

**MOUNTWEST COMMUNITY & TECHNICAL COLLEGE  
INSTITUTIONAL BOARD OF GOVERNORS**

**Policy No. H - 4**

**TITLE IX, SEXUAL HARASSMENT, AND DISCRIMINATION POLICY**

**General:**

- 1.1 Scope: This policy defines sexual harassment, Title IX, and discrimination, and provides guidelines for filing complaints and explains what action will be taken against those found to have engaged in sexual harassment.
- 1.2 Statutory and other References: W. Va. Code §18B-1-6. A policy statement issued by the Office for Civil Rights of the U. S. Department of Education on the interpretation of the following: Title IX of the Education Amendments of 1972 and Equal Employment Opportunity Commission (EEOC) interpretative guidelines issued in March, 1980; and subsequent federal court decisions on the subject of sexual harassment. 34 C.F.R. § 106.
- 1.3 Passage Date: May 19, 2021
- 1.4 Effective Date: May 19, 2021
- 1.5 History: Replaces MUBOG Policy GA-1 which was transferred by the MUBOG to the Institutional Board of Governors of Mountwest Community & Technical College. Revised March 29, 2021. Replaces previous policy H-4, Sexual Harassment

**Policy:**

- 2.1 It is the policy of Mountwest Community & Technical College to maintain a work and educational environment free from all forms of sexual harassment of any employee, applicant for employment, or student. Sexual harassment in any manner or form is expressly prohibited. It is the responsibility of the College to provide educational opportunities to create this free environment and to take immediate and appropriate corrective action when sexual harassment is reported or becomes known. Supervisors at every level are of primary importance in the implementation and enforcement of this rule.
- 2.2 Mountwest Community & Technical College provides equal opportunities 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, age, sex, gender, sexual orientation, religion, disability, national origin, or protected veteran status.

This statement of nondiscrimination also applies to all programs and activities covered by Title IX, which prohibits sex discrimination in higher education. Mountwest Community & Technical College strives to provide educational opportunities for minorities and women in the

undergraduate student body that reflect the interest, individual merit, and availability of such individuals. The college ensures equality of opportunity and treatment in all areas related to student admissions, instructions, employment, placement accommodations, financial assistance programs, and other services.

- 2.3 Mountwest does not discriminate on the basis of sex in the education program or activity that it operates. Mountwest, as a recipient of federal financial assistance, is required by Title IX of the Education Amendments of 1972 (“Title IX”) and 34 C.F.R. §106 (“Title IX Regulations”) not to discriminate in such a manner. The requirement to not discriminate in Mountwest’s education programs or activities extends to admission and employment, and any inquiries about the application of Title IX and the Title IX regulations of MCTC can be referred to Mountwest’s Title IX Coordinators, or the Assistant Secretary, Office of Civil Rights, U.S. Department of Education.
- 2.4 Mountwest Community & Technical College also neither affiliates with nor grants recognition to any individual, group, or organization having policies that discriminate on the basis of race, color, age, sex, gender, sexual orientation, religion, disability, national origin, or protected veteran status.

### **Applicability**

- 3.1 This policy applies to applicants for admission and employment, students, and employees of Mountwest concerning all sexual harassment in an education program or activity of Mountwest, whether on campus or off campus.
- 3.2 The requirements set forth in this policy apply only to sex discrimination occurring against a person in the United States.

### **Definitions**

- 4.1 Actual knowledge: means notice of sexual harassment or allegations of sexual harassment to Mountwest’s Title IX Coordinator or any official of Mountwest who has authority to institute corrective measures on behalf of Mountwest. As used in this policy, “official of Mountwest who has authority to institute corrective measures on behalf of Mountwest” means the President and each Vice President of Mountwest. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of Mountwest with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of Mountwest. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in the Title IX regulations at § 106.8(a).
- 4.2 “Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- 4.3 “Consent” means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

