



BOARD OF GOVERNORS

AGENDA

August 20, 2021

MEMBERS

Megan Callaghan Bailey

Mark Blankenship

Barry Crist

Ashley Deem

Jeff Ginther

Alex Harris

Barry Holstein

Andrew Kennedy

Larry Pack, Jr.

Andrea Petry

Rhonda White

Dr. Casey Sacks
Acting President

BOARD OF GOVERNORS

BRIDGEVALLEY COMMUNITY AND TECHNICAL COLLEGE

Public Livestream Link:

<https://vimeo.com/585029687/fa0c50befd>

August 20, 2021, 1:00 p.m.

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
Minutes of August 6, 2021.....BOG 1
- IV. Administrative Items
 - a. Action Item: Revision of BOG Rule A-5 - Policy Regarding Sexual Misconduct, Nondiscrimination, Equal Opportunity, and Other Forms Of Harassment – Casey Sacks.....BOG 2
- V. Possible Executive Session Pursuant to W. Va. Code § 6-9A-4 to Discuss Personnel Issues and the Purchase, Sale, Or Lease of Property
 - a. Presidential Search and Contract
 - b. College Facilities
- VI. Additional Board Action and Comments
- VII. Announcements/Upcoming Events
 - a. August 30 – First Day of Fall 2021 Classes

b. September 22 – BridgeValley Night at Power Park

VIII. Next Meeting

Friday, October 8, 2021

9:00 am

Location: South Charleston Campus

IX. Adjournment

BOARD OF GOVERNORS
BRIDGEVALLEY COMMUNITY AND TECHNICAL COLLEGE
MINUTES
AUGUST 6, 2021

A meeting of the BridgeValley Community and Technical College Board of Governors (BOG) was held on Friday, August 6, 2021, at 1:00 p.m. at the Upper Kanawha Valley Economic Development Corporation located at 326 Third Avenue, Montgomery, WV.

Board members present: Megan Bailey, Mark Blankenship, Barry Crist, Ashley Deem, Jeff Ginther, Alex Harris, Barry Holstein, Andrew Kennedy, Larry Pack, Jr., Andrea Petry, and Rhonda White. Also in attendance were President Casey Sacks; Special Guest Rich Donovan, Senior Director of Facilities, WVHEPC; and BridgeValley faculty and staff.

I. Call to Order

Chair Deem called the meeting to order at 1:00 p.m.

II. Roll Call

Roll was taken by Amy Moore noting that a quorum was present.

III. Approval of Minutes

Vice Chair Blankenship moved to approve the meeting minutes of June 30, 2021. Larry Pack, Jr., seconded the motion. Motion carried.

Vice Chair Blankenship moved to approve the meeting minutes of July 7, 2021. Larry Pack, Jr., seconded the motion. Motion carried.

IV. Administrative Items

a. Welcome New Members – Jeff Ginther, Alex Harris, and Rhonda White

Chair Deem welcomed new members Jeff Ginther, Alex Harris (student representative) and Rhonda White (faculty representative).

V. Reports

a. President's Report – Dr. Casey Sacks

i. Relationship Building

President Sacks has started reaching out to legislators and community leaders to build relationships for the college. She has met with the following: Senator Eric

Tarr; Delegate Josh Booth; Delegate Jim Barach; Senator Tom Takubo; Monica Cross with WVMA; Julie Norman with Region 3 Workforce Development; Matt Ballard with West Virginia Regional Technology Park; Greg Ingram, Mayor of Montgomery; and Delegate Joshua Higginbotham. Julie Norman has invited Dr. Sacks to serve on her board. Just this week, she met with the Mayor of South Charleston.

ii. Organizational structure changes

Workforce division has been consolidated. Dr. Laura McCullough will serve at the Vice President of workforce. It was unclear who oversaw certain areas, so it made sense to consolidate.

In the past the human resources director reported to the president because she was married to the Vice President of Operations and since she has left the college, the new human resources director will now report to the Vice President of Operations.

iii. Program changes

All entrepreneurship programs are now under workforce. The college is working on teaching out the culinary and hospitality entrepreneurship programs. There are four students enrolled in those programs.

iv. ABET certification status

The last time the Board met there was some conversation with Dean Norm Mortensen regarding ABET accreditation. The CET (Computer Engineering Technology) program had not actions required. The MET (Mechanical Engineering Technology) program had some paperwork revisions that have been submitted. The EET (Electrical Engineering Technology) program revised the paperwork and posted required positions. The Board approved positing a position for EET. The college will hear back in late August or early September on their reaffirmation decision.

The Dean anticipates we will get the six-year accreditation for CET and MET and the EET program may have an interim report to file.

v. Building strategies for the future

In the process of building strategies for the future. In beginning stages of saying what does student success look like, and we will keep having those conversations at the forefront.

Dr. Sacks goals for the next thirty days is to continue to build relationships with employees and community leaders.

Dr. Sacks stated that enrollment is down, and she is very concerned about it. Our enrollment team has been doing outreach events. We have leveraged our COVID relief funds to help re-enroll students who owe a balance to the college. The message is that we are open. If we have a resurgent of the virus, faculty members are capable of pivoting to online instruction.

Chair Deem asked if we have enough PPE. Jason Stark, Vice President of Operations stated that we have plenty of PPE on hand.

Secretary Holstein asked what level of flexibility we have regarding faculty salaries. Dr. Sacks stated that we do pay faculty with different degrees at different levels.

Andrew Kennedy mentioned the Mountaineer Challenge Academy is building their enrollment and we need to build a relationship with them. Kristi Ellenberg, Dean of General Education, Liberal Arts and Sciences, stated she has a class at the academy and has been trying to build a relationship. She is meeting with Debbie Gipson, Deputy Director, Mountaineer Challenge Academy, for a discussion.

VI. Possible Executive Session Pursuant to W.Va. Code § 6-9A-1 to Discuss Personnel Issues and the Purchase, Sale, or Lease of Property

Vice Chair Blankenship moved to enter Executive Session Pursuant to W.Va. Code § 6-9A-4 to discuss Personnel Issues and the Purchase, Sale, or Lease of Property. Larry Pack, Jr, seconded. Motion carried.

Secretary Holstein moved to call the meeting to order following Executive Session. Vice Chair Blankenship seconded. Motion carried.

VII. Additional Board Action and Comments

Chair Deem stated that the Board had a very productive executive session. Items discussed were the presidential search and college facilities. The Board wants to reassure everyone that they are very committed to the City of Montgomery. The city has been very good to BridgeValley, and BridgeValley hopes to do the same in return.

Secretary Holstein made a motion to direct administration to consider the most efficient use of our space in Montgomery and South Charleston and bring some options back to the Board at its next regular meeting. Vice Chair Blankenship seconded. Motion carried.

Secretary Holstein made a motion to authorize Dr. Sacks to get cost estimates to repair the stairway in Davis Hall that does not meet code and to provide additional information for financial requirements for repairs at the next regular Board meeting. Vice Chair Blankenship seconded. Motion carried.

Secretary Holstein made a motion to end all current Facility Use Agreements for the GRID and to move the Brewing program into Davis Hall before the start of the Fall 2021 semester. Vice Chair Blankenship seconded. Motion carried.

