

Title IX / Sexual Conduct Procedure— **EFFECTIVE August 14, 2020**

I. INTRODUCTION

We encourage members of the campus community who experience any form of sexual misconduct discussed in this policy to contact one of the persons/offices listed in Section II below – regardless of when or where the act occurred. These resources can assist the student in recovering from the experience and in deciding what options may be available, such as the student conduct process, the criminal justice system and the civil courts.

For more information on sexual misconduct, see the Title IX/Sexual Harassment & Discrimination page on the Blue Ridge CTC website. **The Title IX Coordinator contact information is available and publically posted for all community members, including student, employees, and student or employment applicants.**

As a recipient of federal funds, Blue Ridge Community and Technical College is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq., which prohibits discrimination on the basis of sex in education programs or activities. Sexual misconduct, as defined in this policy, is a form of sex discrimination prohibited by Title IX.

In compliance with Title IX, the College provides a procedure (described below) for reporting, investigating and adjudicating sexual misconduct committed by students. Although the College encourages students to use College procedures, students may also file a Title IX complaint with the Office of Civil Rights of the U.S. Department of Education. Contact for the WV region is:

Office for Civil Rights, Philadelphia Office
U.S. Department of Education
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: 215-656-8541*
Fax: 215-656-8605
E-mail: OCR.Philadelphia@ed.gov

A. Anonymity and Confidentiality; Students Who Do Not Want to Take Formal Action or Pursue Conduct Charges

Students or others who are not sure whether they want to make a complaint should still seek help from the resources listed below. Contacting the Title IX Coordinator or another campus resource does not mean that the student must file an official report with the College or report the assault to law enforcement. These resources are provided to offer non-judgmental support and information to help the student decide what is best for him or her as he or she recovers.

The College makes every effort to protect students' privacy and confidentiality. Information reported will be shared only on a need-to-know basis, and after consultation with the reporting student. The College also takes steps to protect students against further misconduct, including retaliation, as described below. If a student (or other person) informs a campus resource of an incident of sexual violence or other form of sexual harassment, the College may need to investigate and take

appropriate action to fulfill its Title IX obligation to provide a non-discriminatory environment, even if the student wishes to remain anonymous or not to pursue a conduct charge.

Title IX requires the College to provide a non-discriminatory environment for all students. Accordingly, if a reported act of sexual misconduct indicates that this environment may be compromised, Title IX Coordinator may conduct a preliminary investigation into the alleged sexual misconduct and may weigh a student's request for anonymity against the following factors: the seriousness of the alleged conduct; whether there have been other complaints of sexual misconduct against the same student; and the right of the student alleged to have committed sexual misconduct to receive information about the allegations if the information is maintained by the College as an "education record" under FERPA. The Title IX will inform the reporting party if the College cannot ensure absolute privacy.

B. Amnesty from Student Discipline for the Reporting Party

Assisting students who are reporting sexual misconduct is the College's primary interest. In order to facilitate reporting, the Associate Dean of Students may choose not to charge students who report sexual misconduct and any material witnesses with Code of Conduct violations for behavior that otherwise would be considered violations (for example consuming alcohol underage or consuming illegal drugs).

C. Protecting Students Reporting Sexual Misconduct

When a student reports sexual misconduct to any campus resource, that resource will work with the Title IX Coordinator to make sure the reporting student is protected (such as against further misconduct). The Coordinator will consult with the reporting party regarding protective measures such as changes to College academic schedules, removing the student's information from the College directory, and issuing a "no contact order." The College will enforce protective measures under the Code of Conduct.

II. RESOURCES

A. On-Campus Resources

1. Title IX Coordinator

The Title IX Coordinator's duties and responsibilities at Blue Ridge Community and Technical College (BRCTC) include;

- a. Monitoring and oversight of overall implementation of Title IX compliance at BRCTC.
- b. Coordinate training and education
- c. Manage communications
- d. Administer grievance procedures for all members of campus community
- e. Serve as liaison to state and federal agencies
- f. Identify potential patterns or repeat offenders
- g. Partner with all parts of the institution to ensure safeguard to students' rights and responsibilities.