- 4.4 “Education program or activity” means locations, events, or circumstances over which Mountwest exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Mountwest.
- 4.5 “Formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that Mountwest investigate the allegation of sexual harassment. At the time of filing a formal complaint with Mountwest, a complainant must be participating in or attempting to participate in the education program or activity of Mountwest. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by e-mail, by using the contact information listed for the Title IX Coordinator, and by any additional method designated by Mountwest. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by e-mail) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under the Title IX regulations, part § 106, or under § 106.45, and must comply with the requirements of the Title IX regulations, part § 106, including § 106.45(b)(1)(iii).
- 4.6 “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- 4.7 “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:
- 4.7.1 An employee of Mountwest conditioning the provision of an aid, benefit, or service of Mountwest on an individual’s participation in unwelcome sexual conduct;
- 4.7.2 Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Mountwest education program or activity; or
- 4.7.3 “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).
- 4.8 “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. Such measures are designed to restore or preserve equal access to Mountwest’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Mountwest’s educational environment, or deter sexual harassment. 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 or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Mountwest must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of Mountwest to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

### **Title IX Coordinator**

- 5.1 Mountwest has designated and authorized the following as Title IX Coordinator(s) to coordinate Mountwest's efforts to comply with its responsibilities under Title IX, 34. C.F.R. § 106, and other federal and state sex discrimination and sexual harassment laws. The contact information is as follows:

Mesha D. Shamblin  
Mountwest Community & Technical College  
c/o Vice President – Human Resources – Suit 415 One Mountwest Way  
Huntington, West Virginia 25701  
Phone: 304-710-3401

James McDougale  
Mountwest Community & Technical College  
c/o Vice President – Student Services – 101V  
One Mountwest Way  
Huntington, West Virginia 25701  
Phone: 304-710-3474

- 5.2 Mountwest may designate and authorize designee(s) to serve as Title IX Coordinator in the absence of those listed above. In such event, notice of such designation and authorization, along with all contact information, will be provided to the applicable groups set forth in Section 3 above.

### **Publication Requirements**

- 6.1 Mountwest shall prominently display the contact information for the Title IX Coordinator set forth in Section 5 above and the nondiscrimination policy statement set forth in Section 2 above on the Mountwest website and in the Mountwest Catalog and Mountwest Student, Faculty, and Employee Handbooks.
- 6.2 Mountwest shall not use or distribute a publication stating that Mountwest treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX or the Title IX regulations.

## **Adoption of Grievance Procedures**

- 7.1 Mountwest shall adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by the Title IX regulations and a grievance process that complies with the Title IX regulations, § 106.45 for formal complaints as defined in this policy.
- 7.2 Mountwest shall provide to its applicants for admission and employment, students, and employees notice of Mountwest's grievance procedures and grievance process, including the following:
  - 7.2.1 How to report or file a complaint of sex discrimination,
  - 7.2.2 How to report or file a formal complaint of sexual harassment, and
  - 7.2.3 How Mountwest will respond

## **Reporting of Sex Discrimination Generally**

- 8.1 Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-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-business hours) by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.

## **Response to Sexual Harassment**

- 9.1 Should Mountwest have actual knowledge of sexual harassment in an education program or activity of Mountwest against a person in the United States, Mountwest shall respond in a manner that is not deliberately indifferent. Mountwest would be deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.
- 9.2 Mountwest's response must treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process that complies with the Title IX regulations, § 106.45, before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.
- 9.3 The Title IX Coordinator shall promptly contact the complainant to:
  - 9.3.1 Discuss the availability of supportive measures,
  - 9.3.2 Consider the complainant's wishes with respect to supportive measures,

- 9.3.3 Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
- 9.3.4 Explain to the complainant the process for filing a formal complaint.
- 9.4 The U.S. Department of Education may not deem Mountwest to have satisfied Mountwest's duty to not be deliberately indifferent under the Title IX regulations, part 106, based on Mountwest's restrictions of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

### **Response to a Formal Complaint**

- 10.1 In response to a formal complaint, Mountwest shall follow a grievance process that complies with the Title IX regulations, § 106.45.29.
- 10.2 With or without a formal complaint, Mountwest must comply with Section 9 above.
- 10.3 The Assistant Secretary, Office of Civil Rights, U.S. Department of Education, will not deem Mountwest's determination regarding responsibility to be evidence of deliberate indifference by Mountwest, or otherwise evidence of discrimination under Title IX by Mountwest, solely because the Assistant Secretary would have reached a different determination based on an independent weighing of the evidence.

