

# BLUE RIDGE COMMUNITY AND TECHNICAL COLLEGE

## NOTICE OF PROPOSED RULE

**SERIES:** 1 | **General Rules**  
**NUMBER:** 15.1 | **Discrimination, Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation**

### PURPOSE

X

**New Rule**  
**Amendment of Rule**  
**Repeal of Rule**

The primary purposes of this amended rule are:

- Blue Ridge CTC ("College" hereafter) is committed to fostering a diverse and inclusive culture by promoting diversity, inclusion, equality, and intercultural and intercommunity outreach. Accordingly, the College does not discriminate on the basis of race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression in the administration of any of its educational programs, activities, or with respect to admission or employment.

### SUBMISSION OF COMMENTS

**Comment Period Start Date:** August 6, 2014  
**Comment Period End Date:** September 5, 2014

Please submit any comments concerning this proposed rule to:

The Office of the President  
Blue Ridge Community and Technical College  
13650 Apple Harvest Drive  
Martinsburg WV 25403  
304-260-4380  
304-260-4376  
[rulecomments@blueridgectc.edu](mailto:rulecomments@blueridgectc.edu)

*To be considered by the Board of Governors, a comment must be submitted in writing by the comment period due date.*

# BLUE RIDGE COMMUNITY AND TECHNICAL COLLEGE BOARD OF GOVERNORS

**SERIES:** 1     **General Rules**  
**RULE:** 15.1     **Discrimination, Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation**

**Scope:** Set forth how discrimination, harassment, sexual and domestic misconduct, certain consensual amorous relationships, stalking, and retaliation will be addressed by the College.

**Authority:** West Virginia Code §18B-1-6. 18B-2A-4; West Virginia Human Rights Act of 1967; Titles VII of the Civil Rights Act of 1964 and the Civil Rights Acts of 1991; Title IX of the Education Amendments of 1972; Equal Employment Opportunity commission (EEOC) interpretative guidelines issued in March of 1980; Vietnam Era Veterans Readjustment Act; Sections 503 and 504 of the Rehabilitation Act; Executive Order 11246; Immigration Reform and Control Act of 1986; Equal Pay Act; Title II of the Genetic Information Nondiscrimination Act; Age Discrimination Act; Americans with Disabilities Act; Disabled Veterans Act; Campus Sexual Violence Elimination Act; the Violence Against Women Act of 1994; and federal court decisions on the subject of sexual harassment and discrimination.

**Approval Date:**

**Effective Date:**

**Revision History:** Originally effective July 26, 2006 with a title of "Policy 4 Social Justice"; amended March 5, 2014 and title changed to "Rule 15.1 Social Justice – Nondiscrimination/ Antiharassment"; and amended again on TBD and title changed to "Rule 15.1 Discrimination, Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation."

## SECTION 1. Purpose

- 1.1 Blue Ridge CTC ("College" hereafter) is committed to fostering a diverse and inclusive culture by promoting diversity, inclusion, equality, and intercultural and intercommunity outreach. Accordingly, the College does not discriminate on the basis of race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression in the administration of any of its educational programs, activities, or with respect to admission or employment.

## SECTION 2. General Definitions

- 2.1 Complainant. Any individual that makes or files a complaint against another individual with the College or any individual that is the victim of prohibited conduct that is reported to the College.
- 2.2 Consensual amorous relationships. A mutually acceptable romantic, dating, or sexual relationship between individuals.
- 2.3 Member of the College Community. An individual engaged in any College activity or program, whether on or off campus, or any individual lawfully on College owned or leased property, including, but not limited to, any person who is a student, staff, faculty member, other College official, or a visitor.
- 2.4 Respondent. An individual accused of conduct prohibited by Section 3 of this Rule.

- 2.5 Student. An individual subject to the College's Board of Governors Rule 21.1, Student Rights and Responsibilities, and the College's Student Handbook.

### **SECTION 3. Defining and Recognizing Prohibited Conduct**

#### **3.1 General**

The College prohibits discrimination, harassment, sexual misconduct, domestic misconduct, stalking, and retaliation (collectively referred to as "prohibited conduct") by or against any member of the College community that occurs on College premises or in connection with a College-sponsored activity; off-campus conduct that unreasonably interferes with the educational or orderly operation of the College community, its mission, or its objectives determined by a reasonable person; and off-campus conduct that, in light of all of the facts and circumstances, would endanger the health and safety of the College community. As a result, any individual found to have committed these acts against another is subject to appropriate discipline.