Secretary Holstein made a motion directing Dr. Sacks to explore options for Ratliff Hall and bring those options before the Board at the next regular Board meeting. Vice Chair Blankenship seconded. Motion carried. It was noted that BridgeValley is the only community and technical college in the state owning a dormitory. Also, let it be noted that the building is currently vacant.

A virtual meeting will be held on August 20, 2021, at 1:00 pm to discuss personnel issues and any other matters that may arise.

VIII. Announcements/Upcoming Events

- a. August 30 – First Day of Fall 2021 Classes
- b. September 22 – BridgeValley Night at Power Park

IX. Next Meeting

Friday, August 20, 2021
1 pm
Location: Virtual

X. Adjournment

There being no further business, the meeting was adjourned.

_____, Ashley N. Deem, Chair

_____, Barry Holstein, Secretary

**BOARD OF GOVERNORS
BRIDGEVALLEY COMMUNITY AND TECHNICAL COLLEGE
MEETING OF AUGUST 20, 2021**

ITEM: **Revision to BOG Policy A-5 – Title IX,
Sexual Harassment and Discrimination**

RECOMMENDED RESOLUTION: *Resolved*, that the BridgeValley Community and Technical College Board of Governors approves the revision of Policy A-5 - Title IX, Sexual Harassment and Discrimination, for distribution to constituencies and posting for a 30-day comment period and submission to the West Virginia Council at the conclusion of the period if no substantive comments are received.

STAFF MEMBER: Dr. Casey Sacks

BACKGROUND:

This policy has been revised to reflect the current Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 ("Title IX"); 34 C.F.R. § 106.

PROPOSED POLICY

BRIDGEVALLEY COMMUNITY AND TECHNICAL COLLEGE BOARD OF GOVERNORS

POLICY A-5

POLICY REGARDING TITLE IX, SEXUAL HARASSMENT AND DISCRIMINATION

Section 1. General

- 1.1 Scope — This rule sets forth the BridgeValley Community and Technical College Board of Governors' Policy regarding Title IX, Sexual Harassment and Discrimination.
- 1.2 Authority — W. Va. Code § 18B-1-6; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (“Title IX”); 34 C.F.R. § 106
- 1.2.1 Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092, as amended by the Violence Against Women Act of 1994, 42 U.S.C. § 13925.
- 1.3 Effective Date — July 12, 2013; Revised Effective Date — July 9, 2014; Revised Effective Date—_____

Section 2. Title IX Nondiscrimination Policy Statement

BridgeValley Community and Technical College (“BrigeValley”) does not discriminate on the basis of sex in the education program or activity that it operates. BridgeValley, 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 not to discriminate in BridgeValley’s education programs or activities extends to admission and employment, and inquiries about the application of Title IX and the Title IX regulations to BridgeValley may be referred to BridgeValley’s Title IX Coordinator or the Assistant Secretary, Office for Civil Rights, U.S. Department of Education, or both.¹

Section 3. Applicability

- 3.1 This policy applies² to applicants for admission and employment, students, and employees of BridgeValley concerning sexual harassment in an education program or activity of BridgeValley,³ whether on 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.⁴

¹ 106.8(b)(1).

² 106.8(a).

³ 106.44(a).

⁴ 106.8(d).

Section 4. Definitions

- 4.1 “Actual knowledge”⁵ means notice of sexual harassment or allegations of sexual harassment to BridgeValley’s Title IX Coordinator or any official of BridgeValley who has authority to institute corrective measures on behalf of BridgeValley. As used in this policy, “official of BridgeValley who has authority to institute corrective measures on behalf of BridgeValley” means the President and each Vice President of BridgeValley. 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 BridgeValley 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 BridgeValley. “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 “Appeals Officer” means the President of BridgeValley.
- 4.3 “Complainant”⁶ means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- 4.4 “Consent”⁷ means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. The following rules apply to the term “consent” as defined in this policy:
- 4.4.1 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.
- 4.4.2 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.
- 4.4.3 The definition of consent also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the taking of incapacitating drugs.

⁵ 106.30(a).

⁶ 106.30(a).

⁷ 106.30(a).

- 4.4.4 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.
- 4.4.5 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.
- 4.5 “Education program or activity”⁸ means locations, events, or circumstances over which BridgeValley 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 BridgeValley.
- 4.6 “Formal complaint”⁹ means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that BridgeValley investigate the allegation of sexual harassment. At the time of filing a formal complaint with BridgeValley, a complainant must be participating in or attempting to participate in the education program or activity of BridgeValley. 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 BridgeValley. 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 the Title IX Coordinator must comply with the requirements of the Title IX regulations, part § 106, including § 106.45(b)(1)(iii).
- 4.7 “Respondent”¹⁰ means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- 4.8 “Sexual harassment”¹¹ means conduct on the basis of sex that satisfies one or more of the following:

⁸ 106.44(a).

⁹ 106.30(a).

¹⁰ 106.30(a).

¹¹ 106.30(a).

- 4.8.1 An employee of BridgeValley conditioning the provision of an aid, benefit, or service of BridgeValley on an individual's participation in unwelcome sexual conduct;
- 4.8.2 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 BridgeValley's education program or activity; or).
- 4.8.3 "Sexual Assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), means an offense classified as a sex offense under the uniform crime reporting system of the FBI (<https://www.fbi.gov/file-repository/ucr/ucr-2019-1-nibrs-user-manual.pdf/view>). The following offenses are classified as sex offenses:
- (i) Rape (except statutory rape): The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - (ii) Sodomy: Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - (iii) Sexual Assault With An Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - (iv) Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - (v) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - (vi) Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.
- 4.8.4 "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.
- (i) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the

relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

- (ii) For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- (iii) Dating violence does not include acts covered under the definition of domestic violence.
- (iv) Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

4.8.5 “Domestic violence” as defined in 34 U.S.C.12291(a)(8), mean a felony or misdemeanor crime of violence committed:

- (i) By a current or former spouse or intimate partner of the victim;
- (ii) By a person with whom the victim shares a child in common;
- (iii) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- (iv) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
- (v) By any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

4.8.6 “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 person’s safety or the safety of others; or suffer substantial emotional distress. For the purposes of this definition:

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker 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.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

- (iv) Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

4.9 “Supportive Measures”¹² 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 BridgeValley’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or BridgeValley’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. BridgeValley 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 BridgeValley to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Section 5. Title IX Coordinator

5.1 BridgeValley has designated and authorized the Director of Human Resources, as Title IX Coordinator to coordinate BridgeValley’s efforts to comply with its responsibilities under Title IX, 34 C.F.R. § 106,¹³ and other federal and state sex discrimination and sexual harassment laws. The Title IX Coordinator’s contact information¹⁴ is as follows:

Campus office address: Room 302, Building 2000, South
Charleston E-mail address: hr@bridgevalley.edu
Office telephone number: 304-205-6606

5.2 BridgeValley may designate and authorize designee(s) to serve as Title IX Coordinator in the absence of the Director of Human Resources. In such event, notice of such designation and authorization, along with name(s)/title(s), office address(es), e-mail address(es), and office telephone number(s) will be provided to the applicable groups set forth in Section 3 above.¹⁵

Section 6. Publication Requirements

6.1 BridgeValley shall prominently display the contact information for the Title IX Coordinator set forth in Section 5 above and the nondiscrimination policy statement set

¹² 106.30(a).

¹³ 106.8(a).

¹⁴ 106.8(a).

