



Mountwest Community & Technical College
DISCRIMINATION/HARASSMENT/TITLE IX COMPLAINT PACKET
Discrimination/Harassment/Sex Discrimination/
Sexual Harassment/Retaliation

General Information

The individual filing the complaint is referred to as the “Complainant”.

The accused is referred to as the “Respondent”.

Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 (Title VII), The Pregnancy Discrimination Act of 1978, The Equal Pay Act of 1963 (EPA), The Age Discrimination in Employment Act of 1967 (ADEA), The Older Workers Benefit Protection Act of 1990 (OWBPA), Title I of the Americans with Disabilities Act of 1990 (ADA), Sections 102 and 103 of the Civil Rights Act of 1991, Sections 501 and 505 of the Rehabilitation Act of 1973, the Genetic Information Act of 2008 and the West Virginia Human Rights Act are Federal and State laws that protect fundamental rights of nondiscrimination and health information privacy. Mountwest is an Equal Opportunity/Affirmative Action Institution that does not discriminate on the basis of race, ethnicity, color, religion, sex (including pregnancy), gender, sexual orientation, national origin, age, marital status, veteran or military status, disability, genetic information, or other category that is protected under federal, state, or local anti-discrimination laws in the administration of any of its educational programs, activities, or with respect to admission or employment. Mountwest is committed to providing an environment that is supportive and comfortable for you to discuss your concerns regarding individual treatment in the workplace, educational setting, equal employment opportunity, and diversity. Every effort will be made to ensure the fair and equal treatment of all involved parties during the complaint investigation process. Mountwest requests that discrimination, harassment, sex discrimination, sexual harassment, disability and any other complaints of unlawful discrimination **be filed within 30 days from the date of the alleged incident(s) with:**

Mesha D. Shamblin
Mountwest Community & Technical College
c/o Vice President – Student Services & Human Resources – Suite 101V
One Mountwest Way
Huntington, West Virginia 25701
Phone: 304-710-3401, shamblinm@mctc.edu

Veella Grooms
Mountwest Community & Technical College
c/o Director – Diversity & Inclusion – RM 357
One Mountwest Way
Huntington, West Virginia 25701
Phone: 304-710-3386, grooms@mctc.edu

Complaints may be filed after 30 days however, individuals are encouraged to report incidents as soon as possible because the passage of time may affect the institution's ability to investigate the incident.

If the complaint is against the Title IX Coordinator or the AA/EOE Coordinator, please file your complaint with the the Vice President for Student Services & Human Resources, shamblinm@mctc.edu, or the President if the complaint is against the Vice President.

During the investigation process, Mountwest is required to: (a) provide an adequate, reliable, and impartial investigation, including the opportunity for both parties to present witnesses and other evidence; (b) designate reasonably prompt timeframes for the major stages of the complaint process; (c) provide notice to the parties of the outcome of the complaint investigation and disposition and the opportunity for the parties to appeal the findings; and (d) assure that the appeal will be conducted in an impartial manner by an impartial decision-maker.

If you choose to file a complaint, the Title IX or AA/EEO Coordinator will:

- Walk you through the complaint process
- Ask you to complete the complaint form or provide a signed, written statement about the incident (s)
- Provide an opportunity for you to identify witnesses or individuals who will support your claim
- Investigate the allegations of the complaint Keep you informed of the progress of the investigation
- Advise you of the outcome of the investigation
- Direct the findings of the investigation to appropriate Mountwest personnel for review and appropriate action

During the investigation process, and in accordance with existing policies and laws, Mountwest will make every reasonable effort to protect the privacy of all parties involved in the investigation, and to keep the information confidential to the extent required by law. However, Mountwest cannot guarantee that any or all of the information will remain confidential.

Anyone accused of discrimination or harassment is presumed not responsible for the alleged conduct.

Generally, an investigation will result in a written report that, at a minimum, includes a statement of the allegations and issues, a summary of the information considered, findings of fact, and a determination by the investigator as to whether the institution's policy has been violated. For allegations of discrimination or harassing behavior, there are three possible findings:

- a. Substantiated: It is more likely than not that the allegation is true. (Preponderance of the evidence standard)
- b. Unsubstantiated: It is not possible to determine whether the allegation is true or untrue. There is insufficient evidence to prove or disprove that the allegation is true.
- c. Unfounded: It is more likely than not that the allegation did not constitute a policy violation. A finding that the allegation is unfounded does not indicate that the complaint was improper or knowingly false.

