

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

Policy No. H - 4

**TITLE IX, SEX-BASED HARASSMENT, AND DISCRIMINATION
POLICY**

General:

- 1.1 Scope: This policy defines sex-based harassment, Title IX, and discrimination, and provides guidelines for filing complaints and explains what action will be taken against those found to have engaged in sex-based harassment.

- 1.2 Statutory and other References: W. Va. Code §18B-1-6. A policy statement issued by the Office for Civil Rights of the U. S. Department of Education on the interpretation of the following: Title IX of the Education Amendments of 1972 and Equal Employment Opportunity Commission (EEOC) interpretative guidelines issued in March, 1980; and subsequent federal court decisions on the subject of sex-based harassment. 34 C.F.R. § 106.

- 1.3 Passage Date: 6/20/2024

- 1.4 Effective Date: 8/01/2024

Policy:

- 2.1 It is the policy of Mountwest Community & Technical College to maintain a work and educational environment free from all forms of sex-based harassment of any employee, applicant for employment, or student. Sex-based harassment in any manner or form is expressly prohibited. It is the responsibility of the College to provide educational opportunities to create this free environment and to take immediate and appropriate corrective action when sex-based harassment is reported or becomes known. Supervisors at every level are of primary importance in the implementation and enforcement of this rule.

- 2.2 Mountwest Community & Technical College provides equal opportunities to all prospective and current members of the student body, faculty, and staff on the basis of individual qualifications and merit without regard to race, color, age, sex, gender, sexual orientation, religion, disability, national origin, or protected veteran status.

This statement of nondiscrimination also applies to all programs and activities covered by Title IX, which prohibits sex discrimination in higher education. Mountwest Community & Technical College strives to provide educational opportunities for minorities and women in the undergraduate student body that reflect the interest, individual merit, and availability of such individuals. The college ensures equality of opportunity and treatment in all areas related to student admissions, instructions, employment, placement accommodations, financial assistance programs, and other services.

- 2.3 Mountwest does not discriminate on the basis of sex in the education program or activity that it operates. Mountwest, as a recipient of federal financial assistance, is required by Title IX of the Education Amendments of 1972 (“Title IX”) and 34 C.F.R. §106 (“Title IX Regulations”) not to discriminate in such a manner. The requirement to not discriminate in Mountwest’s education programs or activities extends to admission and employment, and any inquiries about the

application of Title IX and the Title IX regulations of MCTC can be referred to Mountwest's Title IX Coordinators, or the Assistant Secretary, Office of Civil Rights, U.S. Department of Education.

- 2.4 Mountwest Community & Technical College also neither affiliates with nor grants recognition to any individual, group, or organization having policies that discriminate on the basis of race, color, age, sex, gender, sexual orientation, religion, disability, national origin, or protected veteran status.
- 2.5 Mountwest has adopted Title IX grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator. These grievance procedures address complaints of sex-based harassment that involve a student party.

Applicability

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

Definitions

- 4.1 Actual knowledge: means notice of sex-based harassment or allegations of sex-based harassment to Mountwest's Title IX Coordinator or any official of Mountwest who has authority to institute corrective measures on behalf of Mountwest. As used in this policy, "official of Mountwest who has authority to institute corrective measures on behalf of Mountwest" means the President and each Vice President of Mountwest. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of Mountwest with actual knowledge is the respondent. The mere ability or obligation to report sex-based harassment or to inform a student about how to report sex-based harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of Mountwest. "Notice" as used in this paragraph includes, but is not limited to, a report of sex-based harassment to the Title IX Coordinator as described in the Title IX regulations at § 106.8(a).
- 4.2 "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sex-based harassment.
 - 4.2.1 The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that Mountwest investigate and make a determination about alleged discrimination under Title IX:
 - A "complainant," which includes:
 - a student or employee of Mountwest who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
 - a person other than a student or employee of Mountwest who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time

when that individual was participating or attempting to participate in Mountwest's education program or activity;

- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- Mountwest Title IX Coordinator.

4.2.2 With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following person have a right to make a complaint:

- Any student or employee of Mountwest or
- Any person other than a student or employee who was participating or attempting to participate in Mountwest's education program or activity at the time of the alleged sex discrimination.

4.3 "Consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

4.4 "Education program or activity" means locations, events, or circumstances over which Mountwest exercised substantial control over both the respondent and the context in which the sex-based harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Mountwest.

