

**SOUTHERN WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE  
BOARD OF GOVERNORS  
SCP-2843**

**SUBJECT:** Discrimination, Harassment, Sexual Harassment, Sexual and Domestic Misconduct, Stalking and Retaliation Policy

**REFERENCE:** West Virginia Code §18B-1-6; West Virginia Human Rights Act; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681; the West Virginia Human Rights Act, W. Va. Code §§ 5-11-1 to -20; the Campus Sexual Violence Elimination Act, 20 U.S.C. §1092; the Violence Against Women Act of 1994, 42 U.S.C. § 13925; West Virginia Council for Community and Technical College Education, Title 135, Series 27, *Academic Freedom, Professional Responsibility, Promotion and Tenure*; SCP-1400, *Guest Speakers, Lecturers, Performers, and Organized Groups*; SCP-4770, *Students Rights and Responsibilities*, SAM - 2000.1, *Employee Handbook*.

**ORIGINATION:** June 1, 1984

**EFFECTIVE:** July 20, 2017

**REVIEWED:** September 15, 2015

**SECTION 1. PURPOSE**

1.1 This policy sets forth how discrimination, harassment, sexual harassment, sexual and domestic misconduct, certain consensual relationships, stalking and retaliation will be addressed by Southern West Virginia Community and Technical College (“Southern”).

**SECTION 2. SCOPE AND APPLICABILITY**

2.1 Southern West Virginia Community and Technical College 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.

2.2 This policy applies to all individuals engaged in any Southern activity or program, whether on or off campus, and all individuals on Southern property, including, but not limited to, all students, staff, faculty members, or other Southern officials and visitors.

2.3 This policy is not intended to substitute for or supersede criminal or civil law. Individuals should report incidents of sexual offense (assault and sexual exploitation), domestic misconduct (domestic violence and dating violence), and stalking to law enforcement authorities. Criminal and civil remedies are available in addition to any remedies that Southern may provide under this policy.

### SECTION 3. DEFINITIONS

- 3.1 Complainant means either an individual who is the alleged victim of prohibited conduct that is reported to Southern or, where appropriate, Southern itself when proceeding on a complaint when the alleged victim is unavailable or unwilling to participate.
- 3.2 Reporter means any party that makes or files a complaint about prohibited conduct under this policy. The reporter may be the complainant, any other person or Southern.
- 3.3 Respondent means an individual accused of conduct prohibited by Section 4 of this policy.
- 3.4 Member of the Southern Community means an individual engaged in any Southern activity or program, whether on or off campus, or any individual lawfully on Southern property, including, but not limited to, any person who is a student, staff, faculty member, other Southern official or visitor.
- 3.5 Student means an individual subject to SCP-4470, *Student Rights and Responsibilities*.
- 3.6 Consensual relationship means a mutually acceptable romantic, dating or sexual relationship between individuals.
- 3.7 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 in, 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 Southern 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, for example, 20 U.S.C. § 1681(a) (2015).
- 3.8 Harassment is a 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 may take various forms including, but not limited to, name-calling, graphic or written statements (including the use of social media, text messages, e-mail or other similar forms) or other conduct that may be physically threatening, harmful or humiliating. Harassment does not necessarily have to include intent to harm, be directed at a specific target or involve repeated incidents.
- 3.9 Hostile Environment is a situation where an individual is subjected to any conduct based on the reasons set forth in Section 3.8 and that conduct is sufficiently severe or pervasive, or so 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 Southern's programs, services, opportunities or activities. A hostile environment can be created by anyone involved in a Southern program or activity, including but not limited to, 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 environment, consideration will be given not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the

conduct as sufficiently severe or pervasive, or objectively offensive. Also, the following factors will be considered:

- 3.9.1 The degree to which the conduct affected the education or employment of one or more students or employees;
  - 3.9.2 The nature, scope, frequency, duration and location of the incident or incidents;
  - 3.9.3 The identity, number, age, sex and relationships of persons involved;
  - 3.9.4 The location of the conduct and the context in which it occurred; and
  - 3.9.5 Other incidents occurring at the location or at Southern, including incidents of sex-based, but non-sexual harassment.
- 3.10 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 Southern 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 conduct 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, such as viewing material on computers or other electronic devices where others can see. Importantly, these and any other examples in this policy are provided only for illustration purposes and all conduct must still meet the applicable definitions in the policy before rising to the level of prohibited conduct.