### **Emergency Removal and Administrative Leave**

- 11.1 Emergency removal. Mountwest may remove a respondent from Mountwest's education program or activity on an emergency basis, provided that Mountwest undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities in Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.
- 11.2 Administrative leave. Mountwest may place a non-student employee respondent on administrative leave during the pendency of the grievance process for formal complaints of sexual harassment. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

### **Grievance Process for Formal Complaints of Sexual Harassment**

Mountwest Will:

- 12.1 Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following its grievance process set forth in this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to Mountwest's education program or activity. Such remedies may include the same individuals

services described in the definition of “supportive measures” above; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

- 12.2 Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person’s status as a complainant, respondent, or witness.
- 12.3 Require that any individual designated by Mountwest as a Title IX Coordinator, investigator, decision-maker, or any person designated by Mountwest to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- 12.3.1 Mountwest shall ensure that the Title IX Coordinators, investigators, and decision-makers receive training on the definition of sexual harassment set forth in Section 4.7 above, the scope of Mountwest’s education program or activity, how to conduct an investigation and grievance process including hearings and appeals, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- 12.3.2 Mountwest shall ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, as set forth in Section 13.5.
- 12.3.3 Mountwest must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence as set forth in the Title IX regulations, § 106.45(b)(5)(vii).
- 12.3.4 Any materials used to train Title IX Coordinators, investigators, and decision-makers must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.
- 12.4 Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- 12.5 Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- 12.6 Describe the range of possible disciplinary sanctions that Mountwest may implement following any determination of responsibility.
- 12.7 State that the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard and apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment.
- 12.8 Include the procedures and permissible bases for the complainant and respondent to appeal.
- 12.9 Describe the range of supportive measures available to complainants and respondents

- 12.10 Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

## **Sexual Harassment**

- 13.1 Sexual harassment is prohibited.

### **13.2 Consent**

- 13.2.1 Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the sexual activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual activity.
- 13.2.2 A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the individual initiating or furthering the sexual harassment was intoxicated and, therefore, did not realize the incapacity of the other.
- 13.2.3 This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the taking of incapacitating drugs.
- 13.2.4 Consent to some sexual contact, such as kissing or fondling, cannot be presumed to be consent for other sexual activity, such as intercourse. A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.
- 13.2.5 In the State of West Virginia, a minor cannot consent to sexual activity. Thus, sexual contact by an adult with a person younger than 16 years old is a crime as well as a violation of this policy, even if the minor wanted to engage in the act.

### **13.3 Receipt of Actual Notice of Allegations and Complaints**

#### **13.3.1 Receipt of Actual Notice of Allegations.**

- (i) Receipt of Actual Notice of Allegations. Mountwest receives actual notice when an official of Mountwest who has authority to institute corrective measures on behalf of Mountwest, which is the President and each Vice President, receives notice of a complaint. The complaint should include, at a minimum, the following: the name of the person impacted by the alleged incident, the name of the accused individual, other individuals involved in the alleged incident, as well as relevant facts, including the date, time and location. Upon receipt of the notice, the Title IX Coordinator shall



investigate the information contained in the notice, determine what sexual harassment or other violation of this policy occurred, if any, and respond appropriately.

- (ii) Once Mountwest is in receipt of actual knowledge of sexual harassment in a Mountwest education program or activity against a person in the United States, Mountwest will respond promptly in a manner that is not deliberately indifferent.
- (iii) Mountwest's response treats complainants and respondents equitably by offering supportive measures and by following a grievance process that complies with this policy before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.
- (iv) The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

#### 13.3.2 Filing of Complaints

- (i) To file a complaint of sexual harassment or other violation of this policy falling under Title IX, an employee, student, or applicant may complete a Sexual Harassment Complaint Form. Forms may be obtained from the Office of Student Affairs, the Office of Human Resources, or on the Mountwest website. The Title IX Coordinator will provide assistance in completing the form.
- (ii) Completed Sexual Harassment Complaint Forms shall be submitted to the Title IX Coordinator as soon as possible after the incident. If a complaint is against the Title IX Coordinator, the Sexual Harassment Complaint Form shall be filed with the Vice President for Academic Affairs, Vice President for Student Services or Human Resources, or Dean, who will immediately designate a person to begin an investigation consistent with this policy.
- (iii) A reporting party has the right, and can expect, to have reports taken seriously by Mountwest when formally reported, and to have those incidents investigated and properly resolved through this policy.

13.3.3 Handling of Victim Requests. If a victim does not wish for his or her name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, Mountwest will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow Mountwest to honor that request, Mountwest will offer interim support and remedies to the victim and the community, but will not otherwise pursue formal action.

