

CONCORD UNIVERSITY BOARD OF GOVERNORS

Policy No. 37

Nondiscrimination, Sexual Misconduct, and Other Forms of Harassment

Effective Date: 02/25/2014

Section 1: Authority

1.1 W. Va. Code § 18B-1-6

1.2 W. Va. Code R. § 133-4

Section 2: Definitions

2.1 “Bullying” means repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a Protected Category.

2.2 “Complainant” means any current employee, student or applicant to Concord University (regardless of whether he or she is applying for employment or for admission as a student), vendor or contractor representative, or visitor, who reports an alleged violation under this policy. The complainant is not required to be the person who allegedly suffered the discriminatory or harassing treatment; rather, it could be a witness to the events or a Mandatory Reporter.

2.3 “Consent” means informed, knowing, voluntary and clear permission, through mutually understandable word or action, to engage in mutually agreed upon sexual activity. Under West Virginia law, a lack of consent results from: (1) forcible compulsion; (2) incapacity to consent; or (3) if the complaint charges sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor’s conduct. A person is deemed incapable of consent when such person is: (1) less than sixteen years old; (2) mentally defective; (3) mentally incapacitated; or (4) physically helpless. Consent is discussed in more detail in Section 7.2 of this policy.

2.4 “Discrimination” means actions that deprive others of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a Protected Category.

2.5 “Domestic Violence/Intimate Partner Violence” means the occurrence of one or more of the following acts between family or household members or between individuals in an intimate relationship to each other, including dating: (1) attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons; (2) placing another in reasonable apprehension of physical harm; (3) creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts; (4) committing either sexual assault or sexual abuse as those terms are defined

in Chapter 61 of the West Virginia Code; and (5) holding, confining, detaining or abducting another person against that person's will.

2.6 "Hazing" means acts likely to cause physical or psychological harm or social ostracism to any person within the Concord University community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity on the basis of actual or perceived membership in a Protected Category.

2.7 "Hostile Environment" means an environment created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent, or pervasive and objectively offensive so as to interfere with, limit, or deny the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits, or opportunities.

2.8 "Incapacitation" means a state where a person cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how of his or her sexual interaction").

2.9 "Intimidation" means implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a Protected Category.

2.10 "Mandatory Reporter" means all employees, both full-time and adjunct faculty and full-time and part-time staff of Concord University, but does not include student employees, such as Resident Assistants in the Residence Halls.

2.11 "Minor" means a person under the age of 16 years.

2.12 "Non-Consensual Sexual Contact" means any intentional Sexual Touching, however slight, including with any object, by a person upon another person, that is without consent and/or by force.

2.13 "Non-Consensual Sexual Intercourse" means any Sexual Penetration or intercourse (anal, oral or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force.

2.14 "Protected Category" means a category under which an individual falls or is perceived to fall that is protected under federal, state, or local anti-discrimination laws, including race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age, marital status, veteran or military status, disability, or genetic information.

2.15 "Respondent" means the accused employee, student, or campus visitor who allegedly perpetrated acts of discrimination, harassment, or sexual misconduct.

2.16 "Retaliation" means any adverse action taken against a person due to the fact that he or she complains about harassment, supports a complainant involving harassment, assists in providing information relevant to a claim of harassment, or otherwise participates in any way in the investigation of the complaint. .

2.17 "Sexual Exploitation" means a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse, or Non-Consensual Sexual Contact. The term

includes, but is not limited to, the following situations:

2.17.1 Sexual voyeurism, such as watching a person undressing, using the bathroom or engaging in sexual acts without the consent of the person observed;

2.17.2 Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent, such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent;

2.17.3 Prostitution;

2.17.4 Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection; and

2.17.5 Administering alcohol or drugs (such as date rape drugs) to another person without his or her knowledge or consent for the purpose of engaging in sexually-related activity with that person.

2.18 "Sexual Harassment" means any unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual/gendered nature. A form of sexual harassment occurs when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status, submission to or rejection of such conduct by an individual is used as the basis of employment or academic decisions affecting such individual, or such conduct creates a Hostile Environment.