¹⁵ 106.8(a) & 106.8(b)(2).

forth in Section 2 above on the BridgeValley website and in the BridgeValley Catalog and BridgeValley Student, Faculty, and Employee Handbooks.¹⁶

- 6.2 BridgeValley shall not use or distribute a publication stating that BridgeValley 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.¹⁷

Section 7. Adoption of Grievance Procedures

- 7.1 BridgeValley 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.¹⁸
- 7.2 BridgeValley shall provide to its applicants for admission and employment, students, and employees notice of BridgeValley'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 BridgeValley will respond.¹⁹

Section 8. Reporting of Sex Discrimination Generally

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.²⁰

Section 9. Response to Sexual Harassment

- 9.1 Sexual harassment is prohibited.
- 9.2 Should BridgeValley have actual knowledge of sexual harassment in an education program or activity of BridgeValley against a person in the United States, BridgeValley shall respond in a manner that is not deliberately indifferent. BridgeValley would be deliberately

¹⁶ 106.8(b)(2).

¹⁷ 106.8(b)(2)(ii).

¹⁸ 106.8(c).

¹⁹ 106.8(c).

²⁰ 106.8(a).

indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.²¹

- 9.3 BridgeValley'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.²²
- 9.4 Reports of violations of this policy should be made promptly as follows:
 - 9.4.1 Reports of sexual harassment or other violations of this policy falling under Title IX should be made to the Title IX Coordinator, the Director of Human Resources;
 - 9.4.2 Reports of violations of this policy involving the Director of Human Resources should be made to the President of BridgeValley;
 - 9.4.3 Reports of violations of this policy involving the President of BridgeValley should be made to the Chair of the BridgeValley Board of Governors; and
 - 9.4.4 Reports of violations of this policy involving the Chair of the BridgeValley Board of Governors should be made to the Chancellor of the West Virginia Higher Education Policy Commission.
- 9.5 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.
- 9.6 The Title IX Coordinator, or other applicable administrator listed in Section 9.4 above or his/her designee, shall promptly contact the complainant to:
 - 9.6.1 Discuss the availability of supportive measures,
 - 9.6.2 Consider the complainant's wishes with respect to supportive measures,
 - 9.6.3 Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
 - 9.6.4 Explain to the complainant the process for filing a formal complaint.²³
- 9.7 Although reports of violations of this policy should be made promptly, there is no time limitation on the filing of reports. If the Respondent is no longer subject to BridgeValley's jurisdiction or significant time has passed since the alleged incident, BridgeValley's ability to investigate may be more limited.

²¹ 106.44(a).

²² 106.44(a).

²³ 106.44(a).

- 9.8 Additional information on reporting options can be found on BridgeValley’s website, at <https://www.bridgevalley.edu/titleix>
- 9.9 The U.S. Department of Education may not deem BridgeValley to have satisfied BridgeValley’s duty to not be deliberately indifferent under the Title IX regulations, part 106, based on BridgeValley’s restrictions of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.²⁴

Section 10. Response to a Formal Complaint

- 10.1 In response to a formal complaint, BridgeValley shall follow a grievance process that complies with the Title IX regulations, § 106.45.²⁵
- 10.2 With or without a formal complaint, BridgeValley must comply with Section 9 above.²⁶
- 10.3 The Assistant Secretary, Office for Civil Rights, U.S. Department of Education, will not deem BridgeValley’s determination regarding responsibility to be evidence of deliberate indifference by BridgeValley, or otherwise evidence of discrimination under Title IX by BridgeValley, solely because the Assistant Secretary would have reached a different determination based on an independent weighing of the evidence.²⁷

Section 11. Emergency Removal and Administrative Leave

- 11.1 Emergency removal. BridgeValley may remove a respondent from BridgeValley’s education program or activity on an emergency basis, provided that BridgeValley 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.²⁸ 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.²⁹
- 11.2 Administrative leave. BridgeValley may place a non-student employee respondent on administrative leave during the pendency of the grievance process for formal complaints of sexual harassment.³⁰ 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.³¹

²⁴ 106.44(a).

²⁵ 106.44(b)(1).

²⁶ 106.44(b)(1).

²⁷ 106.44(b)(2).

²⁸ 106.44(c).

²⁹ 106.44(c).

³⁰ 106.44(d).

³¹ 106.44(d).

Section 12. Grievance Process for Formal Complaints of Sexual Harassment

Requirements for Grievance Process. BridgeValley’s grievance process shall:

- 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 BridgeValley’s education program or activity. Such remedies may include the same individual 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.³²
- 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.³³
- 12.3 Require that any individual designated by BridgeValley 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.³⁴
 - 12.3.1 BridgeValley shall ensure that the Title IX Coordinators, investigators, and decision-makers receive training on the definition of sexual harassment set forth in Section 4.8 above, the scope of BridgeValley’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.³⁵
 - 12.3.2 BridgeValley 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 13.5.³⁶
 - 12.3.3 BridgeValley 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).³⁷

³² 106.45(b)(1)(i).

³³ 106.45(b)(1)(ii).

³⁴ 106.45(b)(1)(iii).

³⁵ 106.45(b)(1)(iii).

³⁶ 106.45(b)(1)(iii).

³⁷ 106.45(b)(1)(iii).

- 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.³⁸
- 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.³⁹
- 12.5 Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals, 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.⁴⁰
- 12.6 Describe the range of possible disciplinary sanctions that BridgeValley may implement following any determination of responsibility.⁴¹
- 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.⁴²
- 12.8 Include the procedures and permissible bases for the complainant and respondent to appeal.⁴³
- 12.9 Describe the range of supportive measures available to complainants and respondents.⁴⁴
- 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.⁴⁵

Section 13. Notice of Allegations

- 13.1 Upon receipt of a formal complaint, BridgeValley must provide the following written notice to the parties who are known:⁴⁶

³⁸ 106.45(b)(1)(iii).

³⁹ 106.45(b)(1)(iv).

⁴⁰ 106.45(b)(1)(v).

⁴¹ 106.45(b)(1)(vi).

⁴² 106.45(b)(1)(vii).

⁴³ 106.45(b)(1)(viii).

⁴⁴ 106.45(b)(1)(ix).

⁴⁵ 106.45(b)(1)(x).

⁴⁶ 106.45(b)(2).

13.1.1 Notice of BridgeValley's grievance process that complies with § 106.45 of the Title IX regulations and this policy.⁴⁷

13.1.2 Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in Section 4.8 of this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.⁴⁸

- (i) Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment as defined in Section 4.8 of this policy, and the date and location of the alleged incident, if known.
- (ii) 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.
- (iii) 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, under Section 16.4 of this policy, and may inspect and review evidence under Section 16.6 of this policy.
- (iv) The written notice must inform the parties of any provision of BridgeValley's code of conduct, handbook, or policy or procedure that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.⁴⁹

13.2 If, in the course of an investigation, BridgeValley decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to Section 13.1 above, BridgeValley must provide notice of the additional allegations to the parties whose identities are known.

Section 14. Dismissal of a Formal Complaint

14.1 BridgeValley must investigate the allegations in a formal complaint.⁵⁰

14.1.1 If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in Section 4.8 of this policy even if proved, did not occur in BridgeValley's education program or activity, or did not occur against a person in the United States, then BridgeValley must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or the Title IX regulations.⁵¹

⁴⁷ 106.45(b)(2)(A).