The report, the complaint, the response and any other evidence obtained during the investigation of the complaint may be used as evidence in other related procedures, such as subsequent complaints, grievances and/or disciplinary actions.

The report also may contain recommendation for actions to resolve the complaint, including but not limited to educational programs, counseling/coaching, mediation, remedies for the complainant, and a referral to institutional disciplinary procedures, as appropriate.

The complainant and the respondent shall be concurrently informed in writing of the completion of the investigation and the outcome of the investigation.

The complainant shall be informed of the findings and of actions taken or recommended to resolve the complaint, if any, that are directly related to the complainant, such as a recommendation that the accused not contact the complainant. The complainant and the respondent shall be informed of the findings and of actions taken or recommended to resolve the complaint and shall be notified generally of referrals for disciplinary action and recommended action.

You are permitted to have a representative of your choice including legal counsel (paid for at your own expense) at any stage of the investigation process.

Alcohol or Drug Use

Alcohol or drug use by the accused and/or the complainant are not defenses to discrimination or harassment, sex discrimination or sexual harassment (including acts of sexual violence). Use of drugs or alcohol may, however, affect the alleged victim's and/or accused's memory which may impact the investigation and final outcome of a complaint.

Retaliation

Various State and Federal laws, including but not limited to Title IX and Mountwest prohibit retaliation against any individual who files or participates in the investigation of a discrimination, harassment, sex discrimination or sexual harassment complaint. The Title IX or AA/EEO Coordinator will investigate retaliation complaints and report the findings to appropriate Mountwest personnel for review and applicable action. If you feel that you have been retaliated against for filing a complaint or otherwise participating in a complaint investigation process, please contact the Title IX or AA/EEO Coordinator.

Confidentiality

The Title IX or AA/EEO Coordinator attempts to balance the needs of the parties for privacy with the institutional responsibility of ensuring a safe educational environment and workplace. Confidentiality is an aspiration, but is not always possible or appropriate. An individual's requests regarding the confidentiality of reports of discrimination, or harassment including but not limited to sex offenses 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 or sexual misconduct and the due process rights of the accused 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 insure that the institution meets its obligations under Title IX. The institution may be limited in its response and investigation if confidentiality is requested.

Criminal Conduct

Acts of sex discrimination or sexual harassment, including but not limited to acts of sexual violence, may also constitute acts of criminal conduct. Any individual may report an incident alleging criminal conduct by calling 9-1-1 in an emergency or by contacting the Mountwest Security at: (304) 710-3499. The Mountwest Security Office and/or other law enforcement authorities may be notified if a complaint contains allegations of criminal conduct.

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

- a. follow Mountwest procedures for making a report for the annual crime statistics report; and
- b. notify the Title IX or AA/EEO Coordinator so that any applicable administrative, investigative or other resolution procedures may be initiated.

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

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

Interim Measures

Mountwest may at any point in the complaint process elect to place the respondent on investigative leave, reassignment, temporary suspension from classes or authorize other types of temporary measures while an investigation is pending, including but not limited to "no contact" directives.

When the Title IXAA/EEO Coordinator receives a report of harassment or discrimination, s/he will undertake an appropriate inquiry and take such prompt and effective action as is reasonably practicable under the circumstances to support and protect the complainant, the campus community and to avoid retaliation against the victim(s) before the final outcome of the investigation or full implementation of the complaint process. Interim measures may be implemented without prior notice to the accused whenever there is reason to believe, based on available facts, that the continued presence of the student poses a substantial threat to himself/herself, to others, to college property, or to the stability and continuance of normal college functions. If the allegation constitutes a sex offense as defined by the Clery Act, the College *will* change the victim's academic situation after an alleged Clery Act sex offense if those changes are requested by the victim and are reasonably available.

When taking steps to separate the complainant and the accused, the Title IX or AA/EEO Coordinator will seek to minimize unnecessary or unreasonable burdens on either party; provided, however, that every reasonable effort will be made to allow the complainant to continue in his or her academic and/or campus employment arrangements. Violation(s) of the Title IX or AA/EEO Coordinator's directive and/or protective actions will constitute related offenses that may lead to additional disciplinary action.