Title IX Coordinator at BRCTC –

Ann Paull
13650 Apple Harvest Drive, Suite 2300
Martinsburg, WV 25403
304.260.4380 ext 2126
apaul@blueridgectc.edu

2. Title IX Deputies

To be able to provide consistent and immediate response, BRCTC names two Deputy Coordinators and One Investigator. Deputies will assist persons alleging sexual harassment or discrimination in filing their grievance(s) and/or oversee the step by step procedure to be sure that the appropriate time frames are met.

- a. Title IX Deputy Coordinator –
Faculty and Staff: Human Resources
13650 Apple Harvest Drive, Suite 1210
Martinsburg, WV 25403
304.260.4380 ext 2231
- b. Title IX Deputy Coordinator – Students:
Assistant Dean of Students, Dr. Jennifer Barrett-Smith
13650 Apple Harvest Drive, Suite 1300
Martinsburg, WV 25403 304.260.4380 ext 2111
jbarrett@blueridgectc.edu
- c. Title IX Investigator – Security: Campus Security and Safety Supervisor
James Devino
13650 Apple Harvest Drive, Suite 1002
Martinsburg, WV 25403
304.260.4380 ext 2251
jdevino@blueridgectc.edu
- d. Title IX Compliance Administrator – Vice President of Enrollment Management
Leslie C. See
13650 Apple Harvest Drive, Suite 2300
Martinsburg, WV 25403
304.260.4380 ext 2107
lsee@blueridgectc.edu

3. Sexual Assault Response Coordinator

The Sexual Assault Response Coordinator integrates and oversees all services for survivors of sexual assault, ensuring that a student's needs are being met. She also consults with service providers, faculty and staff, friends of survivors, parents, and individuals who have been accused

of sexual assault. The Coordinator can also be a safe contact to discuss potential reporting. This is a safe and confidential environment.

Sexual Assault Response Coordinator
Assistant Dean of Students, Dr. Jennifer Barrett-Smith
13650 Apple Harvest Drive, Suite 1300
Martinsburg, WV 25403 304.260.4380 ext 2111
jbarrett@blueridgectc.edu

*****Please note that while an individual may remain anonymous, record of event may be made. All reports are monitored and maintained in the Title IX Coordinator's office.***

B. Off-Campus Resources

1. EastRidge Mental Health Services

EastRidge Health Systems is the comprehensive behavioral health center that serves the citizens of Berkeley, Jefferson, and Morgan Counties, West Virginia and provides mental health, substance abuse, and intellectual/developmental disability services and programs for all age groups. EastRidge provides services without regard to race, color or national origin. EastRidge offers the majority of services out of three outpatient clinic sites located in Martinsburg, Kearneysville, and Berkeley Springs. The College maintains a contract with this service. This provides unlimited counseling at no cost to students who do not qualify for charity services.

24 hour Crisis Number: 855-807-1258

2. Shenandoah Women's Center

Shenandoah Women's Center, (SWC), is a non-profit, community based agency founded in 1977 by community volunteers who established a crisis hotline for battered women. Since then, SWC has grown into a comprehensive resource and counseling center offering multiple services to women and men and children of the tri-county area. SWC is committed to providing services that address the needs of sexual assault and domestic violence victims / survivors and their nonoffending family members.

Shenandoah Women's Center

236 West Martin Street
Martinsburg, WV, 25401
Phone: 304-263-8522

24 Hour Hotline: Berkeley County 304-263-8292

24 Hour Hotline: Jefferson County 304-725-7080

24 Hour Hotline: Morgan County 304-258-1078

Website: <http://www.swcinc.org>

3. National Sexual Violence Hotline

Rape, Abuse, and Incest National Network (RAINN) operates the National Sexual Assault Hotline.