2.19 "Sexual Penetration" means vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

2.20 "Sexual Touching" means any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

2.21 "Stalking" means a course of conduct (i.e., repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of another) directed at a specific person that is unwelcome and would cause a reasonable person to feel fear.

2.22 "Title IX Coordinator" means the Vice President of Student Affairs/Dean of Students, or other individual assigned by the President to serve in this capacity.

Section 3: General Provisions

3.1 Concord University ("Concord") is committed to promoting the goals of fairness and equity in all aspects of the educational enterprise. This policy applies with equal force to employees, students, vendors, contractors, and any other outsiders who may interact with Concord University or its students or employees.

3.2 This policy applies to behaviors that take place on campus, at Concord-sponsored events, and may also apply off-campus and to actions online when the Title IX Coordinator determines that the off-campus conduct affects a

substantial Concord interest. A substantial Concord interest includes, but is not limited to, the following:

3.2.1 Any action that constitutes a criminal offense as defined by federal or state law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality where Concord is located;

3.2.2 Any situation where it appears that the accused individual may present a danger or threat to the health or safety of him/herself or others;

3.2.3 Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder;

3.2.4 Any situation that is detrimental to the educational interests of Concord; or

3.2.5 Any online postings or other electronic communication, including cyber-bullying, cyber-stalking, cyber-harassment, occurring within Concord's control (e.g. Concord networks, websites or between Concord email accounts). Any online postings or other electronic communication, including cyber-bullying, cyber-stalking, cyber-harassment, occurring outside of Concord's control jurisdiction will be investigated when those online behaviors may have the effect of creating a Hostile Environment at Concord or for its employees or students or otherwise cause a substantial on-campus disruption.

3.3 Inquiries about this policy may be made internally to either the Director of Human Resources, in person, via telephone, or via email at titleix@concord.edu; or the Vice President of Student Affairs/ Dean of Students and/or Title IX Coordinator, in person, via telephone, or via email at titleix@concord.edu. Contact information for these individuals is located on the Concord website, at <http://www.concord.edu>.

Section 4: Discriminatory Harassment

4.1 Concord is committed to providing a work and educational environment free of discriminatory harassment. This harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters.

4.2 The following forms of harassment are prohibited under this policy:

4.2.1 Discriminatory and Bias-Related Harassment

(i) Harassment constitutes a form of discrimination that is prohibited by law. This policy explicitly prohibits any form of harassment on the basis of actual or perceived membership in a Protected Category, by any member or group of the Concord community, which creates a Hostile Environment, both objectively and subjectively. Merely offensive conduct and/or harassment of a generic institutional nature not on the basis of an actual or perceived membership in a Protected Category is not prohibited by this policy, and should be addressed with civil confrontation or effective conflict resolution mechanisms. For assistance with conflict resolution, contact the Concord Office of Human Resources or, if you are a student, the Office of Student Affairs. Harassment that does not rise to the level of creating a Hostile Environment is still a concern to Concord and should be

reported so that appropriate intervention and remedies can be implemented, if needed.

(ii) Concord will not tolerate discriminatory harassment against any employee, student, visitor, or guest on the basis of his or her actual or perceived membership in a Protected Category.

4.2.2 Sexual Harassment

Sexual Harassment, which applies to employer and employees and students, is a form of sex/gender discrimination, is an unlawful discriminatory practice, and is a violation of this policy.

Section 5: Additional Misconduct Offenses

5.1 Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a Protected Category;

5.2 Intimidation;

5.3 Hazing (see Concord's policy on hazing);

5.4 Bullying;

5.5 Domestic Violence/Intimate Partner Violence;

5.6 Stalking (including cyber-stalking); and

5.7 Failure to comply with restrictions or sanctions during or after the investigation, including but not limited to no contact orders as defined in Section 11.

5.8 Violating any other Concord policies or procedures, when such violation is motivated by the actual or perceived membership of the victim in a Protected Category.

Section 6: Consensual Relationships

6.1 There are inherent risks in any romantic or intimate relationship between individuals in unequal positions. Thus, except as otherwise provided in Section 6.2, any romantic or intimate relationships in which power differentials are inherent are prohibited, which include, but are not limited to, the following:

6.1.1 relationships between students or applicants for admission and administrators, faculty, or any other Concord employee where a direct power differential exists between the student or applicant for admission and the employee;

6.1.2 relationships between a Concord employee holding a direct or indirect supervisory and/or evaluative role over the other person in the relationship; or

6.1.3 any other romantic or intimate relationship between students or applicants for admission and employees or between employees where any employment-related power differential exists between the persons in the relationship.