Interim measures that may be implemented include but are not limited to:

- Temporary suspension of an employee's employment as well as denial of the employee's access to Institution facilities or property including but not limited to any institution housing;
- Temporary suspension or limitation of an individual's eligibility to enjoy certain privileges, or participate in or attend certain events (or certain kinds of events) without the suspension of employment or enrollment. This action may prohibit an individual's presence on institution property or in certain facilities, or impose conditions that must be met in order for the individual to enjoy certain privileges, participate in activities, or attend events;
- Temporary suspension of a student's eligibility for enrollment or attendance, as well as denial of access to facilities or property including but not limited to housing;
- Implementation of a "no contact directive".

Related Conduct

The Title IX or AA/EEO Coordinator is empowered to hear allegations of, and to recommend sanctions for, conduct that violates any institution rule regulation or policy including but not limited to employee handbooks and/or any student conduct code directly related to the alleged discriminatory/harassing/retaliatory conduct. The Title IX or AA/EEO Coordinator may refer the complaint to other college departments for disposition pursuant to other disciplinary procedures if the conduct does not rise to the level of discrimination or harassment but does violate other institutional rules, regulations or policies.

Medical Treatment and Counseling Information

a. CHH Counseling Center

2nd Floor, Chaffin Building, 517, Ninth Street, Huntington, WV 25704
304-526-2049

b. Rape, Abuse and Incest National Network National Sexual Assault Hotline

1-800-656-HOPE (4673) <http://www.rainn.org/>

c. The National Domestic Violence Hotline

1-800-799-7233 <https://www.thehotline.org/>

You do not have to formally report an incident to seek medical attention or receive counseling support services.

Additional Information

Additional information regarding the enforcement of State and Federal anti-discrimination/harassment/retaliation laws and complaint procedures may be obtained from the following agencies:

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>

The West Virginia Human Rights Commission

1321 Plaza East – Room 108A

Charleston, WV 25301

Telephone: 304-558-2616

Toll Free: 888-676-5546

FAX: 304-558-0085

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

Employees Only:

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/>

Complainant is at all times free to pursue a complaint with the Equal Employment Opportunity Commission, the West Virginia Human Rights Commission, the United States Department of Education Office for Civil Rights (responsible for enforcing Title IX), the United States Department of Labor (Office of Federal Contract Compliance Programs), or by consulting a labor/employment attorney at her or his own expense.

Instruction Sheet

A. FILING A COMPLAINT

If you feel that you have been subjected to discrimination or harassment based on any of the above stated protected basis, please complete the following FORM and mail or fax it to the Title IX or AA/EEO Coordinator (see address and fax number below). The Title IX.AA/EEO Coordinator will also assist you if need help completing the form. Your complaint should be filed as soon as possible after the alleged incident(s). **The person filing the complaint is referred to as the Complainant. The person believed to be responsible for the incident(s) stated in the complaint is the Respondent.**

(1) **Name of Complainant:** The name of the person who is filing the complaint

(2) **Status:** Indicate whether you are a staff, academic, or student employee, a student, an applicant, former employee, vendor, or if you have another affiliation with Mountwest.

(3) **Complainant's Department:** If you are an employee, the department in which you work; if you are a former employee, the department in which you worked

(4) **Contact Information:** Provide the phone number(s), email and mailing address where you can be reached.

(5a) **Basis:** Check the appropriate box(es). If this is a retaliation complaint, skip 5a and 5b and go to 5c.

(5b) **Sexual Harassment:** Sexual harassment is a form of sex discrimination and includes but is not limited to acts of sexual violence such as sexual assault, rape, and acquaintance rape. If you feel that you have been sexually harassed, please check YES and explain in paragraph 10.

(5c) **Retaliation:** Check yes if this you believe you were subjected to retaliation because you filed a complaint or participated in the investigation of a complaint.

(6) **Date(s)/Place(s):** (month, day and year): Please list the date(s) when and place(s) where the alleged incident(s) of discrimination/harassment/retaliation occurred

(7) **Respondent(s):**

a. State the name or names of the individuals you believe to be responsible for the conduct set forth in the complaint including contact information if known.

b. Please state how you come into contact with the respondent. For example, if the respondent is a student, state whether you live near the student in housing provided by the institution and/or what classes you may with the student. If the respondent is an employee, state whether you are a student in respondent's class, are supervised by or work with him/her, or whether respondent is your advisor.