Call toll free: 1-800-656-HOPE

U.S. Department of Education

Office for Civil Rights

400 Maryland Ave. SW

Washington, DC 20202-1100

Customer Service: 800-421-3481 Fax: 202-453-6012

TDD: 877-521-2172*

E-mail: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

4. The Blue Ridge CTC website contains a full list of available resources:

<http://www.blueridgectc.edu/current-students/title-xisexual-harrassment-discrimination/>

III. OVERVIEW AND PURPOSE OF SEXUAL MISCONDUCT POLICY.

Our community of trust requires that students treat one another with respect, dignity and fairness. In an intimate relationship, these values are of paramount importance. Sexual misconduct, as defined by this policy, includes a broad range of behavior such as inappropriate physical touching, sexual exploitation, and sexual intercourse without consent and other forms of sexual violence. Any type of sexual misconduct is considered sexual harassment. Sexual misconduct may be a crime.

The College is committed to maintaining an environment that is free from sexual violence and in which the freedom to make individual choices regarding sexual behavior is respected by all. Sexual intimacy requires effective consent (as defined in Section III.B). Sexual misconduct by anyone is unacceptable and will be addressed in a timely fashion and with serious consequences by the College.

This policy and procedure are the College's grievance procedure required by Title IX. This policy and procedure are designed to provide students charged with sexual misconduct with due process while ensuring a reporting party's protections under Title IX and providing prompt and equitable resolution of charges.

A. Violations

1. **Sexual Assault** is an act of interpersonal violence that occurs at alarming numbers on college campuses. Victims can be male, female, straight, gay, bisexual or transgender. Sexual Assault includes unwanted sexual intercourse, unwanted sexual intrusion or any form of sexual touching with another person without the consent of that person.
2. **Discrimination** is the unequal treatment of a person based on that person's gender. This prohibition covers any term or condition of employment, academic program, student service, activity, benefit or opportunity.

3. **Sexual Misconduct** is a category of behavior that includes actual or attempted sexual harassment, non-consensual sexual contact, non-consensual sexual intercourse, and sexual exploitation. Sexual misconduct can occur between strangers or non-strangers, including people involved in an intimate or sexual relationship. Sexual misconduct can be committed by males or by females, and it can occur between people of the same or different sex. Sexual violence is also sexual misconduct.
4. **Sexual Harassment** is defined by College policy as unwelcome conduct including sexual violence, when
 - a. Submission to such conduct is made or threatened to be made a term or condition of employment, education, or participation in a College activity, such as admission into a class or program.
 - b. Submission to or rejection of such conduct is used or threatened to be used as a factor in a decision affecting employment, education, or participation in a College activity, such as a student's grade. This form of sexual harassment is known as "quid pro quo" harassment.
 - c. Another form of sexual harassment is unwelcome conduct based on sex or gender that unreasonably interferes with a student's academic (or work) performance or living conditions, or creates an intimidating, hostile, or offensive environment. This form of harassment may include conduct based on sex that is not sexual in nature. Each situation is considered in context to determine if sexual harassment has occurred. Conduct must be severe or pervasive in order to create a hostile environment; conduct may be inappropriate, offensive or hurtful yet not be sexual harassment.

****Harassment can be verbal, physical, or written, and if written, may be communicated in different ways such as email or text messaging. Harassment can also occur over social media.**

- d. **Non-Consensual Sexual Contact** is either of the following without effective consent (see below for the definition of consent):
 1. deliberately touching a person's intimate parts (including genitalia, groin, breast or buttocks, or clothing covering any of those areas), or
 2. using force or threat of force to cause a person to touch his or her own or another person's intimate parts.
- e. **Non-Consensual Sexual Intercourse** is the penetration (anal, oral or vaginal) by a penis, tongue, finger, or an inanimate object without effective consent.
- f. **Sexual Exploitation** is taking sexual advantage of another person without effective consent and includes, without limitation, causing the incapacitation of another person for a sexual purpose; causing the prostitution of another person; electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images of another person; allowing third parties to observe sexual acts; engaging in voyeurism; distributing

intimate or sexual information about another person; and/or knowingly transmitting a sexually transmitted infection, including HIV, to another person.