⁴⁸ 106.45(b)(2)(B).

⁴⁹ 106.45(b)(2)(B).

⁵⁰ 106.45(b)(3)(i).

⁵¹ 106.45(b)(3)(i).

- 14.1.2 Such a dismissal does not preclude action under another provision of BridgeValley’s code of conduct, handbook, or policy or procedure.⁵²
- 14.2 BridgeValley may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:⁵³
- 14.2.1 A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- 14.2.2 The respondent is no longer enrolled or employed by BridgeValley; or
- 14.2.3 Specific circumstances prevent BridgeValley from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.⁵⁴
- 14.3 Upon a dismissal required or permitted pursuant to Sections 14.1 or 14.2 above, BridgeValley must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.⁵⁵

Section 15. Consolidation of Formal Complaints

- 15.1 BridgeValley 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.⁵⁶
- 15.2 Where a grievance process involves more than one complainant or more than one respondent, reference in this policy to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.⁵⁷

Section 16. Investigation of a Formal Complaint

When investigating a formal complaint and throughout the grievance process, BridgeValley must:⁵⁸

- 16.1 Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on BridgeValley and not on the parties, provided that BridgeValley 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 BridgeValley

⁵² 106.45(b)(3)(i).
⁵³ 106.45(b)(3)(ii).
⁵⁴ 106.45(b)(3)(ii).
⁵⁵ 106.45(b)(3)(iii).
⁵⁶ 106.45(b)(4).
⁵⁷ 106.45(b)(4).
⁵⁸ 106.45(b)(5).

obtains that party's voluntary, written consent to do so for a grievance process under Section 7 above (if a party is not an "eligible student" as defined in 34 C.F.R. § 99.3, then BridgeValley must obtain the voluntary, written consent of a "parent," as defined in 34 C.F.R. § 99.3).⁵⁹

- 16.2 Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.⁶⁰
- 16.3 Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.⁶¹
- 16.4 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, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, BridgeValley 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.⁶²
- 16.5 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.⁶³
- 16.6 Provide both parties an equal 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 BridgeValley 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.⁶⁴
 - 16.6.1 Prior to completion of the investigative report, BridgeValley 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.⁶⁵
 - 16.6.2 BridgeValley 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.⁶⁶

⁵⁹ 106.45(b)(5)(i).

⁶⁰ 106.45(b)(5)(ii).

⁶¹ 106.45(b)(5)(iii).

⁶² 106.45(b)(5)(iv).

⁶³ 106.45(b)(5)(v).

⁶⁴ 106.45(b)(5)(vi).

⁶⁵ 106.45(b)(5)(vi).

⁶⁶ 106.45(b)(5)(vi).

- 16.7 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.⁶⁷

Section 17. Hearings

- 17.1 BridgeValley's grievance process must provide for a live hearing.⁶⁸
- 17.2 At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.⁶⁹
- 17.2.1 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, notwithstanding the discretion of BridgeValley under Section 16.4 above to otherwise restrict the extent to which advisors may participate in the proceedings.⁷⁰
- 17.2.2 Only relevant cross-examination and other questions may be asked of a party or witness.⁷¹
- 17.2.3 Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.⁷²
- 17.3 At the request of either party, BridgeValley 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.⁷³
- 17.4 If a party does not have an advisor present at the live hearing, BridgeValley must provide without fee or charge to that party, an advisor of BridgeValley's choice to conduct cross-examination on behalf of that party.⁷⁴
- 17.5 Questions and evidence about the complainant's sexual predisposition or prior sexual behavior is 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.

⁶⁷ 106.45(b)(5)(vii).

⁶⁸ 106.45(b)(6)(i).

⁶⁹ 106.45(b)(6)(i).

⁷⁰ 106.45(b)(6)(i).

⁷¹ 106.45(b)(6)(i).

⁷² 106.45(b)(6)(i).

⁷³ 106.45(b)(6)(i).

⁷⁴ 106.45(b)(6)(i).

- 17.6 Live hearings may be conducted with all parties physically present in the same geographic location or, at BridgeValley’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.⁷⁵
- 17.7 BridgeValley must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.⁷⁶

Section 18. Determination Regarding Responsibility

- 18.1 The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility.⁷⁷
- 18.2 To reach a determination, BridgeValley must apply the preponderance of the evidence standard.⁷⁸
- 18.3 The written determination must include the following:⁷⁹
- 18.3.1 Identification of the allegations potentially constituting sexual harassment as defined in Section 4.8 above;⁸⁰
 - 18.3.2 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;⁸¹
 - 18.3.3 Findings of fact supporting the determination;⁸²
 - 18.3.4 Conclusions regarding the application of BridgeValley’s code of conduct, handbooks, and/or policies and procedures to the facts;⁸³
 - 18.3.5 A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions BridgeValley imposes on the respondent consistent with Section 18.4 below, and whether remedies designed to restore or preserve equal access to BridgeValley’s education program or activity will be provided by BridgeValley to the complainant;⁸⁴ and

⁷⁵ 106.45(b)(6)(i).

⁷⁶ 106.45(b)(6)(i).

⁷⁷ 106.45(b)(7)(i).

⁷⁸ 106.45(b)(7)(i).

⁷⁹ 106.45(b)(7)(ii).

⁸⁰ 106.45(b)(7)(ii)(A).

⁸¹ 106.45(b)(7)(ii)(B).

⁸² 106.45(b)(7)(ii)(C).

⁸³ 106.45(b)(7)(ii)(D).

⁸⁴ 106.45(b)(7)(ii)(E).

18.3.6 BridgeValley's procedures and permissible bases for the complainant and respondent to appeal.⁸⁵

18.4 Sanctions may be imposed upon any person under BridgeValley's jurisdiction who is found to have violated this policy. 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 BridgeValley, as applicable.

18.4.1 Typical student sanctions that may be imposed singly or in combination include, but are not limited to the following:

- (i) Admonition
- (ii) Warning
- (iii) Disciplinary Probation
- (iv) Restitution
- (v) Suspension
- (vi) Expulsion

18.4.2 Typical employee sanctions that may be imposed singly or in combination include, but are not limited to the following:

- (i) Discussion
- (ii) Verbal Warning
- (iii) Written Warning
- (iv) Suspension
- (v) Termination of Employment

18.4.3 Any person found responsible for violating the sexual harassment prohibitions in this policy will likely face a 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.

18.4.4 The range of sanctions may be broadened or lessened in the case of serious mitigating circumstances or egregiously offensive behavior. BridgeValley will not deviate from the range of recommended sanctions unless compelling justification exists to do so.

⁸⁵ 106.45(b)(7)(ii)(F).

- 18.5 BridgeValley must provide the written determination to the parties simultaneously.
- 18.6 The determination regarding responsibility becomes final either on the date that BridgeValley 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.⁸⁶
- 18.7 The Title IX Coordinator is responsible for effective implementation of any remedies.⁸⁷

Section 19. Appeals

- 19.1 BridgeValley must offer both parties an appeal from a determination regarding responsibility, and from BridgeValley's dismissal of a formal complaint or any allegations therein, on the following bases:⁸⁸
- 19.1.1 A procedural irregularity that affected the outcome of the matter;⁸⁹
- 19.1.2 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;⁹⁰ and
- 19.1.3 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.⁹¹
- 19.2 As to all appeals, BridgeValley must:⁹²
- 19.2.1 Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;⁹³
- 19.2.2 Ensure that the Appeals Officer 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;⁹⁴
- 19.2.3 Ensure that the Appeals Officer for the appeal complies with the standards set forth in Section 12.3 above;⁹⁵

⁸⁶ 106.45(b)(7)(iii).