6.2 Notwithstanding the prohibitions in Section 6.1, any romantic or intimate relationship prohibited in Section 6.1 that exists prior to the creation of a power differential between the individuals involved in the romantic or intimate relationship shall not violate this policy if (i) the individuals in the relationship report the existence of the relationship as required in Section 6.4 upon the

creation of the power differential and (ii) the individuals consent to the removal of any potential power differential that could exist. This may require appropriate administrative action, including but not limited to, shifting or otherwise relocating an employee to a separate department or reporting capacity from the other individual involved in the relationship or the shifting of grading or other decision-making responsibilities of a faculty member which affect a particular student in the case of a pre-existing relationship with that student.

6.3 Issues may also arise in the educational setting or workplace from romantic or intimate relationships between students or applicants for admission and Concord employees or between Concord employees where a direct or indirect supervisory and/or evaluative role or other power differential does not exist between the persons in the relationship. Thus, while not prohibited, such relationships are highly discouraged.

6.4 If a relationship develops that falls under Sections 6.2 or 6.3, the student, applicant for admission, or employee involved in the relationship must timely report the existence and termination, if any, of such relationship as follows: applicants for admission and students shall report to the Vice President and Academic Dean and employees shall report to the Director of Human Resources.

6.5 Once a relationship is reported under Section 6.4, the Vice President and Academic Dean and the Director of Human Resources, respectively, shall inform the persons involved in the relationship of Concord's standards concerning consensual relationships, may set parameters while the persons are on campus, and make take other steps as appropriate.

6.6 Persons who engage in any relationship prohibited by Section 6.1 or who engage in any relationship listed in Sections 6.2 and 6.3 and who fail to timely report shall be subject to administrative action, up to and including termination of employment or dismissal from Concord, as applicable.

Section 7: Sexual Misconduct

7.1 Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. The following acts of sexual misconduct are prohibited:

7.1.1 Sexual Harassment, as set forth in Section 7.2.2 of this policy;

7.1.2 Non-Consensual Sexual Intercourse;

7.1.3 Non-Consensual Sexual Contact; and

7.1.4 Sexual Exploitation.

7.2 Consent

7.2.1 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, it must be informed, knowing, and voluntary. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in that specific sexual activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and gauging

consent, and you are thus urged to seek consent in verbal form. Talking with sexual partners about desires and limits may seem awkward, but serves as the basis for positive sexual experiences shaped by mutual willingness and respect.

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

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

7.2.4 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 or sexual 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 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.

7.2.5 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.

7.3 Filing of Complaints

7.3.1 To file a complaint of sexual misconduct or other violation of this policy falling under Title IX, an employee, student, or applicant may complete a Sexual Misconduct Complaint Form. Forms may be obtained from the Office of Student Affairs, the Office of Human Resources, or on the Concord website. The Title IX Coordinator will provide assistance in completing the form.

7.3.2 Completed Sexual Misconduct Complaint Forms shall be submitted to the Title IX Coordinator as soon as possible after the incident. If a complaint is against the Title IX Coordinator, the Sexual Misconduct Complaint Form shall be filed with the Vice President and Academic Dean, who will immediately designate a person to begin an investigation consistent with this policy.

7.3.3 As is addressed in more detail in Section 7.5, the Title IX Coordinator shall conduct a prompt, thorough, reliable, and impartial investigation of all complaints or shall appoint unbiased investigators to do so. Interim corrective measures may be taken during the investigation process, such as a ban from certain locations or events on campus, an adjustment to an academic schedule, a temporary suspension or removal from campus. The University will endeavor to complete the investigation within sixty (60) days; however, there are occasions when the

investigation may take longer. Parties will be informed, on an ongoing basis, of the status of the investigation, to the extent possible or practical, and provided the update does not interfere with the investigation. Parties requesting information on the status of the investigation should contact the Title IX Coordinator.