B. Effective Consent and Incapacitation

1. Effective Consent for Sexual Activity

Students choosing to engage in any form of sexual activity – from touching or kissing to intercourse – must obtain consent from their partner(s) prior to engaging in such activity.

Consent for sexual activity can only be obtained in situations where all people involved have equal power in deciding what will and will not happen during an encounter. Getting consent is an active process that involves clearly communicating intentions and desires. Consent for sexual activity is based on the mutual understanding and respect of all people involved for the desires and wishes of their partner(s). Consent is informed, with all people involved having the information relevant to the sexual activity in question. Consent:

- a. Is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested an understandable agreement between them to do the same thing, in the same way, at the same time and with one another.
- b. Is not merely the absence of a verbally stated “no”
- c. Is never final or irrevocable
- d. Is time-limited and situation-specific; even if someone obtained consent from a partner(s) in the past, this does not mean that consent is automatically granted again
- e. Can only be given by someone who is free from verbal or physical pressure, coercion, intimidation, threat, or force
- f. Can only be given by someone in an unimpaired state of mind who is able to understand what is happening; consent is not valid if the party from whom consent is sought is impaired by the use of alcohol or drugs, if the party is asleep, passed out or unconscious.

*****The use of drugs or alcohol is not an excuse for failing to obtain consent for sexual activity.**

2. Incapacitation

One who is incapacitated cannot provide effective consent. Incapacitation is the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, without limitation, sleep, and blackouts. Where alcohol or drugs are involved, incapacitation is a state beyond drunkenness or intoxication, and is defined with respect to how the alcohol consumed impacts a person’s decision-making capacity, awareness of consequences, and ability to make fully informed judgments.

3. Examples of Sexual Misconduct

- a. Amy and Peter have been in an ongoing relationship for a year-and-a-half and have engaged in consensual sexual intercourse. One night while becoming intimate, Amy stops and says

she doesn't feel like having sex that night. Peter continues to touch her, saying that she got him excited and it wasn't fair of her to lead him on like that. Again Amy tells him she does not want to have sex, and then is silent. Peter decides she has given in, and proceeds to have sexual intercourse with her. This is a violation of the Sexual Misconduct Policy. Peter had sexual intercourse with Amy against her will. The fact that Amy has freely consented to sexual intercourse with Peter in the past does **NOT** mean he has her consent in this situation.