⁸⁷ 106.45(b)(7)(iv).

⁸⁸ 106.45(b)(8)(i).

⁸⁹ 106.45(b)(8)(i)(A).

⁹⁰ 106.45(b)(8)(i)(B).

⁹¹ 106.45(b)(8)(i)(C).

⁹² 106.45(b)(8)(iii).

⁹³ 106.45(b)(8)(iii)(A).

⁹⁴ 106.45(b)(8)(iii)(B).

⁹⁵ 106.45(b)(8)(iii)(C).

19.2.4 Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;⁹⁶

19.2.5 Issue a written decision describing the result of the appeal and the rationale for the result;⁹⁷ and

19.2.6 Provide the written decision simultaneously to both parties.⁹⁸

Section 20. Recordkeeping

20.1 BridgeValley must maintain for a period of seven years records of:⁹⁹

20.1.1 Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under Section 17 above, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to BridgeValley's education program or activity;¹⁰⁰

20.1.2 Any appeal and the result therefrom;¹⁰¹

20.1.3 All materials used to train Title IX Coordinators, investigators, and decision-makers. BridgeValley must make these training materials publicly available on its website.¹⁰²

20.2 For each response required under Section 9 through Section 11 above, BridgeValley must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.¹⁰³

20.2.1 In each instance, BridgeValley 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 BridgeValley's education program or activity.¹⁰⁴

20.2.2 If BridgeValley does not provide a complainant with supportive measures, then BridgeValley must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.¹⁰⁵

⁹⁶ 106.45(b)(8)(iii)(D).

⁹⁷ 106.45(b)(8)(iii)(E).

⁹⁸ 106.45(b)(8)(iii)(F).

⁹⁹ 106.45(b)(10)(i).

¹⁰⁰ 106.45(b)(10)(i)(A).

¹⁰¹ 106.45(b)(10)(i)(B).

¹⁰² 106.45(b)(10)(i)(D).

¹⁰³ 106.45(b)(10)(ii).

¹⁰⁴ 106.45(b)(10)(ii).

¹⁰⁵ 106.45(b)(10)(ii).

20.2.3 The documentation of certain bases or measures does not limit BridgeValley in the future from providing additional explanations or detailing additional measures taken.¹⁰⁶

Section 21. Retaliation

21.1 Retaliation is prohibited.¹⁰⁷

21.1.1 Neither BridgeValley nor any 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 or the Title IX regulations, or 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 under the Title IX regulations.¹⁰⁸

21.1.2 Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct, handbook, or policy or procedure 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 or the Title IX regulations, constitutes retaliation.¹⁰⁹

21.1.3 BridgeValley 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 C.F.R. part 99, or as required by law, or to carry out the purposes of 34 C.F.R. part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.¹¹⁰

21.1.4 Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required under Section 7 above.¹¹¹

21.2 Specific circumstances:

21.2.1 The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under Section 21.1 above.¹¹²

21.2.2 Charging an individual with a code of conduct, handbook, or policy or procedure violation for making a materially false statement in bad faith in the course of a

¹⁰⁶ 106.45(b)(10)(ii).

¹⁰⁷ 106.71(a).

¹⁰⁸ 106.71(a).

¹⁰⁹ 106.71(a).

¹¹⁰ 106.71(a).

¹¹¹ 106.71(a).

¹¹² 106.71(b)(1).

grievance proceeding under the Title IX regulations does not constitute retaliation prohibited under Section 21.1 above; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.¹¹³

Section 22. False Reports

BridgeValley 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.

Section 23. Federal Timely Warning Obligations

Victims of sexual harassment should be aware that BridgeValley administrators must issue timely warnings to the BridgeValley community for crimes reported to them that represent a serious or continuing threat 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.

Section 24. Prevention & Awareness Programs

BridgeValley 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 BridgeValley website.

<https://www.bridgevalley.edu/resources-0>

<https://www.bridgevalley.edu/sexual-misconduct>

<https://www.bridgevalley.edu/campus-contacts>

<https://www.bridgevalley.edu/event/2016-10-17-140000/domestic-violence-awareness>

<https://www.bridgevalley.edu/event/2015-10-13-161500/domestic-violence-bystander-training>

Section 25. Implementation of Policy

This policy will be implemented using applicable BridgeValley policies and procedures, and BridgeValley 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 BridgeValley may revise such information within this policy without resubmittal of this policy through the rulemaking process.

¹¹³ 106.71(b)(2).

Section 26. Superseding Provisions

This policy supersedes any conflicting provisions within the BridgeValley Employee Handbook, the BridgeValley Faculty Handbook, or any other BridgeValley policies or procedures. This policy also repeals and supersedes BridgeValley Community and Technical College Board Of Governors Policy A-5 Policy Regarding Sexual Misconduct, Nondiscrimination, Equal Opportunity, And Other Forms Of Harassment.

CURRENT POLICY

BRIDGEVALLEY COMMUNITY AND TECHNICAL COLLEGE BOARD OF GOVERNORS

POLICY A-5

POLICY REGARDING SEXUAL MISCONDUCT, NONDISCRIMINATION, EQUAL OPPORTUNITY, AND OTHER FORMS OF HARASSMENT

Section 1. General

- 1.1. Scope — This rule sets forth the BridgeValley Community and Technical College Board of Governors' Policy regarding sexual harassment.
- 1.2. Authority — W. Va. Code § 18B-1-6, § 133-4; Sexual harassment is prohibited by:
 - The 1980 Equal Employment Opportunity Commission (EEOC) interpretive guidelines on Title VII of the Civil Rights Act of 1964;
 - The Office of Civil Rights policy statement interpreting Title IX of the Educational Amendments of 1972; and
 - The West Virginia Human Rights Act.
- 1.3. Effective Date — July 12, 2013; Revised Effective Date — July 9, 2014.

Section 2. Definitions

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

Likewise, non-consent or lack of consent may also be communicated in a variety of ways both verbal and nonverbal. A verbal "no" (or its verbal or non-verbal equivalent) indicates an unwillingness to participate in sexual activity. Non-consent can also be communicated in a variety of other ways, depending on the circumstances or context. Even in the absence of a verbal "no," physical resistance is not necessary to communicate a lack of consent. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and gauging consent, and you are thus urged to seek consent in verbal form. Talking with sexual partners about desires and limits may seem awkward, but serves as the basis for positive sexual experiences shaped by mutual willingness and respect.
- 2.3. "Consent" requires the response of yes, not the absence of no. Consent requires conversation. The person who initiates sexual activity is responsible for asking for consent. The absence of a clear verbal signal means you do not have consent. Both parties must have unimpaired judgment (examples that may cause impairment include but are not limited to alcohol, drugs,