4.5 "Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sex-based harassment against a respondent and requesting that Mountwest investigate the allegation of sex-based harassment. At the time of filing a formal complaint with Mountwest, a complainant must be participating in or attempting to participate in the education program or activity of Mountwest. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by e-mail, by using the contact information listed for the Title IX Coordinator, and by any additional method designated by Mountwest. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by e-mail) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under the Title IX regulations, part § 106, or under § 106.45, and must comply with the requirements of the Title IX regulations, part § 106, including § 106.45(b)(1)(iii).

4.6 "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sex-based harassment.

4.7 "Sex-based harassment" is a form of sex discrimination and means sex-based harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:

4.7.1 (1) Quid pro quo harassment. An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

4.7.2 (2) Hostile environment harassment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive

that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the recipient's education program or activity; or

4.7.3 (3) Specific offenses.

- Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
- Dating violence meaning violence committed by a person: Who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (1)The length of the relationship;
 - (2)The type of relationship; and
 - (3)The frequency of interaction between the persons involved in the relationship;

4.7.4 Domestic violence meaning felony or misdemeanor crimes committed by a person who: (A)Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim; (B)Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C)Shares a child in common with the victim; or (D)Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or

4.7.5 Stalking meaning 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.

"Supportive Measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such

measures are designed to restore or preserve equal access to Mountwest's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Mountwest's educational environment, or deter sex-based harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Mountwest must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of Mountwest to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Title IX Coordinator

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

Katie Bentley
Mountwest Community & Technical College
Director – Advising Services
One Mountwest Way
Huntington, West Virginia 25701 Phone:
304-710-3402

James McDougle
Mountwest Community & Technical College Vice
President ,Student Services, Suite 101V
One Mountwest Way
Huntington, West Virginia 25701 Phone:
304-710-3474

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

Publication Requirements

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

Adoption of Grievance Procedures & Protection of Privacy

- 7.1 Mountwest shall adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee or others attempting to participate in its education program, complaints alleging any action that would be prohibited by the Title IX regulations and a grievance process that complies with the Title IX regulations, § 106.45 for formal complaints as defined in this policy.
- 7.2 Mountwest shall provide to its applicants for admission and employment, students, and

employees notice of Mountwest's grievance procedures and grievance process, including the following:

- 7.2.1 How to report or file a complaint of sex discrimination,
- 7.2.2 How to report or file a formal complaint of sex-based harassment, and
- 7.2.3 How Mountwest will respond
- 7.2.4 Mountwest will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with family members, confidential resources, or advisor; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

Reporting of Sex Discrimination Generally

- 8.1 Any person may report sex discrimination, including sex-based harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.

Response to Sex-based Harassment/Discrimination

- 9.1 Should Mountwest have actual knowledge of sex-based harassment in an education program or activity of Mountwest against a person in the United States, Mountwest shall respond in a manner that is not deliberately indifferent. Mountwest would be deliberately indifferent only if its response to sex-based harassment is clearly unreasonable in light of the known circumstances.
- 9.2 Mountwest's response must treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process that complies with the Title IX regulations, § 106.45, before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.
- 9.3 The Title IX Coordinator shall promptly contact the complainant to:
 - 9.3.1 Discuss the availability of supportive measures,
 - 9.3.2 Consider the complainant's wishes with respect to supportive measures,
 - 9.3.3 Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
 - 9.3.4 Explain to the complainant the process for filing a formal complaint.
- 9.4 The U.S. Department of Education may not deem Mountwest to have satisfied Mountwest's duty to not be deliberately indifferent under the Title IX regulations, part 106, based on Mountwest's restrictions of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

Response to a Formal Complaint

- 10.1 In response to a formal complaint, Mountwest shall follow a grievance process that complies with the Title IX regulations, § 106.45.29.

- 10.2 With or without a formal complaint, Mountwest must comply with Section 9 above.
- 10.3 The Assistant Secretary, Office of Civil Rights, U.S. Department of Education, will not deem Mountwest's determination regarding responsibility to be evidence of deliberate indifference by Mountwest, or otherwise evidence of discrimination under Title IX by Mountwest, solely because the Assistant Secretary would have reached a different determination based on an independent weighing of the evidence.
- 10.4 **Informal Resolution:** In lieu of resolving a complaint through the Title IX grievance procedures outlined below, the parties may instead elect to participate in an informal resolution process. Mountwest does not offer informal resolution to resolve a complaint that includes allegations that an employee engaged in sex-based harassment if such process would conflict with federal, state, or local law. The college will inform the parties in writing of any informal resolution process it offers and determines is appropriate, if any. Before initiation of an informal resolution process, the college will explain in writing to all parties the allegation, requirements of the informal process, that any party has the right to withdraw from the informal resolution process and initiative or resume grievance procedures at any time before resolution, that if a resolution is resolved, they cannot initiate or resume grievance from the same allegations, any potential terms requested or offered in an informal resolution agreement, and what information Mountwest will maintain and whether /how the information could be disclosed.