- b. Raquel is dancing with Carlos, a student she knows from her Human Growth class, at a crowded party. After dancing for a while, Carlos kisses Raquel, and she kisses him back. A short time later, Carlos moves his hands to Raquel's buttocks. She tells him to stop, saying she doesn't want to be touched in that way and that he should have more respect for her. He laughs, tells her she takes herself too seriously, and again begins to grope her. This is a violation of the Sexual Misconduct Policy. Carlos touched Raquel in a sexual way without her consent, and continued to do so after she told him to stop. Even though Raquel appears to have consented to kissing, this consent does not extend to other sexual contact. This behavior is a form of non-consensual sexual contact.
- c. Michelle and Vera have been intimate for a few weeks. One night, Vera calls Michelle and asks her to come over. When she arrives, Vera kisses Michelle passionately and leads her into the bedroom. They each express their excitement and desire to "hook up," and are soon making out heavily in Vera's bed. After a while, Michelle tries to engage in oral sex with Vera. Vera tells Michelle that she really likes her, but that she doesn't feel ready for that. Michelle tells Vera she's just being shy, and ignores her when she repeats that she doesn't feel ready. Finally, Michelle threatens to reveal on the Internet that Vera is a lesbian. Because Vera has not yet come out to her friends and family, she becomes frightened and silent. Michelle proceeds with oral sex. This is a violation of the Sexual Misconduct Policy. Because of Michelle's manipulative and threatening arguments, Vera was afraid and unable to freely give her consent. Michelle did not receive consent from Vera and has committed non-consensual sexual intercourse.
- d. April and Tre have been together for six months. She often tells her friends stories of Tre's sexual prowess, and decided to prove it to them. One night, she and Tre engage in consensual sexual intercourse. Without Tre's knowledge, April sets up her digital camera to videotape them having sex. The next evening, she uploads the video to an online videosharing site and discusses it with her friends online. This is a violation of the Sexual Misconduct Policy. Tre's consent to engage in sexual intercourse with April did NOT mean April had obtained his consent to videotape it. This is a form of sexual exploitation.
- e. Michael and Hector have been flirting with each other all night at a party. Around 1:30 a.m., Hector excuses himself to find a bathroom. Michael notices Hector slurring his speech. Michael wonders if Hector went to the bathroom to vomit. When Hector returns, the two begin flirting more heavily and move to a couch. As the conversation continues, the two become more relaxed and more physically affectionate. Michael soon suggests they go back

to his room, and Hector agrees. As they walk down the stairs, Michael notices that Hector looks unstable and offers his arm for support and balance. When they get back to his room, Michael leads Hector to the bed and they begin to become intimate. Hector becomes increasingly passive and appears disoriented. Michael soon begins to have sexual intercourse with him. The next morning, Hector thinks they had sex but cannot piece together the events leading up to it. This is a violation of the Sexual Misconduct Policy. Hector was clearly under the influence of alcohol and thus unable to freely consent to engage in sexual activity with Michael. Although Michael may not have known how much alcohol Hector had consumed, he saw indicators from which a reasonable person would conclude that Hector was intoxicated, and therefore unable to give consent. Michael in no way obtained consent from Hector for sexual intercourse.

IV. PROCEDURAL CONSIDERATION

A. Who May Report an Alleged Violation –

Any person may file a report of sexual misconduct against a Blue Ridge student, student organization, Blue Ridge Staff or Faculty, or Third Party vendors associated with Blue Ridge Community and Technical College under this Policy. All Blue Ridge employees are mandated reporters to the Title IX Coordinator. The Coordinator will determine whether or not to trigger the College's response obligations.

B. How to File a Report –

Any person in immediate threat or harm, should call 9-1-1 for emergency assistance. A person may make an anonymous report to the Title IX Coordinator or any persons at Blue Ridge CTC. Please note that all parties of the College, with the exception of the Sexual Assault Response Coordinator, are required reporters and therefore must notify the Title IX Coordinator of any incident. Reports may be submitted via the website or by using the Official Complaint Form. All cases will be investigated. The reporting party may elect to remain anonymous, however, there may be cases where the College may not be able to secure anonymity. Such cases may involve serial offenders.

C. Geographic Jurisdiction –

This policy applies to any allegation of Sexual Misconduct against a student, **if the allegation occurred during the school's educational program or activity, occurred in the United States, or on properties that the College has substantial control.** It is considered applied if the conduct negatively affects a victim's school experience or the overall school environment.

D. Timing of Reports and Availability of Procedures –

As long as the College has jurisdiction over the reported student, there is no time limit to invoking this policy in cases of alleged sexual misconduct. Nevertheless, persons are encouraged to report alleged sexual misconduct as soon as possible in order to maximize the College's ability to respond promptly and effectively.

E. Retaliation –

It is a violation of College policy to retaliate against any person making a report of sexual misconduct or against any person cooperating in the investigation of (including testifying as a witness to) any allegation of sexual misconduct. "Retaliation" includes intimidation, threats, or harassment against

any such reporting party or third party. Retaliation should be reported promptly to the Associate Dean of Students and may result in disciplinary action independent of the sanction or interim measures imposed in response to the underlying allegations of sexual misconduct.