and mental health conditions). Prior to sexual activity, both parties must disclose personal risk factors such as any known STDs, and both parties must use safer sex practices. Consent means that both partners decide together to have sex. Regardless of your prior sexual history consent is required each time you have sexual activity. Both parties must have a clear and accurate understanding of the intended sexual activity. It is not your partner's job to resist; it is your responsibility to respect his/her boundaries. At any time when consent is withdrawn or not verbally agreed to, the sexual activity must stop. Silence is not consent. You cannot rely on assumptions on what your partner does or does not want. Incapacity of the victim does not constitute consent on the part of the victim. A person is determined incapable of consent when such person is less than sixteen years old; or mentally defective; or mentally incapacitated; or physically helpless. Mentally defective means that the person suffers from a mental disease or defect, which renders such person incapable of appraising the nature of his or her conduct. Mentally incapacitated means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to such person without his or her consent or as a result of any other act committed upon such without his or her consent. Physically helpless means that a person is unconscious or for any reason is physically unable to communicate unwillingness to an act. It is the position of College that a sexual assault also occurs against the victim who willingly takes a controlled or intoxicating substance if the sexual contact occurs after the victim becomes temporarily incapable of appraising or controlling his or her conduct as a result of the controlled or intoxicating substance. A student charged with sexual assault can be prosecuted under West Virginia law AND disciplined in accordance with College policies and regulations. A student found guilty of sexual assault through the campus Student Conduct system may be subject to suspension or expulsion.

- 2.4. "Discrimination" means actions that deprive others of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a Protected Category.
- 2.5. "Domestic Violence/Intimate Partner Violence/Abuse" means the occurrence of any of the following acts/conditions between those in or having previously been in an intimate relationship to each other, including dating, domestic and/or any other intimate relationship.
 - 2.4.1. Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;
 - 2.4.2. Placing another in reasonable apprehension of physical harm;
 - 2.4.3. Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts;
 - 2.4.4. Committing sexual assault, sexual abuse, domestic battery or domestic assault as those terms are defined under West Virginia criminal law;
 - 2.4.5. Holding, confining, detaining or abducting another person against that person's will.
- 2.6. "EEO/Equity/AA/Employee ADA/504 Coordinator" means the Chief Human Resources Officer, who serves as the Equal Employment Opportunity/Equity/Affirmative Action Coordinator and the Americans with Disabilities Act/504 Coordinator for Employees and oversees implementation of The College's Affirmative Action and Equal Opportunity plan,

disability compliance, and The College's policy on discrimination and harassment. The Director of Student Services serves as the Americans with Disabilities Act/504 Coordinator for students.

- 2.7. "Hazing" means acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity on the basis of actual or perceived membership in a Protected Category.
- 2.8. "Hostile Environment" means an environment created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent, or pervasive and objectively offensive so as to interfere with, limit, or deny the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits, or opportunities.
- 2.9. "Incapacitation" means as a state where a person cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent (e.g., to understand the who, what, when, where, why or how of his or her sexual interaction).
- 2.10. "Intimidation" means implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a Protected Category.
- 2.11. "Minor" means a person under the age of 16 years.
- 2.12. "Non-Consensual Sexual Contact" means any intentional Sexual Touching, however slight, with any object, by a person upon another person, that is without consent and/or by force.
- 2.13. "Non-Consensual Sexual Intercourse" means any Sexual Penetration or intercourse (anal, oral or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force.
- 2.14. "Protected Category" means a category under which an individual falls or is perceived to fall that is protected under federal, state, or local anti-discrimination laws, including race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age, marital status, veteran or military status, disability, or genetic information.
- 2.15. "Retaliation" means any adverse employment action taken against a person who complained about harassment, supported a complainant involving harassment, or who participated in the investigation of a claim of harassment because of that person's participation in filing the complaint of harassment, supporting a complainant involving harassment, or for participating in the investigation of a claim of harassment.
- 2.16. "Sexual Exploitation" means a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse, or Non-Consensual Sexual Contact. The term includes, but is not limited to, the following situations:
 - 2.16.1. Sexual voyeurism, such as watching a person undressing, using the bathroom or engaging in sexual acts without the consent of the person observed;
 - 2.16.2. Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent, such as allowing another person to hide in a closet and

observe sexual activity, or disseminating sexual pictures without the photographed person's consent;

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

Section 3. General Provisions

- 3.1. The College is committed to promoting the goals of fairness and equity in all aspects of the educational enterprise.
- 3.2. This policy applies to behaviors that take place on campus, at College sponsored events, and may also apply off-campus and to actions online when the EEO/Equity/AA/ADA/504 Coordinator or the Title IX Coordinator determines that the off-campus conduct affects a substantial College interest. A substantial College interest includes, but is not limited to, the following:
 - 3.1.1 Any action that constitutes a criminal offense as defined by federal or state law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality where College is located;
 - 3.1.2 Any situation where it appears that the accused individual may present a danger or threat to the health or safety of him/herself or others;
 - 3.1.3 Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder;

- 3.1.4 Any situation that is detrimental to the educational interests of College; and
 - 3.1.5 These provisions of this rule apply equally to and against vendors, contractors, suppliers and any other outsiders who may interact with College or its employees or students.
- 3.3. Any online postings or other electronic communication, including cyber-bullying, cyber stalking, cyber-harassment, etc. occurring within College's control (e.g. College networks, websites or between College email accounts). Any online postings or other electronic communication, including cyber-bullying, cyber stalking, cyber-harassment, etc. occurring outside of College's immediate jurisdiction will be investigated when those online behaviors may have the effect of creating a Hostile Environment.
- 3.4. Inquiries about this policy may be made internally to either the Title IX/ EEO/ Employee ADA Coordinator (Chief Human Resources Officer, Office 302, 304-205-6606) or the Student ADA Coordinator (Director of Student Services, Office 012, 304-205-6710)
- 3.5. All new students, newly hired employees and existing employees will be trained in primary prevention and awareness programs relating to sexual misconduct, domestic violence and related offenses. At a minimum, that training will inform on the nature of prohibited conduct, the definitions of various prohibited behaviors, the definition of "consent" as applied by the institution, safe and positive options for bystander intervention in risky situations, means of recognizing signs of domestic violence and abusive behavior and on-going prevention and awareness of related issues. In addition, that training will inform attendees of the relevant provisions of this policy for purposes of recognizing and reporting instances of prohibited conduct.
- 3.6. Inquiries may be made externally to the Office for Civil Rights, at <http://www.ed.gov/ocr>.

Section 4. College's Affirmative Action Manual

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

Section 5. Nondiscrimination

- 5.1. College will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age, marital status, veteran or military status, disability, or genetic information.
- 5.2. This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the College community, guest or visitor who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the College community on the basis of their actual or perceived membership in a Protected Category is in violation of this policy on nondiscrimination.