Emergency Removal and Administrative Leave

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

Grievance Process for Formal Complaints of Sex-Based Harassment

Mountwest Will:

- Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sex-based harassment has been made against the respondent, and by following its grievance process set forth in this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to Mountwest's education program or activity. Such remedies may include the same individuals services described in the definition of "supportive measures" above; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- 12.1 Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
 - 12.2 Require that any individual designated by Mountwest as a Title IX Coordinator, investigator, decision-maker, or any person designated by Mountwest to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents

generally or an individual complainant or respondent.

- 12.2.1 Mountwest shall ensure that the Title IX Coordinators, investigators, and decision-makers receive training on the definition of sex-based harassment set forth in Section 4.7 above, the scope of Mountwest's education program or activity, how to conduct an investigation and grievance process including hearings and appeals, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- 12.2.2 Mountwest shall ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in Section 13.5.
- 12.2.3 Mountwest must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence as set forth in the Title IX regulations, § 106.45(b)(5)(vii).
- 12.2.4 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 sex-based harassment.
- 12.3 Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- 12.4 Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- 12.5 Describe the range of possible disciplinary sanctions that Mountwest may implement following any determination of responsibility.
- 12.6 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 sex-based harassment.
- 12.7 Include the procedures and permissible bases for the complainant and respondent to appeal.
- 12.8 Describe the range of supportive measures available to complainants and respondents
- 12.9 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. The following types of evidence are impermissible (except by Mountwest to determine whether one of the exceptions listed below applies; will not be disclosed and will not otherwise be used) regardless of whether they are relevant:
 - 12.9.1 Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
 - 12.9.2 A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless [ABC School] obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
 - 12.9.3 Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the

respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

Sex-based harassment

13.1 Sex-based harassment is prohibited.

13.2 Consent

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

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

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

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

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

13.3 Receipt of Actual Notice of Allegations and Complaints

13.3.1 Receipt of Actual Notice of Allegations.

Receipt of Actual Notice of Allegations. Mountwest receives actual notice when an official of Mountwest who has authority to institute corrective measures on behalf of Mountwest, which is the President and each Vice President, receives notice of a complaint. The complaint should include, at a minimum, the following: the name of the person impacted by the alleged incident, the name of the accused individual, other individuals involved in the alleged incident, as well as relevant facts, including the date, time and location. Upon receipt of the notice, the Title IX Coordinator shall investigate the information contained in the notice, determine what sex-based harassment or other violation of this policy occurred, if any, and respond appropriately.

(i) Once Mountwest is in receipt of actual knowledge of sex-based harassment in a Mountwest education program or activity against a person in the United States,

Mountwest will respond promptly in a manner that is not deliberately indifferent.

- (ii) Mountwest's response treats complainants and respondents equitably by offering supportive measures and by following a grievance process that complies with this policy before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.
- (iii) The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

13.3.2 Filing of Complaints

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

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

13.3.4 Timeframe for Resolution

- (i) Mountwest aims to bring all allegations to a prompt and equitable resolution. Mountwest has established the following timeframes for the major stages of the grievance procedures:
 - a. Evaluation – 5 business days
 - b. Investigation – Up to 15 business days
 - c. Determination – 5 business days
 - d. Appeal – See appeal steps below in section 13.8.

Mountwest has also established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay: Written notification of all parties within 5 business days of identifying the need for delay. Mountwest's administrative investigation and resolution process is entirely separate from a criminal investigation or proceeding undertaken by law enforcement. Mountwest's resolution will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. However, Mountwest may undertake a short delay (several days to a few weeks, but typically no longer than 10

calendar days) in its investigation or resolution process, to comply with a law enforcement request for cooperation (e.g., to allow for criminal evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated.