F. Standard of Proof –

The Department of Education’s Office of Civil Rights has interpreted Title IX to require schools to evaluate reports of alleged sexual misconduct under a “preponderance of the evidence” standard and that is the standard adopted by this Policy. A preponderance of the evidence exists when a reasonable person, after a careful balancing of available information, would conclude a violation has occurred and the student/organization charged is responsible for the violation.

G. Responsible Decision Maker

The decision-maker, appointed by the President, and not the Title IX Coordinator or any other persons named in this policy, who has been aptly trained, will issue a written document regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, and whether remedies will be provided to the complainant.

H. Sanctions –

Primary Sanctions for Sexual Harassment, Non-Consensual Sexual Contact and Sexual Exploitation range from probation to permanent dismissal. Informal resolution or restorative justice between the parties may be offered or permitted unless the allegation involves an employee sexually harassed a student.

Primary Sanctions for Non-Consensual Sexual Intercourse/Sexual Assault range from Suspension to Permanent Dismissal. Informal resolution or restorative justice between the parties may be offered or permitted unless the allegation involves an employee sexually harassed a student.

Related Misconduct - In accordance with this Policy, the Student Judicial Hearing Board is empowered to hear allegations of, and to impose sanctions for, sexual misconduct and any violations of the College’s Student Code of Conduct pending against the charged party directly related to the alleged sexual misconduct or any alleged violations of this Policy.

Students who appear before the Student Judicial Hearing Board, whether as parties to the proceedings or as witnesses, are expected to provide truthful testimony in accordance with the College’s Honor Code.

A. Effect of Criminal Proceedings –

Because sexual misconduct may constitute both a violation of College policy and criminal activity, the College encourages persons to report alleged sexual misconduct promptly to local law enforcement agencies. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this Policy, criminal investigations or reports are not determinative of whether sexual misconduct, for purposes of this Policy, has occurred. In other words, conduct may constitute sexual misconduct under this Policy even if it is not a crime or law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute. In such cases, the reporting party may not initially understand the results of the criminal investigation, the nature of criminal procedure, or the grounds for the law enforcement decision not to prosecute. The

reporting party in such cases may request that the Director identify a campus Title IX Deputy to assist him or her in seeking and attending a meeting with the local prosecutor to gain an understanding of the decision to decline a prosecution.

The filing of a report of sexual misconduct under this Policy is independent of any criminal investigation or proceeding, and (except that the College's investigation may be delayed temporarily while the criminal investigators are gathering evidence) the College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation and take interim measures to protect the reporting party and the College community, if necessary.

B. Modified Procedures for Alleged Violations of the Sexual Misconduct Policy –

With the exceptions below, the investigation and adjudication of reports of sexual misconduct is governed by the policies set forth in the Student Code of Conduct.

1. For sexual misconduct cases, the College's investigation of the report (including all investigation required to prepare formal charges, if any) will be completed **in a timely manner** of the complaint. If a case of sexual misconduct is not resolved, the matter will be scheduled for a hearing before the **Student Judicial Hearing Board**.
2. The **Student Judicial Hearing Board** is comprised of two members of the faculty or staff appointed by the Vice President of Enrollment Management or designee, one male and one female. Both parties will review the Board members and identify prior to the hearing any conflict of interest. In the event of a conflict, alternate members will be chosen. **Selected members will have complete Title IX hearing training.**
3. Both parties may have an **advisor** of his/her choosing present at the hearing. The **advisor (which may include an attorney at law) may cross examine any parties** in the hearing process and will be bound by the rules of confidentiality governing the hearing. All **advisors** must be named and reported 2 days prior to the hearing date. **Both parties may introduce witnesses and evidence as part of the hearing process.**
4. **Both parties are to participate** throughout the hearing. **Live hearings may be conducted with all parties is physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. All hearings will be audio or audiovisually recorded.**
5. The reporting party, the charged party, and case administrator may not ask repetitive questions of any witness. Upon prior consultation, either the reporting party or the case administrator may make summary comments in the hearing.
6. Both parties have a right not to have their unrelated past sexual histories discussed in the hearing. The hearing officers or chair of the Conduct Board will determine whether proposed testimony regarding past sexual history between the parties is related to the case at issue and may be introduced during the hearing. **Direct questioning of either party is not permitted.**
7. A Title IX Deputy Coordinator will review all evidence submitted to the **Student Judicial Hearing Board** to determine whether remedial or protective action (such as changes to a student's class schedule) is appropriate.

