

PIERPONT COMMUNITY & TECHNICAL COLLEGE
Board of Governors Policies and Procedures
POLICY # 9
TITLE: SEXUAL HARASSMENT
(Replaces Policy 42 (11/10/05) Consensual Romantic or Sexual Relationships)

Effective Date: July 1, 2002

Amended: November 14, 2017

Repealed:

SECTION 1. GENERAL

1.1 Scope

This rule defines sexual harassment and sex and gender discrimination and provides guidelines for filing complaints regarding sexual harassment and sex and gender discrimination.

1.2 Authority

This policy complies with federal, state and local laws and regulations. Specifically, this policy upholds: West Virginia Code § 18B-1-6; Title IX of the Education Amendments of 1972, including accompanying regulations and guidance provided by the U.S. Department of Education' Office for Civil Rights; Title VII of the Civil Rights Act of 1964, including accompanying regulations and guidance provided by the Equal Employment Opportunity Commission (EEOC); Applicable federal court decisions. This policy replaces policies 09, "Sexual Harassment," and 42, "Consensual Romantic or Sexual Relationships."

1.3 Investigation and Resolution

All alleged violations of this policy will be promptly, thoroughly, and impartially addressed using Pierpont Community & Technical College Title IX Investigative and Resolution Procedures.

1.4 Effective Date: Upon passage

SECTION 2. POLICY

- 2.1 It is the policy of the Pierpont Community & Technical College Board of Governors to maintain a work and educational environment free from all forms of sexual harassment and sex or gender discrimination of any employee, applicant for employment, student, guest or visitor. Sexual harassment is expressly prohibited. It is the responsibility of Pierpont Community & Technical College to strive to maintain an environment free of such conduct and to take prompt, thorough and impartial measures to stop the harassment, remedy its effects and prevent its recurrence once the institution receives notice of sexual harassment or sex or gender based discrimination.

SECTION 3. DEFINITION

3.1 Sexual Harassment

Sexual Harassment is:

- unwelcome sexual, sex-based and/or gender/gender identity-based verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any College program is encouraged to report it immediately to the Title IX Coordinator, Title IX Investigator or a deputy.

Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of *quid pro quo* harassment, retaliatory harassment and/or creates a hostile environment. A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
 - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's educational [and/or employment], social and/or residential program.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when
 - Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.
 - This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

Romantic or sexual relationships between a faculty member and current student, or between a supervisor and employee or between two people where one has authority or power over the other are by their nature discriminatory and are prohibited. Exceptions are recognized for employees or students in established marriages, partnerships or relationships.

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in an employee's office or on the exterior of a residence hall door
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her/his class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She/He probes for explicit details, and demands that students answer her/him, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
- Student A grabs Student B by the hair then grabs the Student B's breast and then places their mouth on it. While this is sexual harassment, it is also sexual violence.

Non-Consensual Sexual Contact

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force¹.

Sexual Contact includes:

- Intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

3.2 Non-Consensual Sexual Intercourse

Non-Consensual Sexual Intercourse is:

- any sexual intercourse

¹ The use of force is not "worse" than the subjective experience of violation of someone who has sex without consent. However, the use of physical force constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restrict, battery,

etc.) would face not just the sexual misconduct charge, but charges under the code for the additional assaultive behavior.

- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force².

Intercourse includes:

- Vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

3.3 Sexual Exploitation

Sexual exploitation occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD or HIV to another person;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

3.4 Additional Applicable Definitions:

- Consent:
 - Consent is
 - clear, and
 - knowing, and
 - voluntary, affirmative and conscious,
 - words or actions,
 - that give permission for specific sexual activity.
 - Consent is active, not passive.
 - Silence, in and of itself, cannot be interpreted as consent.
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² *Id.*

- Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
 - Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
 - Previous relationships or prior consent cannot imply consent to future sexual acts.
 - Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
 - In order to give consent, one must be of legal age.
 - Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
 - Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.
 - The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
 - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
 - This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of drugs. [Possession, use and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc., is prohibited, and administering one of these drugs to another student is a violation of this policy.]
- Force:
 - Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you.” “Okay, don’t hit me; I’ll do what you want.”).
 - Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
 - NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non- consensual sexual activity is not by definition forced.

- Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
- This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.

3.5 Related Misconduct Offenses (Will Fall Under this Policy When Sex or Gender-Based)

- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing, defined as 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 (as defined further in the Hazing Policy);
- Bullying, defined as
 - Repeated and/or severe
 - Aggressive behavior
 - Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
 - That is not speech or conduct otherwise protected by the 1st Amendment.
- Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other. Some examples of Intimate Partner Violence include:
 - A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
 - An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
 - A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
 - Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.
- Stalking
 - Repetitive and menacing,
 - Pursuit, following, harassing, and/or interfering with the peace and/or safety of another.
 - Any other College policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

3.7 Retaliation

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of College policy.