- 3.11 Sexual Offense means sexual assault or 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 Southern West Virginia Community and Technical College.
- 3.12 Sexual Assault means sexual intercourse or sexual contact that occurs without consent. Sexual Assault also means an offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Uniform Crime Reporting program.
- 3.13 Sexual Contact means any (1) intentional touching, either directly, through clothing or with an object, of the breasts, buttocks, anus or any part of the sex organs of another person, or (2) intentional touching of any part

of another's body by the actor's sex organs.

- 3.14 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.
- 3.15 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. "Forcible compulsion" means (a) physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or (b) threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or herself or another person or in fear that he or she or another person will be kidnapped; or (c) fear by person under sixteen years of age caused by intimidation, expressed or implied, by another person who is at least four years older than the victim. 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. Intoxication from alcohol or drug use, alone, does not bar consent, but can when a party is so intoxicated as to be incapacitated; i.e., unable to knowingly and intentionally make decisions for him or herself. Incapacitation negates consent when the alleged perpetrator knows, or a reasonable person in his or her position, under the circumstances, should know, that the alleged victim is incapacitated.
- 3.16 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.
- 3.17 Domestic Violence means a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the alleged victim, by a person with whom the alleged victim shares a child in common, by a person who is cohabitating with or who has cohabitated with the alleged victim as a spouse, by a person similarly situated to a spouse of the alleged victim under the domestic or family laws of the State of West Virginia, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family laws of the State of West Virginia. "Domestic Violence," which is also prohibited by this policy, means: (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 against 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.
- 3.17.1 For purposes of this subsection, 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; or (7) have any of the relationships described in W.Va. Code § 48-27-204.
- 3.18 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. The view of the complainant shall generally be controlling in determining whether such a relationship existed. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence, for purposes of this policy, does not include emotional abuse.

- 3.19 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. One engages in an impermissible course of conduct under this definition if one engages in two or more acts that include, but are not limited to, acts in which the stalker directly, indirectly or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens or communicates to or about a person in a way prohibited as described above or interferes with a person's property. A *reasonable person*, for purposes of this definition, means a reasonable person under similar circumstances and with similar identities to the victim. *Substantial emotional distress*, for purposes of this definition, means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- 3.20 Responsible Employees are any person employed, full time, part-time, or temporarily, by Southern West Virginia Community and Technical College. Responsible Employees are required to forward all reports of violations of this policy, and any information they obtain or receive that this policy may have been violated, to the Title IX Coordinator.
- 3.21 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 policy, including but not limited to filing a complaint or being a witness in or supporter of or against a complaint. This includes interfering with the reporting of or the investigation of prohibited behavior, such as tampering with or destroying relevant evidence; and intimidating, threatening or attempting to influence, in any way, the testimony or information of a reporter, complainant or witness.

#### **SECTION 4. POLICY**

- 4.1 Southern prohibits discrimination, harassment, sexual harassment, sexual offense, domestic misconduct, stalking and retaliation as defined in this policy (collectively referred to as *prohibited conduct*) by or against any member of the Southern community.
- 4.1.1 Jurisdiction: This prohibition applies to conduct that occurs on Southern premises or in connection with a Southern-sponsored activity; off-campus conduct that unreasonably interferes with the educational or orderly operation of the Southern community, its mission or its objectives determined by a reasonable person; and any off-campus conduct that in light of all the facts and circumstances, would endanger the health and safety of the Southern community. As a result, any individual found to have committed these acts against another is subject to appropriate discipline.
- 4.1.2 Role of Supervisor: Those in supervisory positions have a special responsibility to discourage prohibited conduct as well as to implement and enforce this policy.
- 4.2 Violators of this policy are subject to appropriate disciplinary action that may include sanctions such as warning, suspension or expulsion of a student in accord with SCP-4770, *Student Rights and Responsibilities*, 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.