7.3.4 Upon completion of the investigation, the Title IX Coordinator shall provide a written report of investigation, which will set forth the final determination of the complaint on the basis of the legal standard of “preponderance of the evidence.” Parties will be notified simultaneously and in writing of the disposition of the complaint and the process for appeal.

7.4 Receipt of Notice

Regardless of whether a complaint is filed under Section 7.3, if a Mandatory Reporter (as defined herein) receives notice concerning alleged sexual misconduct or other violation of this policy falling under Title IX, then that Mandatory Reporter shall report to the Title IX Coordinator as much of the information as that employee is permitted to report under applicable confidentiality laws, unless an immediate threat of harm exists to self or others. Upon receipt of the notice, the Title IX Coordinator shall investigate the information contained in the notice, determine what sexual misconduct or other violation of this policy occurred, if any, and respond appropriately. The Title IX Coordinator’s response may vary, depending on the information contained in the particular notice, including initiation of the formal investigation process set forth in Sections 7.3.3 and 7.3.4 above.

7.5 Investigation

7.5.1 Following the receipt of a report of sexual misconduct, the respondent will be notified that a report has been filed and will be given written notice of the allegations. The respondent will have the opportunity to submit a written statement within five business days, whenever possible. The respondent and complainant will be given the opportunity to meet separately with the Title IX Coordinator (or designee) to review the policy and procedure.

7.5.2 A specially trained investigator(s) designated by the Title IX Coordinator will interview the complainant, respondent, and any witnesses. This investigator(s) will also gather any pertinent documentation materials. The investigator will not interview witnesses whose sole purpose is to provide character information. The investigator(s) will then prepare a report detailing the relevant content from the interviews and the documentation materials gathered.

7.5.3 Directly following the conclusion of the investigation, a determination of whether or not to proceed to the administrative resolution (see below) phase will be made. This determination will be based on whether reasonable cause exists to believe that a policy violation may have occurred. If reasonable cause does not exist, the procedure will be concluded at this point. However, Concord may institute other forms of remedial, community-based efforts such as educational initiatives and/or trainings.

7.6 Administrative Resolution

7.6.1 If reasonable suspicion exists to move to the administrative resolution phase of the process, the respondent and complainant will have the opportunity to review the investigative report and the documentation from the investigation. Given the sensitive nature of the information provided in the investigative report, the review of the report must occur in the Title IX Coordinator's or Director of Human Resources' office. Ample time will be afforded to the complainant and respondent, within reason, to review the report prior to responding to the allegations.

7.6.2 Following this review, the respondent will be given the opportunity to respond to the alleged violation of policy in the following ways: 1) No response; 2) Not Responsible; or 3) Responsible.

7.6.3 If the respondent is a student and accepts responsibility, the Vice President for Student Affairs (or designee) will be notified and will determine the sanction based on the evidence provided in the investigative report and documentation. The Vice President for Student Affairs (or designee) will schedule a meeting with the respondent to inform him/her of the sanctioning outcome within five business days whenever possible. If this determination and meeting cannot occur within five business days, the Vice President of Student Affairs should provide written notification as to why there is a delay and when to expect a determination and meeting.

7.6.4 The complainant and respondent will be made aware of the sanctioning decision. The respondent and complainant will then have the opportunity to appeal the sanctioning decision by Vice President for Student Affairs or his or her designee. The acceptance of responsibility, however, is not appealable (see Appeals Process).

7.6.5 If the respondent is a student and declines responsibility, or chooses not to respond, a University Hearing Board panel will be convened, unless the student agrees to move to the sanctioning phase without need for a University Hearing Board panel. At no time should a claim of sexual misconduct be heard by the student judicial system. It is a matter for a University Hearing Board panel.

7.6.6 If the respondent is an employee, the results of the investigation will be forwarded to the President for appropriate administrative resolution.

7.7 The Hearing Process

7.7.1 Every effort will be made to convene a University Hearing Board panel as soon as practicable following the conclusion of the investigation – ideally within 15 calendar days after the receipt of the final investigation report. The hearing will follow the process and procedures set out in Concord's Student Handbook and/or Student Judicial Manual.