SECTION 4. SANCTIONS

The following sanctions may be imposed upon any member of the community found to have violated the Sex/Gender Harassment, Discrimination and Misconduct Policy. Factors considered in sanctioning are defined in [as appropriate] the Student Handbook, the Faculty Handbook, and the Staff Handbook.

The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

4.1 Student Sanctions (Listed Below and Defined in the Student Handbook)

- Warning
- Probation
- Suspension
- Expulsion
- Withholding Diploma
- Revocation of Degree
- Transcript Notation
- Organizational Sanctions
- Other Actions

4.2 Employee Sanctions (Listed Below and Defined in the Faculty and Employee Handbooks)

- Warning – Written or Verbal
- Performance Improvement Plan
- Required Counseling
- Required Training or Education
- Demotion
- Loss of/Ineligibility for Raise or Pay Increase
- Suspension with Pay
- Suspension without Pay
- Revocation of Tenure
- Termination

4.3 Sanctioning for Sexual Misconduct

- Any person found responsible for violating the Non-Consensual Sexual Contact policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.*
- Any person found responsible for violating the Non-Consensual Sexual Intercourse policy will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).*
- Any person found responsible for violating the Sexual Exploitation or Sexual Harassment policies will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.*

*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

SECTION 5. ADDITIONAL POLICY PROVISIONS

5.1 Attempted Violations

In most circumstances, the College will treat attempts to commit any of the violations listed in this policy as if those attempts had been completed.

5.2 False Reports

The College will not tolerate intentional false reporting of incidents. It is a violation of the *Student Code of Conduct* and the Faculty and Staff handbooks to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

5.3 Amnesty for Victims and Witnesses

The College community encourages the reporting of misconduct and crimes by victims and witnesses. Sometimes, victims or witnesses are hesitant to report to College officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims as possible choose to report to College officials, and that witnesses come forward to share what they know. To encourage reporting, the College

pursues a policy of offering victims of misconduct and witnesses amnesty from minor policy violations related to the incident.

Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to the Campus Police). The College pursues a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the College will provide educational options, rather than punishment, to those who offer their assistance to others in need.

5.4 Parental Notification

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about individual conduct reports pursuant to the Family Educational Rights and Privacy Act.

SECTION 6. REPORTING AND FILING COMPLAINTS

6.1 Reporting Requirements

All College employees (faculty, staff, and administrators) are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate College officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at the College:

6.2 Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- On-campus licensed professional psychologists, counselors and staff
- On-campus health service providers and staff
- On-campus Victim Advocate

- Off-campus:
 - Licensed professional counselors
 - Local rape crisis counselors
 - Domestic violence resources,
 - Local or state assistance agencies,
 - Clergy/Chaplains

All of the above employees will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit timely anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client or patient.

6.3 Mandatory Reporting

All College employees have a duty to report sexual harassment or discrimination of which they become aware, unless they fall under the “Confidential Reporting” section. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees. Remedial actions may result without formal College action.

If a victim does not wish for their 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, Title IX Investigator or Deputy Coordinators, 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, the College will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told. Information will also be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as small as possible to preserve a reporting party’s rights and privacy

Reports or complaints may be filed with, as appropriate, the Title IX Coordinator or Title IX Investigator. Reports can be made via email, phone, in writing or in person. Reports may also be made online at <https://www.pierpont.edu/faculty-staff/shared-administration/human-resources>.

6.4 Title IX Coordinator

The Title IX Coordinator oversees the College's compliance with Title IX, including the resolution process described in the *Title IX Investigation and Resolution Process*.

Inquiries about and reports regarding sexual harassment issues and/or these procedures may be made internally to:

Title IX Coordinator:

Cindy Curry

Human Resources Office
324 Hardway Hall
1201 Locust Avenue
Fairmont, WV 26554
304.367.4386

Cindy.Curry@pierpont.edu

or

Jessica Kropog-Furgason

Chief Title IX Investigator
Public Safety
Falcon Center
1201 Locust Avenue
Fairmont, WV 26554

Jessica.Kropog@pierpont.edu

Individuals may also contact the Department of Education's Office for Civil Rights, who oversee enforcement of Title IX:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: (800) 421-3481
Phone: (877) 521-2172
Fax: (202) 453-6012
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Employees may also contact the Equal Employment Opportunity Commission (EEOC) Contact:
<http://www.eeoc.gov/contact/>

U.S. Equal Employment Opportunity Commission Pittsburgh
Area Office
William S. Moorhead Federal Building
1000 Liberty Avenue, Suite 1112
Pittsburgh, PA 15222
Phone: 412-395-5902
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