4.2.1 Furthermore, although conduct may not violate this policy, it may still be prohibited by Southern under a different policy or standard of behavior. Accordingly, in such cases, Southern reserves the ability to take any necessary action.

4.3 Although consensual relationships are within the purview of individual privacy, those engaging in such relationships that occur between persons in inherently unequal and closely related positions at Southern, or between 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.

4.3.1 In these specific cases of consensual relationships, the individuals shall notify their immediate supervisor or other appropriate administrator. The supervisor or administrator shall be responsible for arranging to eliminate or mitigate any conflict of interest or other legitimate occupational interest related to employment, the consequences of which might prove detrimental to Southern 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 Southern.

4.3.2 It is important to note that these types of consensual 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 relationship as receiving favorable treatment in employment or educational decisions and actions.

4.4 A faculty member or instructor is prohibited from engaging in a consensual relationship with a student whom the faculty member or instructor evaluates, supervises, instructs or advises.

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

## **SECTION 5. BACKGROUND OR EXCLUSIONS**

5.1 Free expression and academic freedom at Southern West Virginia Community and Technical College (“Southern”) are necessary to enable the institution to reach its goals to engage students in a challenging academic environment; excel in research, creative activity and innovation in all disciplines; foster diversity and inclusion; advance international activity and global engagement; and enhance the well-being and quality of life of the people of West Virginia. Consequently, while this policy seeks to protect members of the Southern community from discrimination, harassment, sexual and domestic misconduct, certain consensual relationships, stalking and retaliation, it should be read in conjunction with policies that relate to free expression and academic freedom: SCP-1400, *Guest Speakers, Lecturers, Performers, and Organized Groups*, SCP-4770, *Student Rights and Responsibilities*; and West Virginia Council for Community and Technical College Education Title 135, Series 27, *Academic Freedom, Professional Responsibility, Promotion and Tenure*.

## **SECTION 6. GENERAL PROVISIONS**

6.1 The President or the President’s designee shall appoint an administrator to act as Southern’s Coordinator to handle all reports of prohibited conduct and complaints under this policy, including acting as Southern’s Title IX Coordinator. The Coordinator will oversee all complaints filed under this policy generally and identify

and address any patterns or systemic problems that arise during the review of such complaints. The Coordinator is further responsible for coordination of training, education, communications and administration of complaint procedures for faculty, staff, students and other members of the Southern community. The President or the President's designee may also appoint deputy Coordinators to assist Southern in furthering this policy.

- 6.2 Southern requires all of its employees to report suspected or known sexual harassment, sexual offense, or any other violations of Section 4 of this policy to the Title IX Coordinator at:

Title IX Coordinator  
Southern West Virginia Community and Technical College  
2900 Dempsey Branch Road  
Post Office Box 2900  
Mount Gay, West Virginia 25637  
Phone: 304-792-7098  
Fax: 304-792-7028  
TTY: 304-792-7054  
Email: [titleix@southernwv.edu](mailto:titleix@southernwv.edu)

- 6.2.1 Students and any other members of the Southern community who believe they have been subject to any of the prohibited conduct as defined in Section 3 and set forth in Section 4 of this policy, or who have witnessed or are aware of such prohibited conduct, are encouraged to report this information to a Responsible Employee or to the Title IX Coordinator.

- 6.2.2 Responsible Employees are required to forward all reports of violations of this policy, and any information they obtain or receive that this policy may have been violated, to the Title IX Coordinator. All employees designated by Southern as Responsible Employees will be clearly identified and published to Southern students and employees.

- 6.2.3 Confidential resources are available for members of the Southern community who have been subject to prohibited conduct. The Title IX Coordinator shall compile, maintain and make available to Southern students and employees a list of these resources, including resources offered by off-campus organizations, to include contact information.

6.2.3.1 Pastors employed by Southern in any capacity are not confidential resources for purposes of this policy, unless they are counselors licensed by the State of West Virginia and employed by Southern as counselors.