7.8 Refusal to Participate

7.8.1 In cases where a complainant and/or respondent is a student and refuses to participate in the investigative process and/or the hearing panel, and where it is determined that reasonable suspicion exists to believe a policy may have been violated, a University Hearing Board panel will convene and determine a finding based on the information available to them. In most cases, refusal to participate

in the investigative process will preclude a party's ability to participate in the hearing panel.

7.9 Appeal

7.9.1 Any party who wishes to appeal the recommendations contained in the report of investigation, as they relate to sexual misconduct or other violations of this policy falling under Title IX, including the sanctions imposed, may do so by submitting that party's appeal in writing to the Vice President and Academic Dean (hereinafter "Appeals Officer"). Signed appeals should be hand-delivered or emailed in pdf format to the Appeals Officer within three (3) business days of the issuance of the final report of investigation. The Appeals Officer may share a copy of the written appeal with the other party, who may be given an opportunity to respond to the appeal. All responses to the appeal must be submitted in writing to the Appeals Officer within three (3) business days of receiving the copy of the appeal from the Appeals Officer.

7.9.2 Recommendations not related to a student's alleged sexual misconduct or other student violations of this policy falling under Title IX shall be addressed through applicable Concord policies and procedures, including handbooks, concerning employee and student conduct, as set forth in Section 9.

7.9.3 All appeals and responses are then reviewed by the Appeals Officer to determine if the appeal request meets the limited grounds and is timely. The original recommendations and sanctions will stand if the appeal is not timely or does not fall within the grounds for appeal set forth below, and the decision is final. The original recommendations and sanctions will also remain in effect pending the outcome of any appeal. If the appeal has standing, the Appeals Officer will consider the appeal. The party requesting the appeal has the burden of proving the error, as the original recommendations and sanctions are presumed to have been decided reasonably and appropriately. The only grounds for appeal are as follows:

- (i) A procedural or substantive error occurred that significantly impacted the outcome of the investigation, such as substantiated bias or material deviation from established procedures;
- (ii) To consider new evidence, unavailable during the original investigation, that could substantially impact the original recommendations or sanctions (a detailed description of this new evidence and its potential impact must be included); or
- (iii) The sanctions imposed are substantially disproportionate to the severity of the violation.

7.9.4 Within ten (10) business days of receiving the response(s) to the appeal(s), if any, the Appeals Officer will provide to both parties a Memorandum of Decision.

7.9.5 If the Appeals Officer determines that a material procedural or substantive error occurred, the Appeals Officer may return the matter to the original investigators with instructions to reconvene to cure the error. When the original investigators are unavailable, another specially trained investigator may be substituted by the Title IX Coordinator to review the appeal. 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.

7.9.6 If the Appeals Officer determines that new evidence should be considered, the Appeals Officer will return the matter to the original investigators to reconsider in light of the new evidence only. The reconsideration of the original investigators is not appealable.

7.9.7 If the Appeals Officer determines that the sanctions imposed are disproportionate to the severity of the violation, the Appeals Officer will return the matter to the investigators, who will modify the sanctions according to the directions of the Appeals Officer. The modified decision of the investigators is final.

7.9.8 Once an appeal is completed, the parties will be notified, simultaneously, of the final determination and any changes that result.

Section 8: Reporting of Violations of this Policy

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

8.1.1 Reports of discrimination, harassment, retaliation, or other violations of this policy should be made to the Director of Human Resources;

8.1.2 Reports of sexual misconduct or other violations of this policy falling under Title IX should be made to the Title IX Coordinator;

8.1.3 Reports of violations of this policy involving the Director of Human Resources or the Title IX Coordinator should be made to the Vice President and Academic Dean;

8.1.4 Reports of violations of this policy involving the Vice President and Academic Dean should be made to the President of Concord;

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

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

8.2 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.

8.3 Individuals responsible for receiving and investigating complaints made under this rule shall ensure victims are notified of their option to seek—or not to seek—assistance from law enforcement and/or campus authorities and the potential consequences of any such election. In addition, victims shall be provided with contact information for the local domestic violence shelter and magistrate court for purposes of determining whether to seek civil relief from the complained-of conduct.

8.4 Upon receiving a report of an alleged violation of this policy, the appropriate

administrator listed in Section 8.1 shall promptly investigate the alleged violation contained in the report.