- 3.1.1 To further this Rule, all members of the College community are expected to engage in conduct that meets professional standards; take appropriate action to prevent prohibited conduct; and avoid behavior that a reasonable person would construe as prohibited conduct.
- 3.1.2 Those in supervisory positions have a special responsibility to discourage prohibited conduct as well as to implement and enforce this Rule.

#### **3.2 Discrimination**

- 3.2.1 Discrimination is conduct that is based upon an individual's race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression and excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, or participation in a College program or activity. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities. It does not, however, include programs or activities specifically exempt by law. See, e.g., 20 U.S.C. § 1681(a) (2014)

#### **3.3 Harassment**

- 3.3.1 Harassment is conduct that creates a hostile environment, as defined below, and is based upon an individual's race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression. Harassment, as defined above, may take various forms, including, but not limited to, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- 3.3.2 Hostile environment means a situation where an individual is subjected to any conduct based on the reasons set forth in Section 3.3.1 and that conduct is sufficiently severe or pervasive and objectively offensive so as to unreasonably interfere with an individual's educational experience, work or academic performance or deny or limit the individual's ability to participate in or benefit from the College's programs, services, opportunities, or activities.

A hostile environment can be created by anyone involved in a College program or activity (e.g., administrators, faculty members, students, and even campus guests). Mere offensiveness is not enough to create a hostile environment. Although repeated incidents

increase the likelihood that harassment has created a hostile environment, a serious incident, even if isolated, can be sufficient to create a hostile environment.

In determining whether harassment has created a hostile work environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether the a reasonable person in a similar situation would have perceived the conduct as sufficiently severe or pervasive and objectively offensive. Also, the following factors will be considered:

- 3.3.2.1 The degree to which the conduct affected one or more students' education or individual's employment;
- 3.3.2.2 The nature, scope, frequency, duration, and location of incident or incidents;
- 3.3.2.3 The identity, number, and relationships of persons involved; and
- 3.3.2.4 The nature of higher education.

- 3.3.3 In addition to hostile environment harassment, sex-based harassment includes sexual harassment and non-sexual harassment based on stereotypical notions of what is female/feminine versus male/masculine or a failure to conform to those gender stereotypes. Sexual harassment means harassment that creates a hostile environment based on sex, as defined above, and also unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature on or off campus that is sufficiently severe or pervasive when (i) submission to such conduct is made either explicitly or implicitly a condition of an individual's employment or academic performance or participation in College programs or activities; or (ii) submission to or rejection of such conduct is used as the basis for employment decisions or for academic evaluation, grades, or advancement. In determining whether alleged conduct constitutes sexual harassment, consideration shall be given to the record as a whole and to the totality of the circumstances, including the nature of sexual behavior and the context in which the alleged incident(s) occurred. Sexual harassment may occur between people of the same sex or people of different sexes.

Examples of sexual harassment may include, but are not limited to, unsolicited, deliberate, or repeated touching, sexual flirtation, advances or propositions which are not welcomed and/or desired; unwelcome jokes, stories, comments, innuendos, or other sexually oriented statements which are specifically designed to embarrass or humiliate through their sexual subject matter content; unwelcome sexual communication such as graphic or degrading comments about one's gender related to personal appearance; unwelcome display of sexually explicit materials, objects or pictures in an individual's place of work or study. Importantly, these and any other examples in this Rule, are provided only for illustration purposes and all conduct must still meet the applicable definitions in the Rule before rising to the level of prohibited conduct.

#### 3.4 Sexual Misconduct

- 3.4.1 Sexual misconduct means sexual assault and sexual exploitation, as defined below. It is a broad term used to encompass unwelcome behavior of a sexual nature that is prohibited by Title IX and the College.
- 3.4.2 Sexual assault means sexual intercourse or sexual contact that occurs without consent.
- 3.4.3 Sexual contact means any intentional touching, either directly or through clothing, of the breast, buttocks, anus or any part of the sex organs of another person, or intentional touching of any part of another person's body by the actor's sex organs.
- 3.4.4 Sexual intercourse is defined as anal, oral, or vaginal penetration, however slight, by an inanimate object or another's body part, including, but not limited to a penis, tongue, or finger.