#### 13.3.4 Timeframe for Resolution

- (i) Mountwest aims to bring all allegations to a prompt and equitable resolution.

- (ii) Mountwest's administrative investigation and resolution process is entirely separate from a criminal investigation or proceeding undertaken by law enforcement. Mountwest's resolution will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. However, Mountwest may undertake a short delay (several days to a few weeks, but typically no longer than 10 calendar days) in its investigation or resolution process, to comply with a law enforcement request for cooperation (e.g., to allow for criminal evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated.
- (iii) Mountwest will also allow for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

#### 13.4 Formal Complaint Investigation Processes

##### 13.4.1 The Title IX Coordinator is designated to formally investigate notice or complaints of alleged violations of this policy.

- (i) If the reporting party or the Title IX Coordinator, based upon an alleged policy violation, wishes to pursue a formal resolution, then the Title IX Coordinator shall appoint trained Title IX investigators (typically using a team of two investigators), to conduct a prompt, fair, thorough, reliable, and impartial investigation.
  - a. Mountwest is committed to ensuring that its resolution processes are free from actual or perceived bias or conflicts of interest that would materially impact the outcome. Any party who feels that there is actual or perceived bias or conflict of interest that would materially impact the outcome may submit a written petition for the person's removal from the process. The petition shall include specifics as to the actual or perceived bias or conflict of interest, as to why the petitioner believes the bias or conflict could materially impact the outcome. Such petitions should be made to the Title IX Coordinator, or, in the event that the potential conflict or bias involves the Title IX Coordinator, to the Vice President of that Title IX Coordinator, or the President if the Title IX Coordinator is a Vice President.
  - b. *Notice of allegations.* Upon receipt of a formal complaint, Mountwest will provide the following written notice to the parties who are known: Notice of Mountwest's grievance process; Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written

notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice must inform the parties of any provision in Mountwest's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

- c. If, in the course of an investigation, Mountwest decides to investigate allegations about the complainant or respondent that are not included in the notice, Mountwest must provide notice of the additional allegations to the parties whose identities are known, 106.45(2).
- d. Mountwest will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to Mountwest's education program or activity. Such remedies may include the same individualized services described as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- e. Mountwest will include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- f. Mountwest requires that any individual designated by Mountwest as a Title IX Coordinator, investigator, or decision-maker, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- g. Mountwest's process requires an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness
- h. *Dismissal of a formal complaint.* Mountwest must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in Mountwest's education program or activity, or did not occur against a person in the United States, then Mountwest must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX; such a dismissal does not preclude action under another provision of Mountwest's code of conduct. Mountwest may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by Mountwest; or specific circumstances prevent Mountwest from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Upon a

dismissal required or permitted, Mountwest must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

- i. *Consolidation of formal complaints.* Mountwest may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular “party,” “complainant,” or “respondent” include the plural, as applicable. Mountwest may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by Mountwest; or specific circumstances prevent Mountwest from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Upon a dismissal required or permitted, Mountwest must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- j. Mountwest will ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Mountwest and not on the parties provided that Mountwest cannot 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 Mountwest obtains that party’s voluntary, written consent to do so for a grievance process.
- k. Mountwest will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- l. Mountwest will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- m. Mountwest will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- n. The Title IX Coordinator, Title IX Investigators, Decision Makers, Appeals Officer and other implementing this policy will receive training on the definition of sexual harassment, the scope of Mountwest’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue,

conflicts of interest, and bias. Mountwest must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. Mountwest also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and appeals officers, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;

- o. The investigators shall:
  - 1. Determine the identity and contact information of the reporting party;
  - 2. Initiate and, on an ongoing basis throughout the investigation, monitor and modify, as needed, any necessary remedial actions;
  - 3. Identify the exact policies allegedly violated;
  - 4. Conduct an immediate initial inquiry to determine if there is reasonable cause to charge the responding party and what policy violations should be alleged as part of the charge; if there is insufficient evidence to support reasonable cause, the report should be closed with no further action;
  - 5. Meet with the reporting party to finalize their statement;
  - 6. Prepare the notice of charges on the basis of the initial inquiry;
  - 7. Provide the person impacted and the accused individual with notice of investigation;
  - 8. Commence a prompt, fair, thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list evidence list, intended timeframe, and order of interviews for all witnesses and the responding party; both the person impacted and the accused individual shall have the equal opportunity to provide witnesses, including fact and expert witnesses and other inculpatory and exculpatory evidence to the investigators during the investigation;
  - 9. Provide regular updates to the person impacted and the accused individual, as appropriate, throughout the investigation;
  - 10. Complete the investigation promptly; and
  - 11. Make a finding based on a preponderance of the evidence (whether a policy violation is more likely than not).