6.2.3.2 By law, counselors licensed by the State of West Virginia under W. Va. Code §30-31-1 *et seq.* are not permitted to disclose information either communicated to or acquired by them while engaged in the practice of counseling except with the written consent of the client, when a communication reveals the contemplation of an act dangerous to the client or others, or when the client, or his or her personal representative, waives that privilege by bringing charges against the licensee.

- 6.3 Any member of the Southern community who believes he or she has been subject to, has witnessed, or is aware of any of the prohibited conduct as defined in Section 3 and set forth in Section 4 may file a complaint in any manner set for in the applicable procedure.

- 6.4 Southern encourages the reporting of incidents that violate this policy. The use of alcohol or drugs should

not be a deterrent to reporting an incident. When conducting an investigation, Southern's primary focus will be on addressing the alleged misconduct and not on alcohol and drug violations that may be discovered or disclosed. Southern does not condone underage drinking; however, Southern will extend limited amnesty from punitive sanctioning by Southern in the case of drug or alcohol use to complainants, witness and others who report incidents, provided that they are acting in good faith in such capacity. Southern may provide referrals to counseling and may require educational options, rather than disciplinary sanctions, in such cases.

- 6.5 The President or the President's designee(s) shall formulate a complaint procedure to investigate and respond to all complaints regarding alleged misconduct in violation of this policy. In all cases, complaints will be handled in such a manner so as to achieve a prompt and equitable resolution in no less than 60 days. Further, Southern 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.
- 6.5.1 If a student is found through that procedure to have engaged in prohibited conduct that warrants the student's subsequent suspension or expulsion from Southern in resolution of the complaint, the matter will then be handled pursuant to the then-current version of SCP-4770, *Student Rights and Responsibilities*, which can be found in the "Policies" area of Southern's website.
- 6.5.2 If an employee is found through that procedure to have engaged in prohibited conduct that warrants the employee's subsequent suspension or termination from Southern in resolution of the complaint, the matter will then be handled pursuant to the "Disciplinary Action" provisions of Southern's then-current Employee Handbook.
- 6.5.3 Any investigation resulting from a complaint will be separate from and in addition to any criminal investigation that may result.
- 6.6 Southern respects the privacy of those reporting prohibited conduct and will endeavor to respect requests for confidentiality to the extent permissible by law. However, Southern 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. In determining whether to honor an individual's request for confidentiality that could preclude a meaningful investigation or potential discipline of the alleged perpetrator, Southern may consider a range of factors, including: whether there have been other sexual violence complaints about the same alleged perpetrator; whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence; whether the alleged perpetrator threatened further sexual violence or other violence against the complainant or others; whether the sexual violence was committed by multiple perpetrators; whether the complainant's report or allegation reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group; whether the sexual violence was perpetrated with a weapon; the age of the complainant subject to the sexual violence; and whether Southern possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).
- 6.6.1 That said, as set forth in subsection 6.2.3, there are places where a victim can receive confidential services. The complaint procedure must identify clearly additional resources, if any, where a victim can go to receive such services without having to risk confidentiality. The complaint procedure identifies additional resources where a victim can go to receive such services without having to risk confidentiality.
- 6.7 If a party is found to have intentionally or maliciously been dishonest, reckless or frivolous in making allegations of a violation under this policy, that party shall be subject to appropriate disciplinary action.
- 6.8 No individual may retaliate against any reporter or complainant, any person that assists a complainant in the



requirements. Revisions provide clarity and reflect changes in management responsibilities.

December 4, 2013 – Revisions reflect no substantial changes in procedure or documentation requirements. Revisions provide clarity, are grammatical in nature, and reflect changes in job titles.

March 10, 2014 – Changes reflect recommended corrective actions made by the Civil Rights Office during the Civil Rights Audit conducted on March 12, 2013.

September 15, 2015 – Due to major changes in federal and state laws as a result of amendments to the Clery Act, a review of this policy began. Significant changes have been made to the policy to encompass and address not only sexual harassment, but also discrimination, harassment, sexual and domestic misconduct, stalking, and retaliation. The policy title was changed from *Sexual Harassment Policy* to *Discrimination, Harassment, Sexual Harassment, Sexual and Domestic Misconduct, Stalking and Retaliation Policy* to reflect the inclusion of these topics.