effort will be made to address the complaint consistent with the complainant’s desires. However, under certain circumstances, Eastern may have a legal obligation to identify and remedy discrimination or harassment, irrespective of whether a formal complaint is actually filed and even if the complainant would prefer no action be taken.

SECTION 2. OPTIONAL INFORMAL RESOLUTION OF COMPLAINTS

- 2.1 Before filing a formal complaint under this procedure, the individual may attempt to resolve the problem through informal discussions with the respondent. Individuals are not required to use the informal resolution process before filing a formal complaint.
- 2.2 The individual should work with the Title IX/EEO/AA *or* ADA/504 Coordinator to schedule and facilitate the informal resolution meeting.

- 2.3 The informal resolution process consists of: a) the discussion between parties regarding the allegations, b) the response to the allegations, and c) a written resolution agreement between the parties as to the disposition of the allegations. The Title IX/EEO/AA *or* ADA/504 Coordinator shall be involved with the drafting of the written resolution agreement. Both parties must sign the written resolution agreement in order to deem the matter closed.
- 2.4 There is no appeal to the informal resolution process. The Title IX/EEO/AA *or* ADA/504 Coordinator is charged with ensuring the disposition (and any actions stated therein) is completed.
- 2.5 At any time before the signing of the resolution agreement, the individual can end the informal process and initiate the formal process.
- 2.6 If the complaint cannot be informally resolved to the satisfaction of the individual, he or she has the right to file a formal complaint and to proceed under the formal resolution procedures.

SECTION 3. FORMAL RESOLUTION OF COMPLAINTS

- 3.1 An individual who contends that unlawful or college-prohibited discrimination/harassment has occurred may file a formal complaint by submitting a report form and/or contacting the Title IX/EEO/AA *or* ADA/504 Coordinator.
- 3.2 The formal process consists of a signed complaint/report form, preliminary assessment, an investigation, a determination regarding the allegation, appropriate corrective action or sanctions when the complaint is substantiated, and an offered appeal process.
- 3.3 Upon receipt of a formal complaint/report form of discrimination or harassment, the Title IX/EEO/AA *or* ADA/504 Coordinator shall conduct a preliminary assessment to determine whether, if substantiated, the behavior or conduct reported would constitute a violation of the policy. The Title IX/EEO/AA *or* ADA/504 Coordinator has sole discretion to determine whether further investigation is necessary in any particular case. In circumstances where a complaint will not be investigated, the complaint will be notified.
- 3.4 Following the determination that an investigation should take place, the complainant and respondent will be provided an opportunity to disclose any potential conflicts of interest or bias regarding the complaint to the Title IX/EEO/AA *or* ADA/504 Coordinators.
- 3.5 The Title IX/EEO/AA *or* ADA/504 Coordinator will provide written notice of allegations (NOA) to the respondent upon commencement of the formal resolution process. The NOA will include:
 - a) a summary of all allegations;
 - b) specific policies implicated;

- c) a statement of the potential sanctions/corrective actions that could result;
- d) a statement that the applicable evidentiary standard is a preponderance of the evidence;
- e) a statement that the college presumes the respondent is not responsible for the reported misconduct unless and until the evidence supports a determination of a policy violation;
- f) detail on how the party may request disability accommodations during the interview process;
- g) a statement about Eastern's policy on retaliation;
- h) an instruction to preserve any evidence that is directly related to the allegations.

- 3.6 Amendments and updates to the NOA may be made as the investigation progresses and more information becomes available. Notice is presumed to have been given upon emailing the NOA to the respondent's college-owned email address.
- 3.7 The Title IX/EEO/AA *or* ADA/504 Coordinator will review all information provided to them and will interview individuals who potentially possess relevant evidence as identified by the parties. The Title IX/EEO/AA *or* ADA/504 Coordinator shall focus on the allegation(s) of policy violation, assess the relevance of witnesses and evidence, and work efficiently to conclude the investigation promptly (within 60 business days), as outlined in this procedure. The investigation report, which shall include: a) a summary of the allegations, b) a written determination (including rationale) regarding the allegation and whether a policy violation is substantiated or unsubstantiated, and, c) any recommendation(s) addressing substantiated findings.
- 3.8 Within ten (10) business days, the Title IX/EEO/AA *or* ADA/504 Coordinator will provide a written notification of the investigation outcome simultaneously to the complainant and respondent. This outcome notification will include a summary of the written findings.