(ii) Mountwest will provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, Mountwest may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

(iii) Both the reporting party and the responding party will have the opportunity to provide witnesses and evidence to the investigators during the investigation.

- (iv) If at any point during the investigation it is determined there is no reasonable cause to believe that this policy has been violated, the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.
- (v) Both the person impacted and the accused individual will have the opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which Mountwest does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, Mountwest must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. Mountwest must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
- (vi) Mountwest shall create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.
- (vii) Mountwest may, depending upon the circumstances, choose to hold parties who participate in the investigation immune from disciplinary charges for minor violations that are discovered during the course of the investigation and related to the incident(s) being investigated.

13.5 Hearings. Mountwest's grievance process provides for a live hearing. At the live hearing, the decision-makers shall permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. At the request of either party, Mountwest must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-makers must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, Mountwest must provide without fee or charge to that party, an advisor of Mountwest's choice to conduct cross-examination on behalf of that party. 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. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility;

provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. Live hearings may be conducted with all parties physically present in the same geographic location or, at Mountwest's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Mountwest will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

### 13.6 Determination Regarding Responsibility

13.6.1 The decision-makers shall issue a written determination regarding responsibility. To reach this determination, the decision-makers will apply the preponderance of the evidence standard. The written determination will include:

- (i) Identification of the allegations potentially constituting sexual harassment;
- (ii) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- (iii) Findings of fact supporting the determination;
- (iv) Conclusions regarding the application of Mountwest's code of conduct to the facts;
- (v) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions Mountwest imposes on the respondent, and whether remedies designed to restore or preserve equal access to Mountwest's education program or activity will be provided by Mountwest to the complainant; and
- (vi) Mountwest's procedures and permissible bases for the complainant and respondent to appeal.

13.6.2 Mountwest will provide the written determination to the parties simultaneously.

13.6.3 The determination regarding responsibility becomes final either on the date that Mountwest provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

13.6.4 The Title IX Coordinator is responsible for effective implementation of any remedies.

### 13.7.1 Sanctions

13.7.1 Sanctions may be imposed upon any person under Mountwest's jurisdiction who is found to have violated this policy.

- (i) Typical student sanctions that may be imposed singly or in combination include, but are not limited to the following:
  - a. Admonition
  - b. Warning
  - c. Disciplinary Probation
  - d. Restitution
  - e. Suspension
  - f. Expulsion
- (ii) Typical employee sanctions that may be imposed singly or in combination include, but are not limited to the following:
  - a. Discussion
  - b. Verbal Warning
  - c. Written Warning
  - d. Suspension
  - e. Termination of Employment

13.7.2 Any person found responsible for violating the Sexual Harassment prohibitions will likely face a recommended sanction ranging from admonition/discussion to expulsion/termination of employment, depending on the severity of the incident, and taking into account any previous disciplinary violations.

13.7.3 The range of recommended sanctions may be broadened or lessened in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the Title IX Coordinator nor the Appeals Officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

## 13.8 Appeal

13.8.1 Any party who wishes to appeal the recommendations contained in the report of investigation, as they relate to sexual harassment or other violations of this policy falling under Title IX, including the determination regarding responsibility and from Mountwest's dismissal of a formal complaint or any allegations therein, may do so by submitting that party's appeal in writing to the President of Mountwest (hereinafter "Appeals Officer"). Mountwest will give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. If a complaint is against the Vice President for Academic Affairs, the Vice President for Human Resources & Student Services, or the Vice President for Finance & Administration, the appeal shall be submitted to the President, who will immediately designate a person to assume the duties of Appeals Officer. Signed appeals should be hand-delivered or emailed in pdf format to the Appeals Officer within five (5) business days of the issuance of the final report of investigation. The Appeals Officer shall share a copy of the written appeal with the other party, who will be given an opportunity to respond to the appeal. Mountwest will implement appeal procedures equally for both parties. All responses to the appeal must be submitted in writing to the Appeals Officer within five (5) business days of receiving the copy of the appeal from the Appeals Officer.