8. The Title IX Coordinator will provide **all parties** with notification of the outcome of a conduct proceeding and any sanction(s) imposed at the same time notice. This shall be conducted within five days of the decision.
9. Either party has the right of appeal. **Both parties will receive appeal information as part of the conduct proceeding outcome notification.**

VI. Appeals

A. Right of Appeal –

All parties are entitled to due process and as such, each may appeal the decision.

B. Timeline and Form of Appeal

- a. Appeals must be submitted to the Vice President of Enrollment within five working days following written notification of the decision.
- b. All appeals must be in writing and must clearly cite the grounds for the appeal and the evidence supporting it.

C. Grounds for Appeal

1. A charged party may appeal the resolution on the ground of an excessive or inappropriate sanction.
2. The appeal must be based on the following grounds:
 - a. Procedural irregularity severe enough to have denied the student a fair hearing. Procedural deviations will not be sufficient to sustain an appeal unless they are found to be severe enough to have denied the student a fair hearing.
 - b. Discrimination **or bias** in the hearing on a basis prohibited by College Policy which caused an unfair hearing.
 - c. ~~Lack of sufficient evidence to support the decision.~~
 - d. New material evidence that is not merely corroborative or repetitive, unknown by the student at the time of the hearing and pertinent to the case.
 - e. ~~An excessive or inappropriate sanction.~~
3. Appeals for cases in which the primary sanction issued is Probation with Loss of Privileges, Suspension, or Dismissal are considered by the President or designee.
 - a. "Upon receipt of a timely appeal," the Vice President of Enrollment Management will present all original hearing material to the President (or designee) to hear the appeal.
 - b. The President may decide one of the following:
 - i. There **is no basis for the appeal**. The appeal then is dismissed, and the original decision stands.
 - ii. An **incorrect finding of responsibility was reached**. The President or designee then will dismiss the case.

iii. The **sanction administered is excessive or inappropriate**. The President or designee then determines a sanction that is fair to the facts and circumstances of the case. The President or designee will not increase the level of the sanction.

4. Continued Enrollment During Appeal

- a. If the sanction being appealed includes suspension or dismissal from the College, the student will not take part in any College function except scheduled classes while the appeal is pending. Where appropriate, the VPEN also may restrict the student from parts of the campus or specific functions or activities during the appeal period.
- b. In those cases where the VPEN determines that the continued presence of the student constitutes a risk to the educational process, to him/herself, or to the safety of others, the VPEN may prohibit the student from attending classes until the appeal is complete.

D. Notification and Access to Record During Appeal

The individual or committee hearing an appeal will have access to the full record of the case and may invite the appealing party to make a personal appearance to discuss the appeal. In such instances, the case administrator or the chair of the student conduct committee whose decision is being appealed may also be invited to be present to respond to the appeal.

The student and the administrator or board that heard the original case will receive written notification of the decision regarding the appeal, including the reasons for the decision if appropriate. The entire case file is maintained by the Vice President of Enrollment and will include a copy of investigation, hearing, evidence, findings and all correspondence. **All files will honor FERPA regulations.**

VII. AMENDMENTS

This Policy may be amended, in writing, by the President.