SECTION 4. SANCTIONS AND CORRECTIVE ACTION

- 4.1 The Vice President of Academics and Student Services will implement student sanctions as appropriate. The following are some common sanctions that may be imposed upon students singularly or in combination:
- **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any Eastern policy, procedure, or directive will result in more severe sanctions/responsive actions.
 - **Required Counseling:** A mandate to meet with and engage in either college-sponsored or external counseling to better comprehend the misconduct and its effects.
 - **Probation:** A written reprimand for violation of college policy, providing for more severe disciplinary sanctions in the event that a student or organization is found in violation of any college policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular

activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

- **Suspension:** Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Eastern.
- **Expulsion:** Permanent termination of student status and revocation of rights to be on campus for any reason or to attend college-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript, subject to any applicable expungement policies.
- **Withholding Diploma:** Eastern may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
- **Revocation of Degree:** Eastern reserves the right to revoke a degree previously awarded from Eastern for fraud, misrepresentation, and/or other violation of Eastern policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Other Actions:** In addition to or in place of the above sanctions, Eastern may assign any other sanctions as deemed appropriate.

If the respondent is an employee, the Vice President of Academics and Student Services will report the findings of fact and policy conclusions to the Human Resources Office.

Corrective actions for an employee who has engaged in harassment, discrimination, and/or retaliation may include:

- Verbal or Written Warning
- Performance Improvement Plan
- Enhanced Supervision, Observation, or Review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Reassignment
- Restriction of Stipends and/or Professional Development Resources
- Termination
- **Other Actions:** In addition to or in place of the above sanctions/responsive actions, Eastern may assign any other responsive actions as deemed appropriate.

SECTION 5. SUPPORTIVE MEASURES

- 5.1 For any allegation of unlawful discrimination, the college may provide supportive measures to assist or protect the parties during the pendency of the investigation. Such measures may include academic adjustments, arranging for changes in class schedules, or other appropriate temporary measures.

SECTION 6. APPEAL RIGHT

- 6.1 A complainant or respondent who is not satisfied with the outcome has five (5) business days to submit an appeal of the decision, in writing, to the College President. If a conflict of interest prevents the College President from serving as the Appeal Officer, then the President may appoint another college official to serve as the Appeal Officer. Conflicts of interest requiring a change of Appeal Officer shall be communicated to the requesting party.
- 6.2 **Grounds for Appeal.** Appeals are limited under the following grounds: a) procedural irregularity that affected the outcome of the matter; **OR**, b) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter.
- 6.2.1 The appeal request must state the grounds for appeal and why the complainant or respondent believes the outcome was improper.
- 6.2.2 Denials based on lack of grounds shall be communicated to the requesting party within five (5) business days of the request for appeal being received by the Appeal Officer.
- 6.2.3 If any grounds for appeal are met, the Appeal Officer will review the results of the investigation and written findings and respond to the request within ten (10) business days from receipt of the request. The ten-day review and response period may be extended for extenuating circumstances, with notice to all parties. The Appeal Officer may accept, reject, or modify the investigatory outcome. If the Appeal Officer determines that it is necessary to remedy a substantial deficiency caused by one of the appeal grounds above, the case file will be reopened and assigned for further investigation. If necessary, other investigator(s) may be assigned. If the Appeal Officer determines that the investigation was thorough and complete and that the decision is supported by the evidence, the Appeal Officer will affirm the investigation outcome.

SECTION 7. MAINTENANCE OF DOCUMENTATION

- 7.1 Documentation resulting from each level in the formal resolution process (including witness statements, investigative notes, etc.) will be maintained in accordance with state and Eastern document retention guidelines, [A.R.-6.9: Records Retention Regulation](#).

SECTION 8. CONFIDENTIALITY OF PROCEEDINGS

- 8.1 Every effort will be made by the college to protect the confidentiality of the parties during the processing of complaints under this procedure. Records will be maintained in a confidential manner to the extent permitted by law and insofar as they do not interfere with Eastern's legal obligation to investigate and resolve issues of discrimination.

SECTION 9. RETALIATION PROHIBITED

- 9.1 Retaliation against a person who has filed a complaint or against any witness questioned during an investigation is strictly prohibited. Any retaliatory action by instructors, supervisors, managers, academic professionals, administrators, or other employees who have the authority to take adverse action against a complainant or witness is prohibited and may be grounds for disciplinary action.

SECTION 10. FALSE STATEMENTS PROHIBITED

- 10.1 Any individual who knowingly provides false information pursuant to filing a discrimination charge or during the investigation of a discrimination charge will be subject to appropriate discipline under the Student Conduct Code or appropriate employee Administrative Regulation.

SECTION 11. EXTERNAL FILING OF DISCRIMINATION/HARASSMENT COMPLAINT

- 11.1 Eastern encourages any individual to use the college's grievance processes to resolve discrimination/harassment concerns: however, individuals also have the right to file civil rights complaints with appropriate external agencies. No retaliation will be taken against a person for filing a complaint with an external agency. See Section 8 of the policy for external resources.

Gregory A. Greenwell

Chair, Board of Governors

12/20/2023

Date