- 13.8.2 Mountwest will ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.
- 13.8.3 Recommendations not related to sexual harassment or other violations of this policy falling under Title IX shall be addressed through applicable Mountwest policies and procedures, including handbooks, concerning employee and student conduct.
- 13.8.4 All appeals and responses are then reviewed by the Appeals Officer to determine if the appeal request meets the limited grounds and is timely. The original recommendations and sanctions will stand if the appeal is not timely or does not fall within the grounds for appeal set forth below, and the decision is final. The original recommendations and sanctions will also remain in effect pending the outcome of any appeal. If the appeal has standing, the Appeals Officer will consider the appeal. The party requesting the appeal has the burden of proving the error, as the original recommendations and sanctions are presumed to have been decided reasonably and appropriately. The only grounds for appeal are as follows:
- (i) A procedural irregularity<sup>78</sup> that affected the outcome of the matter;
  - (ii) To consider 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; or
  - (iii) The Title IX Coordinator, investigator(s), or decision-maker(s) 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.
- 13.8.5 Within ten (10) business days of receiving the response(s) to the appeal(s), if any, the Appeals Officer will provide to both parties a Memorandum of Decision.
- 13.8.6 If the Appeals Officer determines that a material procedural or substantive error occurred, the Appeals Officer may return the matter to the original investigators with instructions to reconvene to cure the error. The results of a reconvened investigation cannot be appealed. In rare cases where the procedural or substantive error cannot be cured by the original investigators, as in cases of substantiated bias, the Appeals Officer may order a new investigation on the complaint with new investigators. The results of a new investigation can be appealed, once, on the applicable grounds for appeals.
- 13.8.7 If the Appeals Officer determines that new evidence should be considered, the Appeals Officer will return the matter to the original investigators to reconsider in light of the new evidence only. The reconsideration of the original investigators is not appealable.
- 13.8.8 Once an appeal is completed, the parties will be notified, simultaneously, of the final determination and any changes that result. The Appeals Officer will issue a written decision describing the result of the appeal and the rationale for the result
- 13.9 *Recordkeeping.* Mountwest will maintain for a period of seven years records of:
- 13.9.1 Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to Mountwest's education program or activity. Mountwest will also keep

records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, Mountwest will 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 Mountwest's education program or activity. If Mountwest does not provide a complainant with supportive measures, then Mountwest will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit Mountwest in the future from providing additional explanations or detailing additional measures taken;

13.9.2 Any appeal and the result therefrom; and

13.9.3 All materials used to train Title IX Coordinators, investigators, and decision-makers. Mountwest will make these training materials publicly available on its website.

### **Reporting of Violations**

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

14.1.1 Reports of sexual harassment or other violations of this policy falling under Title IX should be made to the Title IX Coordinator;

14.1.2 Reports of violations of this policy involving the Title IX Coordinator should be made to the Vice President for Student Services & Human Resources;

14.1.3 Reports of violations of this policy involving the Vice President for Student Services & Human Resources should be made to the President of Mountwest;

14.1.4 Reports of violations of this policy involving the President of Mountwest should be made to the Chair of the Mountwest Board of Governors; and

14.1.5 Reports of violations of this policy involving the Chair of the Mountwest Board of Governors should be made to the West Virginia Higher Education Policy Commission.

14.2 If a reporting individual believes that an immediate threat of harm exists to self or others or that an individual has violated federal, state, or local law, the reporting individual should immediately contact law enforcement.

14.3 Upon receiving a report of an alleged violation of this policy, the appropriate administrator shall promptly investigate the alleged violation contained in the report.

14.4 Although reports of violations of this policy should be made promptly, there is no time limitation on the filing of reports, as long as the accused individual remains subject to Mountwest's jurisdiction.

14.5 Additional information on reporting options can be found on Mountwest's website, at <http://www.mctc.edu>, under the "Human Resources" link or the "Students" link.