(8) **Respondent(s) Status:** Check the appropriate box for each listed in Number 7, if known.

(9) **Respondent Department:** If the Respondent is an employee of Mountwest, state his/her department if known.

(10) **Witnesses:** If you have any witnesses, please provide their names and contact information, if known. Attach additional sheets if necessary.

(11) **Witness(es) Status:** Check the appropriate box for each listed in Number 11, if known.

(12) **Grievance:** If you are an employee and have filed a grievance with the West Virginia Public Employees Grievance Board, check “yes” and provide the date you filed.

(13) **Government Agency:** Whether you are an employee or a student, if you have filed a complaint with a government agency other than the West Virginia Public Employees Grievance Board, check “yes”, the agency with which you filed, and provide the date you filed.

(14) **Resolution:** What actions will resolve your complaint (e.g. training opportunity, cease the alleged behavior, etc)? Please be advised that the institution is under no obligation to impose any specific resolution or sanction.

(15) **Confidentiality Requested:** Please check the appropriate box and add any additional comments if necessary.

(16) **Complaint:** Be as specific as possible. Include the following information: what happened, and why you believe the discrimination/harassment/retaliation was related to any basis listed in section 6 (race, color, etc...). If this is a retaliation claim, state what you believe you were involved in that led to the retaliation. You may attach additional sheets or use the back of this form if necessary.

(17) **Signature/Notice:** Sign and mail or fax the completed FORM only to the Title IX or AA/EEO Coordinator:

Attach additional sheets if necessary and any additional documentation which supports your claim of discrimination/harassment/sex discrimination/sexual harassment/retaliation. Your complaint should be filed within 30 days from the date of the alleged incident(s) but may be filed up to 350 days from the date of the alleged incident(s). Please be advised that the passage of time may affect the institution’s ability to address your complaint. Information and assistance in completing this Complaint Form may be obtained from the Title IX OR AA/EEO Coordinator.

Keep the **General Information, Instruction Sheet** and a copy of the signed and completed **Form** for your records.

FORM

1. **Complainant:** _____

2. **Check one:**

- Staff
- Student
- Faculty
- Student Employee
- Former Employee
- Applicant
- Other: _____

3. **Complainant's Department** (*if employed at Mountwest*): _____

4. **Contact Information:** Phone(s): _____ E-mail: _____

Mailing Address: _____

5. a. **I believe I was subjected to:**

- Discrimination**
- Harassment**

because of my:

- Race
- Color
- Age(40 and over)
- Gender Identity
- Pregnancy
- Genetic Information
- Disability (physical or mental)
- Sexual Orientation
- Sex (Gender)
- Service in the Uniformed Services or Covered Veterans
- Religion
- Citizenship
- Marital Status
- National Origin/Ancestry
- Other: _____

b. **I believe I have been Sexually Harassed.**

- Yes
- No

c. **I believe I was subjected to retaliation.**

- Yes
- No
-

6. **Date(s)/Place of alleged discrimination/harassment/retaliation:**

7. Respondent(s)

a. _____

b. _____

c. _____

8. Status of Respondents if known:

Respondent A:

- Staff
- Student
- Faculty
- Formal Employee
- Applicant
- Other

Respondent B:

- Staff
- Student
- Faculty
- Formal Employee
- Applicant

- Other

Respondent C:

- Staff
- Student
- Faculty
- Formal Employee
- Applicant
- Other

9. Respondents Department (if known): _____

10. Witness(es):

11. Status of Witnesses if Known:

- Staff
- Student
- Faculty
- Formal Employee
- Applicant
- Other

12. a. If you are a Mountwest employee, have you filed a grievance pursuant to W. Va. Code §6C-2-1, et seq.?

- Yes
- No

b. If yes, please provide date you filed grievance: _____

13. a. Have you filed a complaint with a government agency other than the West Virginia Public Employees Grievance Board regarding this situation?

- Yes
- No

If yes, please indicate agency name and date complaint was filed:

- OCR
- EEOC
- Other: _____

Date Filed: _____

14. What would you consider to be a successful or acceptable outcome/resolution to your complaint?

15. Confidentiality request:

- Yes
- No

Special Requests:

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