- 3.4.5 Consent is defined as agreement, approval, or permission as to some act or purpose that is given knowingly, willingly, and voluntarily by a competent person. A person is not competent and therefore lacks the ability to consent where there is either forcible compulsion or incapacity to consent. A person is deemed incapable of consent when that person is either less than sixteen years old, mentally incapacitated, or physically unable to resist. It is important to remember that silence, by itself, cannot constitute consent. Consent to one sexual act does not constitute or imply consent to a different sexual act. Previous consent cannot imply consent to future sexual acts. Consent is required regardless of the parties' relationship status or sexual history together.
- 3.4.6 Sexual exploitation means taking sexual advantage of another person without his or her consent. Sexual advantage includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third parties to observe private sexual acts; and engaging in voyeurism.
- 3.5 Domestic Misconduct
- 3.5.1 Domestic misconduct means domestic violence and dating violence as defined below.
- 3.5.2 Domestic violence means s (i) unlawfully and intentionally making physical contact of an insulting or provoking nature with one's family or household member(s); (ii) unlawfully and intentionally causing physical harm to one's family or household member(s); (iii) unlawfully attempting to commit a violent injury again one's family or household member(s); or (iv) unlawfully committing an act which places one's family or household member(s) in reasonable apprehension of immediately receiving a violent injury.
- 3.5.2.1 For purposes of this section, "family or household members" means persons who: (1) are or were married to each other; (2) are or were living together as spouses; (3) are or were sexual or intimate partners; (4) are or were dating; provided, that a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship; (5) are or were residing together in the same household; (6) have a child in common regardless of whether they have ever married or lived together; (7) have the relationships described in W. Va. Code § 48-27-204.
- 3.5.3 Dating Violence" means 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: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.
- 3.6 Stalking
- 3.6.1 Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for his or her safety or the safety of others; or (ii) suffer substantial emotional distress.
- 3.7 Consequences & Corrective Action
- Violators of this Rule are subject to appropriate disciplinary action that may include sanctions as severe as discharge of an employee, expulsion of a student in accord with the Student's Rights & Responsibilities and Student Handbook, or other action depending on the particular circumstances. In addition prohibited conduct that constitutes a criminal law violation will be referred to the appropriate authorities for prosecution.

Furthermore, although conduct may not violate this Rule, it may still be prohibited by the College

under a different Rule, divisional/departmental policy, administrative procedure or standard of behavior. Accordingly, in such cases, the College reserves the right and ability to take any necessary action.

### 3.8 Consensual Amorous Relationships

Although consensual amorous relationships are within the purview of individual privacy, those engaging in such relationships that occur between persons in inherently equal and closely related positions at the College or employees within the same reporting line, including those between supervisors and supervisees, must remain aware that such relationships could lead to circumstances that result in harassment or sexual or domestic misconduct. Therein, employees should remain aware that the College prohibits nepotism and fraternization to avoid conflicts of interest, appearance of favoritism, and abuse of power.

In these specific cases of consensual amorous relationships, the individuals shall notify their immediate supervisor or other appropriate administrator. The supervisor or administrator shall be responsible for making arrangements to eliminate or to mitigate any conflict of interest or other legitimate occupational interest related to employment, the consequences of which might prove detrimental to the College or to either party in the relationship. In some instances, if no suitable way to eliminate or mitigate the conflict is reasonably feasible, one or both individuals may be separated from employment at the College.

It is important to note that these types of consensual amorous relationships also may result in a hostile or offensive environment affecting other employees or students. For example, others may perceive a person involved in the consensual amorous relationship as receiving favorable treatment in employment or educational decisions and actions.

### 3.9 Faculty Member-Student Relationships

A faculty member is prohibited from engaging in a consensual amorous relationship with a student whom the faculty member evaluates, supervises, instructs, or advises. For purposes of this rule, "faculty" shall include all full – or part – time College personnel who teach, including administrators with faculty status.

Where there is a pre-existing consensual amorous relationship, the faculty member shall notify his or her immediate supervisor or other appropriate administrator. The supervisor or other appropriate administrator shall be responsible for making arrangements to eliminate or to mitigate any conflict, the consequences of which might prove detrimental to the College or to either party in the relationship.

## **SECTION 4. Complaints**

### 4.1 Coordinator

The President of the President's designee shall appoint an administrator(s) to act as the College's Coordinator(s) to handle all complaints under this Rule, including one such individual to act as the College's Title IX Coordinator. The Coordinator(s) will oversee all complaints filed under this Rule generally and identify and address any patterns or systemic problems that arise during the review of such complaints. The Title IX Coordinator is further responsible for coordination of training, education, communications, and administration of complaint procedures for faculty, staff, students, and other members of the College community for Title IX. The coordinator may also appoint deputy coordinators to assist the College in furthering this rule and its Title IX actions.