- (ii) Mountwest will also allow for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

13.4 Formal Complaint Investigation Processes

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

- (i) If the reporting party or the Title IX Coordinator, based upon an alleged policy violation, wishes to pursue a formal resolution, then the Title IX Coordinator shall appoint trained Title IX investigators (typically using a team of two investigators), to conduct a prompt, fair, thorough, reliable, and impartial investigation.
 - a. Mountwest is committed to ensuring that its resolution processes are free from actual or perceived bias or conflicts of interest that would materially impact the outcome. Any party who feels that there is actual or perceived bias or conflict of interest that would materially impact the outcome may submit a written petition for the person's removal from the process. The petition shall include specifics as to the actual or perceived bias or conflict of interest, as to why the petitioner believes the bias or conflict could materially impact the outcome. Such petitions should be made to the Title IX Coordinator, or, in the event that the potential conflict or bias involves the Title IX Coordinator, to the Vice President of that Title IX Coordinator, or the President if the Title IX Coordinator is a Vice President.
 - b. *Notice of allegations.* Upon receipt of a formal complaint, Mountwest will provide the following written notice to the parties who are known: Notice of Mountwest's Title IX grievance process and informal resolution process; Notice of the allegations of sex-based harassment potentially constituting sex-based harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sex-based harassment, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process, and information regarding the prohibition of retaliation. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice must inform the parties of any provision in Mountwest's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. Additionally, Mountwest's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance procedures.
 - c. If, in the course of an investigation, Mountwest decides to investigate allegations about the complainant or respondent that are not included in the notice, Mountwest must provide notice of the additional allegations to the

parties whose identities are known, 106.45(2).

- d. Mountwest will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sex-based harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to Mountwest's education program or activity. Such remedies may include the same individualized services described as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- e. The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of the evidence. The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
- f. Mountwest will include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- g. Mountwest requires that any individual designated by Mountwest as a Title IX Coordinator, investigator, or decision-maker, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- h. Mountwest's process requires an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness
- i. *Dismissal of a formal complaint.*
 1. Mountwest may dismiss a complaint of sex discrimination if:
 - Mountwest is unable to identify the respondent after taking reasonable steps to do so;
 - The respondent is not participating in [ABC School's] education program or activity and is not employed by Mountwest;
 - The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and Mountwest determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
 - Mountwest determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, Mountwest will make reasonable efforts to clarify the allegations with the complainant.
 2. Upon dismissal, Mountwest will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then Mountwest will also notify the

respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

3. Appeal of Dismissal: Mountwest will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal. If the dismissal occurs after the respondent has been notified of the allegations, then Mountwest will also notify the respondent of the ability to appeal. Dismissals may be appeals under the same bases listed in Section 13.9.

- If the dismissal is appeals, Mountwest will:
 - Notify the parties of any appeal, including notice of the allegations, if not previously provided;
 - Implement appeal procedures equally to all parties;
 - Ensure the decisionmaker of the appeal did not take part in an investigation of the allegations or dismissal of the complaint
 - Ensure the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
 - Provide parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
 - Notify the parties of the result of the appeal and rationale.

4. When a complaint is dismissed, Mountwest, will, at a minimum, offer supportive measures to the complainant as appropriate, ensure, if the respondent has been notified of the allegations, offered supportive measures, and take prompt and effective steps as appropriate, by the Title IX Coordinator, to ensure that sex discrimination does not continue or recur.

j.

- k. *Consolidation of formal complaints.* Mountwest may consolidate formal complaints as to allegations of sex-based harassment or sex discrimination 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 sex-based harassment or discrimination arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular “party,” “complainant,” or “respondent” include the plural, as applicable. Mountwest may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by Mountwest; or specific circumstances prevent Mountwest from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Upon a dismissal required or permitted, Mountwest must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

- l. Mountwest will ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Mountwest and not on the parties provided that Mountwest cannot access,

consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Mountwest obtains that party's voluntary, written consent to do so for a grievance process.