Section 6. Accommodation of Disabilities

- 6.1. College is committed to compliance with the Americans With Disabilities Act of 1990 (“ADA”) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.
- 6.2. The EEO/Equity/AA/ADA/504 Coordinator is responsible for coordinating efforts to comply with the disability laws set forth in Section 6.1, including investigation of any employee or student complaint alleging noncompliance.
- 6.3. Students with Disabilities
 - 6.3.1. Pursuant to the ADA, College will provide reasonable accommodations and support to all students who have a qualifying disability to ensure equal access to the programs and activities of College.
 - 6.3.2. All accommodations are made on a case-by-case basis by the ADA Coordinator. Students requesting any accommodation should contact the appropriate Dean, who will review documentation provided by the student and in consultation with the student and other appropriate resources, determine which accommodation, if any, is appropriate to the student’s particular needs and programs. Accommodations for student examinations must be made pursuant to College’s policy on accommodations for examinations.
- 6.4. Employees with Disabilities
 - 6.4.1. Pursuant to the ADA, College will provide reasonable accommodations to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.
 - 6.4.2. An employee with a disability is responsible for requesting an accommodation in writing from his or her supervisor, who will consult with the individual and the EEO/Equity/AA/ADA/504 Coordinator to identify which essential functions are affected by the employee’s disability and what reasonable accommodations could enable the employee to perform those duties.
 - 6.4.3. Employees requesting accommodation may be required to provide medical certification from the employee’s health care provider that includes: (1) identification of the health care provider; (2) the health care provider’s diagnosis of the disabling condition; (3) specific limitations and/or suggested restrictions and their relation to the disability; and (4) suggested accommodations.

Section 7. Discriminatory Harassment

7.1. College is committed to providing a work and educational environment free from discriminatory harassment. This harassment policy is not meant to inhibit or to prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters.

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

7.2.1. Discriminatory and Bias-Related Harassment

- (i) Harassment constitutes a form of discrimination that is prohibited by law. This policy explicitly prohibits any form of harassment on the basis of actual or perceived membership in a Protected Category, by any member or group of the College community or any outsider to the College community who interacts with the College community, which creates a Hostile Environment, both objectively and subjectively. Merely offensive conduct and/or harassment of a generic nature not on the basis of an actual or perceived membership in a Protected Category is not prohibited by this policy, and should be addressed with civil confrontation or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, contact the College Office of Human Resources. Harassment that does not rise to the level of creating a Hostile Environment is still a concern to College and should be reported so that appropriate intervention and remedies can be implemented, if needed.
- (ii) College will not tolerate discriminatory harassment against any employee, student, visitor, or guest on the basis of his or her actual or perceived membership in a Protected Category.

7.2.2. Sexual Harassment

Sexual Harassment, which applies to employer and employees and students, is a form of sex/gender discrimination, is an unlawful discriminatory practice, and is a violation of this policy.

Section 8. Additional Misconduct Offenses

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

8.2. Intimidation;

8.3. Hazing;

8.4. Bullying;

8.5. Domestic Violence/Intimate Partner Violence/Abuse;

8.6. Stalking; and

- 8.7. Violating any other College policies or procedures, when such violation is motivated by the actual or perceived membership of the victim in a Protected Category.

Section 9. Consensual Relationships

- 9.1. There are inherent risks in any romantic or intimate relationship between individuals in unequal positions. Thus, except as otherwise provided in Section 9.2, any romantic or intimate relationships in which power differentials are inherent are prohibited, which include, but are not limited to, the following:
 - 9.1.1. relationships between students or applicants for admission and administrators, faculty, preceptors, standardized patients, or any College employee where a direct power differential exists between the student or applicant for admission and the employee;
 - 9.1.2. relationships between a College employee holding a direct or indirect supervisory and/or evaluative role over the other person in the relationship; or
 - 9.1.3. any other romantic or intimate relationship between students or applicants for admission and employees or between employees where any employment-related power differential exists between the persons in the relationship.
- 9.2. Notwithstanding the prohibitions in Section 9.1, any romantic or intimate relationship prohibited in Section 9.1 that exists prior to the creation of a power differential between the individuals involved in the romantic or intimate relationship shall not violate this policy if (i) the individuals in the relationship report the existence of the relationship as required in Section 9.4 before the power differential is created and (ii) the individuals consent to the removal of any potential power differential that could exist, which may require appropriate administrative action, including but not limited to, shifting or otherwise relocating an employee within a separate department or reporting capacity from the other individual involved in the relationship or the shifting of grading or other decision-making responsibilities of a faculty member which affect a particular student in the case of a pre-existing relationship with that student.
- 9.3. Issues may also arise in the educational setting or workplace from romantic or intimate relationships between students or applicants for admission and College employees or between College employees where a direct or indirect supervisory and/or evaluative role or other power differential does not exist between the persons in the relationship. Thus, while not prohibited, such relationships are highly discouraged.
- 9.4. If a relationship develops that falls under Sections 9.2 or 9.3, the student, applicant for admission, or employee involved in the relationship must timely report the existence and termination, if any, of such relationship as follows: applicants for admission and students report to the Vice President for Academic Affairs and Student Services, employees report to the Chief Human Resources Officer.
- 9.5. Once a relationship is reported under Section 9.4, the Vice President or Chief Human Resources Officer, respectively, shall inform the persons involved in the relationship of College's standards concerning consensual relationships, may set parameters while the persons are on campus, and make take other steps as appropriate.

- 9.6. Persons who engage in any relationship prohibited by Section 9.1 or who engage in any relationship listed in Sections 9.2 and 9.3 and who fail to timely report shall be subject to administrative action, up to and including termination of employment or dismissal from College, as applicable.

Section 10. Sexual Misconduct

- 10.1. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. The following acts of sexual misconduct are prohibited:

- 10.1.1. Sexual Harassment, as set forth in Section 7.2.2 of this policy;

- 10.1.2. Non-Consensual Sexual Intercourse;

- 10.1.3. Non-Consensual Sexual Contact; and

- 10.1.4. Sexual Exploitation.

- 10.2. Consent

- 10.2.1. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the sexual activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual activity.

- 10.2.2. A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the individual initiating or furthering the sexual misconduct was intoxicated and, therefore, did not realize the incapacity of the other.

- 10.2.3. This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the taking of incapacitating drugs.

- 10.2.4. Consent to some sexual contact, such as kissing or fondling, cannot be presumed to be consent for other sexual activity, such as intercourse. A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.

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

- 10.3. Filing of Complaints

- 10.3.1. To file a complaint of sexual misconduct or other violation of this policy falling

under Title IX, an employee, student, or applicant may complete a Sexual Misconduct Complaint Form. Forms may be obtained from the Office of Human Resources.

- 10.3.2. The College will ensure that any person designated to conduct an investigation into allegations raised under this policy is fully and adequately trained in the conduct of such investigations, the dynamics of domestic and sexual violence and other matters significant to an understanding of the issues underlying the investigation. The College will also ensure that the conduct of such investigations is done in such a manner as to protect the safety of victims and to promote accountability.
- 10.3.3. Completed Sexual Misconduct 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 Misconduct Complaint Form shall be filed with the President, who will immediately designate a person to begin an investigation consistent with this policy.
- 10.3.4. The Title IX Coordinator shall arrange for a prompt, thorough, reliable, and impartial investigation of all complaints. Interim corrective measures may be taken during the investigation process. Parties will be informed, on an ongoing basis, of the status of the investigation. Parties will also be informed of their right to have others present during any part of the institutional disciplinary process.
- 10.3.5. At the victim's discretion, College will employ measures designed to ensure the confidentiality of the fact, contents and findings of an investigation. Such measures may include, among other things, a coding system for complaints so as to hide any personally identifiable information on victims and internal controls on access to information so as to ensure the dissemination of such information on a need-to-know basis.
- 10.3.6. The standard of evidence to be applied in the investigation of a complaint is that of a preponderance of the evidence. In other words, to substantiate a complaint filed under this rule the evidence collected and considered during the investigation must demonstrate that it is more likely than not that the complained of conduct occurred.
- 10.3.7. Upon completion of the investigation, the Investigator(s) shall provide a written report of investigation, which will set forth the final determination of the complaint on the basis of a preponderance of the evidence. Parties will be notified simultaneously and in writing of the disposition of the complaint and the process for appeal.