8.5 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 Concord's jurisdiction.

Section 9: Violations of Policy

9.1 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 Concord, as applicable.

9.2 Except as provided in Section 7 of this policy concerning sexual misconduct or other violations of this policy falling under Title IX, violations of this policy shall be addressed as follows:

9.2.1 Violations by students shall be addressed through Concord policies and procedures on student conduct.

9.2.2 Violations by employees shall be addressed through the West Virginia Higher Education Policy Commission rules and procedures and the Concord policies and procedures on employee conduct, including applicable faculty and staff handbooks.

Section 10: Retaliation

10.1 Retaliation is a serious violation of this policy. No retaliation should occur against any individual who participates in any way in an investigation of a claim of discrimination, sexual misconduct or harassment, including but not limited to alleging discrimination, sexual misconduct or harassment, supporting a complainant, or for providing information relevant to a claim of discrimination, sexual misconduct or harassment. It will be treated as another possible instance of harassment or discrimination, and should be reported immediately as set forth in Section 8.1. Concord will take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Section 11: Campus No-Contact Orders

11.1 A campus no-contact order is a directive issued by a campus authority that prevents contact between parties or from one party to another. Such an order may be issued through the formal reporting process (i.e. Student Affairs, Human Resources, or the Office of Public Safety) or under the direction of a Title IX Coordinator. This may apply to communications in-person, online, and other forms of contact, both on- and off-campus. It is important to note that this is different than a civil order, which is issued by a court. Campus no-contact orders may be issued as a sanction or outcome and may also be issued on an interim basis while an incident is under investigation or adjudication. It is important to note that the burden of proof for a campus no-contact order is often less than that required for a court issued order, and the consequences for violating it are also

limited to action that can be taken by Concord, such as an additional student conduct charge of failure to comply with a college official. When interim measures to avoid contact between the parties are instituted, in most instances the respondent will be subject to the interim measures.

Section 12: Remedial Action

12.1 Concord will implement initial remedial and responsive actions upon notice of alleged harassment, retaliation, or discrimination, and will take additional prompt remedial and/or disciplinary action with respect to any member of the Concord community, guest, or visitor who has been found to engage in harassing or discriminatory behavior or retaliation.

12.2 Deliberately false and/or malicious accusations of harassment, as opposed to complaints which, even if erroneous, are made in good faith, are just as serious an offense as harassment and will be subject to appropriate disciplinary action.

Section 13: Confidentiality of Reported Information

13.1 Individuals wishing to report violations of this policy must be aware that Concord 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 Concord 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.

13.1.1 If one wishes to keep their identity and the details of an incident confidential, they may find it helpful to speak with on-campus mental health counselor, campus health service provider, or off-campus rape crisis resources or clergy members who can maintain confidentiality. A campus counselor is available to help free of charge. A complainant may wish to consider this option if he or she:

- (i) Would like to know about support and assistance, but are not sure if they want to pursue formal action against the individual;
- (ii) Have questions or would like to process what happened with someone without involving police or campus disciplinary procedures; or
- (iii) Do not want the perpetrator to know that they are seeking help or support.

13.1.2 There are occasions when even confidential resources have some obligations to report, such as in situations of imminent danger and/or sexual abuse of a minor. Thus, Concord cannot guarantee confidentiality to those who report incidents of sexual violence except where those reports are privileged communications with licensed health care professionals. In such instances, Concord will investigate and take appropriate action, taking care to protect the

identity of the complainant and any other reporter as best possible in accordance with this procedure.

13.2 When a report of gender-based misconduct is filed, the complainant, the respondent, and all identified witnesses who are named in the investigation, will be notified of Concord's expectation of confidentiality/privacy. Subject to the issues addressed in Section 13.1, Concord will make all reasonable efforts to maintain the confidentiality/privacy of parties involved in sexual or gender-based misconduct investigations. Breaches of confidentiality/privacy may result in additional disciplinary action.

Section 14: Federal Timely Warning Obligations

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

Section 15: Implementation of Policy

15.1 This policy will be implemented using applicable West Virginia Higher Education Policy Commission rules and procedures, Concord policies and procedures, and Concord 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 Concord may revise such information within this policy without resubmittal of this policy through the rulemaking process.