Mountwest will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. Mountwest will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized

m. Mountwest will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

n. Mountwest will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

The Title IX Coordinator, Title IX Investigators, Decision Makers, Appeals Officer and other implementing this policy will receive training on the definition of sex-based harassment, the scope of Mountwest's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Mountwest must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. Mountwest also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and appeals officers, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sex-based harassment;

o. The investigators shall:

1. Determine the identity and contact information of the reporting party;
2. Initiate and, on an ongoing basis throughout the investigation, monitor and modify, as needed, any necessary remedial actions;
3. Identify the exact policies allegedly violated;
4. Conduct an immediate initial inquiry to determine if there is reasonable cause to charge the responding party and what policy violations should be alleged as part of the charge; if there is insufficient evidence to support reasonable cause, the report should be closed with no further action;
5. Meet with the reporting party to finalize their statement;
6. Prepare the notice of charges on the basis of the initial inquiry;
7. Provide the person impacted and the accused individual with notice of investigation;
8. Commence a prompt, fair, thorough, reliable and impartial investigation

by developing a strategic investigation plan, including a witness list evidence list, intended timeframe, and order of interviews for all witnesses and the responding party; both the person impacted and the accused individual shall have the equal opportunity to provide witnesses, including fact and expert witnesses and other inculpatory and exculpatory evidence to the investigators during the investigation;

9. Provide regular updates to the person impacted and the accused individual, as appropriate, throughout the investigation;
 10. Complete the investigation promptly; and
 11. Make a finding based on a preponderance of the evidence (whether a policy violation is more likely than not).
- (ii) Mountwest will provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, Mountwest may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
- (iii) Both the reporting party and the responding party will have the opportunity to provide witnesses and evidence to the investigators during the investigation. If at any point during the investigation it is determined there is no reasonable cause to believe that this policy has been violated, the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.
- (iv) Both the person impacted and the accused individual will have the opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which Mountwest does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, Mountwest must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. Mountwest must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
- (v) Mountwest shall create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.
- (vi) Mountwest may, depending upon the circumstances, choose to hold parties who participate in the investigation immune from disciplinary charges for minor violations that are discovered during the course of the investigation and related to the incident(s) being investigated.

13.5 Hearings

13.5.1 Mountwest's grievance process provides for a live hearing. At the live hearing, the decision-makers shall permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

- 13.5.2 At the request of either party, Mountwest must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-makers must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- 13.5.3 If a party does not have an advisor present at the live hearing, Mountwest must provide without fee or charge to that party, an advisor of Mountwest's choice to conduct cross-examination on behalf of that party.
- 13.5.4 Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- 13.5.5 If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- 13.5.6 Live hearings may be conducted with all parties physically present in the same geographic location or, at Mountwest's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- 13.5.7 Mountwest will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

13.6 Determination Regarding Responsibility

- 13.6.1 The decision-makers shall issue a written determination regarding responsibility. To reach this determination, the decision-makers will apply the preponderance of the evidence standard. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the standard of evidence, the decisionmaker will not determine that sex discrimination occurred. The written determination will include:
- (i) A description of the alleged sex-based harassment and determination of whether sex discrimination occurred under Title IX, and its rationale.
 - (ii) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - (iii) Findings of fact supporting the determination;
 - (iv) Conclusions regarding the application of Mountwest's code of conduct to the facts;
 - (v) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions Mountwest imposes on the respondent, and whether remedies designed to restore or preserve equal access to Mountwest's education program or activity will be provided by Mountwest to the complainant; and

- (vi) Mountwest's procedures and permissible bases for the complainant and respondent to appeal.

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

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

13.6.4 Mountwest may not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.

13.6.5 The Title IX Coordinator is responsible for effective implementation of any remedie, coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions, and take other appropriate prompt and effective steps to ensure sex discrimination does not continue or recur.

13.7.1 Sanctions

- (i) Sanctions may be imposed upon any person under Mountwest's jurisdiction who is found to have violated this policy. Typical student sanctions that may be imposed singly or in combination include, but are not limited to the following:

- a. Admonition
- b. Warning
- c. Disciplinary Probation
- d. Restitution
- e. Suspension
- f. Expulsion

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

- a. Discussion
- b. Verbal Warning
- c. Written Warning
- d. Suspension
- e. Termination of Employment

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

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

13.8 Appeal

13.8.1 Any party who wishes to appeal the recommendations contained in the report of investigation, as they relate to sex-based harassment or other violations of this policy falling under Title IX, including the determination regarding responsibility and from Mountwest's dismissal of a formal