10.4. Receipt of Notice

Regardless of whether a complaint is filed under Section 10.3, if an employee of College receives notice concerning alleged sexual misconduct or other violation of this policy falling under Title IX, then that employee shall report to the Title IX Coordinator that much of the information contained in the notice as that employee is permitted to report under applicable confidentiality laws or that has not been requested by the victim to be specifically withheld, unless an immediate threat of harm exists to self or others. Upon receipt of the notice, the Title IX Coordinator, or designee, shall investigate the information contained in the notice, determine what sexual misconduct or other violation of this policy occurred, if any, and respond appropriately. The Title IX Coordinator's response may vary, depending on the information contained in the particular notice, including initiation of the formal investigation process set forth in Sections 10.3.3 and 10.3.4 above.

10.5. Appeal

- 10.5.1. Any party who wishes to appeal the recommendations contained in the report of investigation, as they relate to sexual misconduct or other violations of this policy falling under Title IX, including the sanctions imposed by the investigators, may do so by submitting that party's appeal in writing to the Chief Human Resources Officer (hereinafter "Appeals Officer"). Signed appeals should be hand-delivered or emailed in pdf format to the Appeals Officer within five (5) business days of the issuance of the final report of investigation. The Appeals Officer shall share a copy of the written appeal with the other party, who will be given an opportunity to respond to the appeal. All responses to the appeal must be submitted in writing to the Appeals Officer within five (5) business days of receiving the copy of the appeal from the Appeals Officer.
- 10.5.2. Recommendations not related to sexual misconduct or other violations of this policy falling under Title IX shall be addressed through applicable College policies and procedures, including handbooks, concerning employee and student conduct, as set forth in Section 16.
- 10.5.3. All appeals and responses are then reviewed by the Appeals Officer to determine if the appeal request meets the limited grounds and is timely. The original recommendations and sanctions will stand if the appeal is not timely or does not fall within the grounds for appeal set forth below, and the decision is final. The original recommendations and sanctions will also remain in effect pending the outcome of any appeal. 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:
 - 10.5.3.1. A procedural or substantive error occurred that significantly impacted the outcome of the investigation, such as substantiated bias or material deviation from established procedures;
 - 10.5.3.2. To consider new evidence, unavailable during the original investigation, that could substantially impact the original recommendations or sanctions (a detailed description of this new evidence and its potential impact must be included); or
 - 10.5.3.3. The sanctions imposed are substantially disproportionate to the severity of the violation.
- 10.5.4. Within ten (10) business days of receiving the response(s) to the appeal(s), if any, the Appeals Officer will provide to both parties a Memorandum of Decision.
- 10.5.5. If the Appeals Officer determines that a material procedural or substantive error occurred, the Appeals Officer may return the matter to the original investigators with instructions to reconvene to cure the error. The results of a reconvened investigation cannot be appealed. In rare cases where the procedural or substantive error cannot be cured by the original investigators, as in cases of substantiated bias, the Appeals Officer may order a new investigation on the complaint with new investigators. The results of a new investigation can be appealed, once, on the applicable grounds for appeals.

- 10.5.6. If the Appeals Officer determines that new evidence should be considered, the Appeals Officer will return the matter to the original investigators to reconsider in light of the new evidence only. The reconsideration of the original investigators is not appealable.
- 10.5.7. If the Appeals Officer determines that the sanctions imposed are disproportionate to the severity of the violation, the Appeals Officer will return the matter to the investigators, who will modify the sanctions according to the directions of the Appeals Officer. The modified decision of the investigators is final.
- 10.5.8. Once an appeal is completed, the parties will be notified, simultaneously, of the final determination and any changes that result.

Section 11. Reporting of Violations

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

- 11.1.1 Reports of discrimination, harassment, retaliation, or other violations of this policy should be made to the Chief Human Resources Officer;
- 11.1.2 Reports of sexual misconduct or other violations of this policy falling under Title IX should be made to the Title IX Coordinator;
- 11.1.3 Reports of violations of this policy involving the EEO/Equity/AA/ADA/504 Coordinator or the Title IX Coordinator should be made to the President;
- 11.1.4 Reports of violations of this policy involving the President of College should be made to the Chief Human Resources Officer and;
- 11.1.5 Reports of violations of this policy involving the Chair of the College Board of Governors should be made to the West Virginia Higher Education Policy Commission.

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

11.3. Upon receiving a report of an alleged violation of this policy, the appropriate administrator listed in Section 11.1 shall promptly investigate the alleged violation contained in the report.

11.4. Although reports of violations of this policy should be made promptly, there is no time limitation on the filing of reports, as long as the accused individual remains subject to College's jurisdiction. Individuals responsible for receiving and investigating complaints made under this rule shall ensure victims are notified of their option to seek—or not to seek—assistance from law enforcement and/or campus authorities and the potential consequences of any such election. In addition, victims shall be provided with contact information for the local domestic violence shelter (see below) and the magistrate court for purposes of determining whether to seek civil relief from the complained-of conduct.

YWCA Resolve
1114 Quarrier Street
Charleston, WV 25301
(304) 340-3573
1-800-681-8663

Women's Resource Center
PO Box 1476
Beckley, WV 25802
(304) 255-2559
1-888-825-7836

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

Section 12. Retaliation

Retaliation against an individual for alleging harassment, supporting a complainant or for participating in the investigation of information relevant to a claim of harassment is a serious violation of this policy, will be treated as another possible instance of harassment or discrimination, and should be reported immediately as set forth in Section 11.1. College will take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Section 13. Remedial Action

College will implement initial remedial and responsive actions upon notice of alleged harassment, retaliation, or discrimination, and will take additional prompt remedial and/or disciplinary action with respect to any member of the College community, guest, or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. The nature of the remedial action will necessarily depend on the nature of the conduct, the results of the investigation and the totality of the circumstances. That remedial action, however, may encompass actions as minor as a verbal reprimand and as significant as termination of employment or dismissal from the institution. Deliberately false and/or malicious accusations of harassment, as opposed to complaints which, even if erroneous, are made in good faith, are just as serious an offense as harassment and will be subject to appropriate disciplinary action.

Section 14. Confidentiality of Reported Information

Individuals wishing to report violations of this policy must be aware that College 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 College 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 College's website, at <http://www.Bridgevalley.edu>, under the "Human Resources" link or the "Students" link Title IX.

Section 15. Federal Timely Warning Obligations

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

Section 16. Violations of Policy

- 16.1. Any employee or student who is found to have violated this policy will be subject to administrative action, up to and including termination of employment or dismissal from College, as applicable.
- 16.2. Except as provided in Section 10 of this policy concerning sexual misconduct or other violations of this policy falling under Title IX, violations of this policy shall be addressed as follows:
 - 16.2.1. Violations by students shall be addressed through College policies and procedures on student conduct.
 - 16.2.2. Violations by employees shall be addressed through the West Virginia Higher Education Policy Commission rules and procedures and the College policies and procedures on employee conduct, including applicable faculty and staff handbooks.

Section 17. Implementation of Policy

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