

**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.