## **Retaliation**

- 15.1 Retaliation is prohibited. No Mountwest employees or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.
- 15.2 Retaliation is a serious violation of this policy, will be treated as another possible instance of violation of this policy, and should be filed according to the grievance procedures for sex discrimination. Mountwest will take appropriate steps to protect individuals who fear that they may be subjected to Retaliation.
- 15.3 The exercise of rights protected under the First Amendment does not constitute retaliation.
- 15.4 Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## **Supportive Measures**

- 16.1 Supportive measures are designed to restore or preserve equal access to Mountwest's education program or activity.
- 16.2 Mountwest will implement initial supportive measures upon actual knowledge of sexual harassment in a Mountwest education program or activity against a person in the United States. Mountwest will take additional prompt remedial and/or disciplinary action with respect to any member of the Mountwest community, guest, or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. These supportive measures are intended to address the short-term effects of sexual harassment, i.e., to redress harm to the alleged victim and the community and to attempt to prevent further violations. These supportive measures may include, but are not limited to:
  - Referral to counseling and health services;
  - Referral to the Employee Assistance Program;
  - Education to the Mountwest community;
  - Assisting with the identification of alternate housing;
  - Altering work arrangements for employees;
  - Providing campus escorts;
  - Increased security and monitoring of certain areas of campus;
  - Implementing contact limitations between the parties, including mutual no contact;
  - Offering adjustments to academic deadlines, course schedules, leaves of absence, etc.
- 16.3 Mountwest will maintain as confidential, to the extent possible, any supportive measures, provided confidentiality does not impair Mountwest's ability to provide the supportive measures.

## **False Reports**

- 17.1 Mountwest will not tolerate intentional false reporting of incidents. Deliberately false and/or malicious accusations of violations of this policy, as opposed to complaints which, even if

erroneous, are made in good faith, are just as serious an offense as a violation of this policy and will subject the false reporter to appropriate disciplinary action. Intentionally false reports may also violate criminal and civil laws.

### **Confidentiality of Reported Information**

- 18.1 Individuals wishing to report violations of this policy must be aware that Mountwest administrators, depending on their roles, have varying reporting responsibilities and abilities to maintain the confidentiality of the individual making the report. Prior to reporting a violation of this policy to a particular administrator, an individual should inquire as to whether that administrator is bound by certain confidentiality and mandatory reporting requirements. Some Mountwest resources may be able to maintain confidentiality, offering options and advice without any obligation to inform an outside agency or individual unless the reporting person requested information to be shared or the information indicates an immediate threat of harm to self or others. Additional information on reporting options can be found on Mountwest's website, at <http://www.mctc.edu> , under the "Human Resources" link or the "Students" link Title IX.
- 18.2 Mountwest must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of 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 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 thereunder.

### **Federal Timely Warning Obligations**

- 19.1 Victims of sexual harassment should be aware that Mountwest administrators must issue timely warnings to the Mountwest community for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. No such warning will identify a victim or contain information that could do so unless permitted by the victim.

### **Prevention & Awareness Programs**

- 20.1 Mountwest has educational programs and campaigns to promote the awareness of dating violence, domestic violence, sexual assault, and stalking. These programs can be found on the Mountwest website.

### **Violations of Policy**

- 21.1 Any employee or student who is found to have violated this policy will be subject to administrative action, up to and including termination of employment or dismissal from Mountwest, as applicable.
- 21.2 Except as provided in this policy concerning sexual harassment or other violations of this policy falling under Title IX, violations of this policy shall be addressed as follows:
  - 21.2.1 Violations by students shall be addressed through Mountwest policies and procedures on student conduct.

- 21.2.2 Violations by employees shall be addressed through Mountwest policies and procedures on employee conduct, including applicable faculty and staff handbooks.
- 21.3 Failure of a non-confidential employee to report an allegation of sexual harassment or other violation of this policy falling under Title IX of which he or she becomes aware, is a violation of this policy and may subject the employee to disciplinary action.

### **Implementation of Policy**

- 22.1 This policy will be implemented using applicable Mountwest policies and procedures, and Mountwest faculty, staff, and student handbooks. In the event the individual, name, title, or contact information changes for any of the individuals listed in this policy, the President of Mountwest may revise such information within this policy without resubmittal of this policy through the rulemaking process.

### **Superseding Provisions**

- 23.1 This policy supersedes the West Virginia Higher Education Policy Commission (“HEPC”) Series 40 (W.Va. Code R. § 133-40), any other rule of HEPC which relates to the subject matter contained within this policy, and any conflicting provisions within the Mountwest Employee Handbook, the Mountwest Faculty Handbook, or any other Mountwest policies or procedures.