Acting as the College's Equal Employment Opportunity/Affirmative Action (EEO/AA) Officer, the Head of HR will coordinate all employee and job applicant complaint procedures, investigation and resolution in compliance with applicable federal and state employment law. The EEO/AA Officer will also coordinate training, education, communications, and administration of such.

#### 4.2 Filing

Any member of the College community who believes he or she has been subject to any of the prohibited conduct set forth in Section 3 may file a complaint in any manner set forth in the applicable procedure, as discussed below. If a complaint is received, it shall be forwarded to the appropriate department for investigation and disposition.

#### 4.3 Procedure

The President or the President's designee(s) shall formulate a complaint procedure(s) to investigate and respond to all complaints of prohibited misconduct. In all cases, complaints will be handled in such a manner so as to achieve a prompt and equitable resolution. Further, the College will take the appropriate steps to end the misconduct, prevent any further misconduct or retaliation, remedy the effects of misconduct, and eliminate any hostile environment that has been created.

If a student has been accused of prohibited conduct, the complaint will be handled pursuant to the College's Board of Governor's Rule 21.1, Student Rights and Responsibilities, and the Student Handbook.

Any investigation resulting from a complaint will be separate from and in addition to any criminal investigation that may result.

Finally, the procedure shall also include and incorporate all of the necessary and appropriate policy requirements, statements, and guidance of the Campus Sexual Violence Act provision, Section 304, of the Violence Against Women Reauthorization Act of 2013, any amendments, as set forth in the College's Annual Campus Security and Fire Safety Report, or applicable guidance from the United States Department of Education, Office of Civil Rights and the White House Task Force to Protect Students from Sexual Assault.

#### 4.4 Disclosure and Confidentiality

The College respects the privacy of those reporting prohibited conduct and will endeavor to respect requests for confidentiality to the extent permissible by law. However, the College has certain legal obligations to address this conduct and to prevent its recurrence and, as a result, cannot guarantee confidentiality to a complainant in all cases. That said, there are places where a victim can receive confidential services and the complaint procedure must identify clearly where a victim can go to receive such services without having to risk confidentiality.

#### 4.5 Dishonest or Frivolous Complaints

If a complainant is found to have been intentionally or maliciously dishonest, reckless, or frivolous in making the allegations, the complainant shall be subject to appropriate disciplinary action up to and including termination for employees and expulsion for students.

### **SECTION 5. Retaliation Prohibited**

5.1 No individual may retaliate against any complainant, any person that assists a complainant in the filing of a complaint under this Rule, or a witness. Complaints of retaliation for such activities will be treated the same way as other complaints under this Rule.

5.2 Retaliate means to take an adverse action against an individual or subject an individual to conduct that has the purpose or effect of unreasonably interfering with that individual's educational experience, work or academic performance, or creates an educational experience or academic or work environment that a reasonable person would find intimidating or hostile because of something that individual did to further this Rule, including but not limited to filing a complaint or being a witness in or supporter of or against a complaint.

### **SECTION 6. Academic Freedom and Accountability**

- 6.1 Academic freedom at the College is necessary to enable the institution to reach its goals to engage students in a challenging academic environment; create activity and innovation in all disciplines; foster diversity and inclusion; advance community engagement; and enhance the well-being and the quality of life of the Eastern Panhandle of West Virginia. Consequently, while this Rule seeks to protect members of the College community from discrimination, harassment, sexual and domestic misconduct, certain consensual amorous relationships, stalking, and retaliation, it should be read or referenced in conjunction with the West Virginia Council for Community and Technical College Education Series 9: Academic Freedom, Professional Responsibility, Promotion and Tenure; and the Faculty, Staff and/or Student Handbook(s).
- 6.2 Under the College President, the Division of Enrollment Management and Office of Human Resources, in conjunction with appropriate administrators and departments shall implement and ensure compliance with this Rule.

**ATTACHMENTS:**

- A: U.S. Department of Education's Office of Civil Rights April 4, 2011, "Dear Colleague" Guidance Letter
- B: Nondiscrimination and Anti-harassment in Employment and Application Administrative Procedure AP1501
- C: Harassment or Discrimination in Employment and Application Complaint Form AP1501A

**DISTRIBUTION LIST:**

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Executive Assistant to the President  
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President

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Date

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Date