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

- 13.8.2 Mountwest will ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.
- 13.8.3 Recommendations not related to sex-based harassment or other violations of this policy falling under Title IX shall be addressed through applicable Mountwest policies and procedures, including handbooks, concerning employee and student conduct.
- 13.8.4 All appeals and responses are then reviewed by the Appeals Officer to determine if the appeal request meets the limited grounds and is timely. The original recommendations and sanctions will stand if the appeal is not timely or does not fall within the grounds for appeal set forth below, and the decision is final. The original recommendations and sanctions will also remain in effect pending the outcome of any appeal. If the appeal has standing, the Appeals Officer will consider the appeal. The party requesting the appeal has the burden of proving the error, as the original recommendations and sanctions are presumed to have been decided reasonably and appropriately. The only grounds for appeal are as follows:
 - (i) A procedural irregularity that affected the outcome of the matter;
 - (ii) To consider new evidence, that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
 - (iii) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- 13.8.5 Within ten (10) business days of receiving the response(s) to the appeal(s), if any, the Appeals Officer will provide to both parties a Memorandum of Decision.
- 13.8.6 If the Appeals Officer determines that a material procedural or substantive error occurred, the Appeals Officer may return the matter to the original investigators with instructions to reconvene to cure the error. The results of a reconvened investigation cannot be appealed. In rare cases where the procedural or substantive error cannot be cured by the original investigators, as in cases of substantiated bias, the Appeals Officer may order a new investigation on the complaint with new investigators. The results of a new investigation can be appealed, once, on the applicable grounds for appeals.
- 13.8.7 If the Appeals Officer determines that new evidence should be considered, the Appeals Officer will return the matter to the original investigators to reconsider in light of the new evidence only. The reconsideration of the original investigators is not appealable.
- 13.8.8 Once an appeal is completed, the parties will be notified, simultaneously, of the final determination and any changes that result. The Appeals Officer will issue a written decision describing the result of the appeal and the rationale for the result

13.9 *Recordkeeping.* Mountwest will maintain for a period of seven years records of:

Each sex-based harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to Mountwest's education program or activity. Mountwest will also keep records of any actions, including any supportive measures, taken in response to a report or formal complaint of sex-based harassment. In each instance, Mountwest will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to Mountwest's education program or activity. If Mountwest does not provide a complainant with supportive measures, then Mountwest will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit Mountwest in the future from providing additional explanations or detailing additional measures taken;

13.9.1 Any appeal and the result therefrom; and

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

Reporting of Violations

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

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

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

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

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

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

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

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

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

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

Retaliation

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

Supportive Measures

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

False Reports

- 17.1 Mountwest will not tolerate intentional false reporting of incidents. Deliberately false and/or malicious accusations of violations of this policy, as opposed to complaints which, even if erroneous, are made in good faith, are just as serious an offense as a violation of this policy and will subject the false reporter to appropriate disciplinary action. Intentionally false reports may also violate criminal and civil laws.

Confidentiality of Reported Information

- 18.1 Individuals wishing to report violations of this policy must be aware that Mountwest administrators, depending on their roles, have varying reporting responsibilities and abilities to maintain the confidentiality of the individual making the report. Prior to reporting a violation of this policy to a particular administrator, an individual should inquire as to whether that administrator is bound by certain confidentiality and mandatory reporting requirements. Some Mountwest resources may be able to maintain confidentiality, offering options and advice without any obligation to inform an outside agency or individual unless the reporting person requested information to be shared or the information indicates an immediate threat of harm to self or others. Additional information on reporting options can be found on Mountwest's website, at <http://www.mctc.edu> , under the "Human Resources" link or the "Students" link Title IX.
- 18.2 Mountwest must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sex-based harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Federal Timely Warning Obligations

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

Prevention & Awareness Programs

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

Violations of Policy

- 21.1 Any employee or student who is found to have violated this policy will be subject to administrative action, up to and including termination of employment or dismissal from Mountwest, as applicable.
- 21.2 Except as provided in this policy concerning sex-based harassment or other violations of this policy falling under Title IX, violations of this policy shall be addressed as follows:
- 21.3 Violations by students shall be addressed through Mountwest policies and procedures on student conduct
- 21.4 Violations by employees shall be addressed through Mountwest policies and procedures on employee conduct, including applicable faculty and staff handbooks.
- 21.5.0 Failure of a non-confidential employee to report an allegation of sex-based harassment or other violation of this policy falling under Title IX of which he or she becomes aware, is a violation of this policy and may subject the employee to disciplinary action.

Implementation of Policy

- 22.1 This policy will be implemented using applicable Mountwest policies and procedures, and Mountwest faculty, staff, and student handbooks. In the event the individual, name, title, or contact information changes for any of the individuals listed in this policy, the President of

Mountwest may revise such information within this policy without resubmittal of this policy through the rulemaking process.

Superseding Provisions

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