

**BP 2.18**  
**Sex<sup>1</sup> Discrimination and Harassment Policy**

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**Policy**

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<sup>1</sup> As used herein, “sex” includes birth/biological sex, gender, gender identify and expression, and sexual orientation.

**IMPORTANT INFORMATION FOR INDIVIDUALS WHO MAY BE VICTIMS OF SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE, OR STALKING:**

If you or someone you know may have been a victim of the behaviors listed above or any other type of violence, you are strongly encouraged to seek immediate assistance.

**ASSISTANCE CAN BE OBTAINED 24 HOURS A DAY, 7 DAYS A WEEK, FROM THE MARION POLICE DEPARTMENT (LOCATED AT 270 SOUTH MAIN ST, MARION, NC AND AVAILABLE BY PHONE AT 911). ASSISTANCE CAN ALSO BE OBTAINED FROM THE McDOWELL COUNTY SHERIFF'S DEPARTMENT (LOCATED AT 593 SPAULDING RD., MARION, NC AND AVAILABLE BY PHONE AT 911)**

During business hours (8:30 a.m. to 4:30 p.m., Monday through Friday), you are also strongly encouraged to contact one of the following individuals:

**Breanna Rose, Title IX Coordinator**

828-652-0618; [bdrose59@go.mcdowelltech.edu](mailto:bdrose59@go.mcdowelltech.edu)

Breanna's office is located in the Cedar Building (11).

**Ryan Garrison, Deputy Title IX Coordinator**

828-652-0627; [rtgarrison55@go.mcdowelltech.edu](mailto:rtgarrison55@go.mcdowelltech.edu)

Ryan's office is located in the Cedar Building (11)

For additional information about seeking medical assistance and emotional support, as well as important contact information for local law enforcement agencies, hospitals, and other resources, see **Exhibit A** attached to this document.

## **SEX DISCRIMINATION AND HARASSMENT POLICY**

### **1.01 Notice of Nondiscrimination**

McDowell Technical Community College (“MTCC”), in compliance with and as required by Title IX of the Education Amendments Act of 1972 and its implementing regulations (“Title IX”) and other civil rights laws, as well as in furtherance of its own values as a higher education institution, does not discriminate on the basis of race, color, national origin, sex, sexual orientation, gender, gender identity, gender expression, pregnancy, disability, age, religion, veteran status, or any other characteristic or status protected by applicable local, state, or federal law in admission, treatment, or access to, or employment in, its programs and activities.

Discrimination and harassment are antithetical to the values and standards of the MTCC community; are incompatible with the safe, healthy environment that the MTCC community expects and deserves and will not be tolerated. MTCC is committed to providing programs, activities, and an education and work environment free from discrimination and harassment. MTCC is also committed fostering a community that promotes prompt reporting and fair and timely resolution of those behaviors.

Inquiries concerning discrimination or harassment on the basis of sex may be referred to MTCC’s Title IX Coordinator, Breanna Rose. Exhibit A to this document provides Breanna Rose’s contact information.

Inquiries concerning discrimination or harassment based on a protected characteristic or status other than sex may be referred to the Title IX Coordinator (for students and/or employees). Exhibit A also provides their contact information.

Individuals may also make inquiries regarding discrimination or harassment to the U.S. Department of Education’s Office for Civil Rights by contacting the District of Columbia Office, 400 Maryland Avenue, SW, Washington, D.C. 20202-1475; Phone 800-421-3481; email: OCR@ed.gov.

### **1.02 Prohibition on Sex Discrimination and Harassment, Retaliation, and Providing False Information or Interfering with a Grievance Process**

This Policy prohibits discrimination and harassment on the basis of sex. MTCC strongly encourages the prompt reporting of, and is committed to timely and fair resolution of, complaints of sex discrimination and harassment.

Sexual Harassment, as defined by Title IX and herein,<sup>1</sup> is a specific type of sex discrimination/harassment that includes Sexual Assault, Dating Violence, Domestic Violence, and Stalking and that MTCC addresses using its Title IX Sexual Harassment Grievance Procedures, as required by Title IX.

This Policy also prohibits Retaliation, as defined by Title IX and herein. Complaints alleging Retaliation may be filed with the Title IX Coordinator and, at the discretion of the Title IX Coordinator, may be addressed under MTCC’s Title IX Sexual Harassment Grievance Procedures or other grievance procedures adopted by MTCC.

Additionally, any individual who knowingly files a false Formal Complaint or who interferes with a MTCC grievance process may be subject to disciplinary action. Interference with a grievance process

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<sup>1</sup> Capitalized terms used herein are defined in Section 1.0.

may include, but is not limited to, attempting to coerce, compel, or prevent an individual from providing testimony or relevant information; removing, destroying, or altering documentation relevant to an investigation; or providing false or misleading information to MTCC officials who are involved in the investigation and/or resolution of a Formal Complaint, or encouraging others to do so.

### **1.03 Reporting and Period of Limitations**

Any person (whether or not alleged to be the victim) may report sex discrimination or harassment, including Sexual Harassment, in person, by mail, by telephone, or by electronic mail, using the contact information for the Title IX Coordinator listed in Exhibit A, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours).

MTCC *strongly encourages* all employees and other members of the MTCC community to promptly report concerns regarding suspected or known discrimination/harassment on the basis of sex to the Title IX Coordinator.

Additionally, MTCC has designated the following employees as confidential resources for students.

Ms. Susan Dietrich – Psychology Instructor.

Information about sex discrimination or harassment shared with these confidential resources typically will not be reported to other MTCC personnel (including the Title IX Coordinator), to the Respondent, or to others, unless the disclosing individual gives their consent to the disclosure or the law requires it (as may be the case with abuse involving a minor or under conditions involving imminent physical harm, for example). (Confidential resources may report *non-identifying* statistical information to the Title IX Coordinator for recordkeeping and compliance purposes.)

MTCC will address allegations of sex discrimination and harassment appropriately no matter the length of time that has passed since the alleged conduct. However, MTCC strongly encourages prompt reporting to preserve evidence for a potential legal or disciplinary proceeding. Delay may compromise the ability to investigate, particularly if the individuals involved in the alleged conduct are no longer MTCC students or employees.

### **1.04 Applicability of Policy and Grievance Procedures**

This Policy applies to any allegation of sex discrimination or harassment made by or against a student or an employee of MTCC or a third party, regardless of sex, sexual orientation, sexual identity, gender expression, or gender identity.

The Title IX Sexual Harassment Grievance Procedures apply only to allegations of Sexual Harassment in MTCC's Education Program or Activity (as defined herein).<sup>2</sup>

MTCC will address allegations of other types of sexual harassment (i.e., that do not meet the definition of Title IX Sexual Harassment) by: (1) using other student and employee conduct disciplinary procedures deemed appropriate by the Title IX Coordinator in consultation with other MTCC administrators; and/or (2) with Supportive Measures, which are defined and discussed in more detail herein.

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<sup>2</sup> And, at the discretion of the Title Coordinator, to related allegations of Retaliation.

## 1.05 Rights of Parents

When a student Complainant or Respondent is a minor or has a guardian appointed and their parent or guardian has the legal right to act on the student's behalf, then the parent or guardian may file a Formal Complaint on behalf of the student, although the student would be the "Complainant." In such a situation, the parent or guardian may exercise the rights granted to the student under this Policy, including requesting Supportive Measures and participating in a grievance process. Similarly, the parent or guardian may accompany the student to meetings, interviews, and hearings during a grievance process to exercise rights on behalf of the student, while the student's Advisor of choice may be a different person from the parent or guardian. Whether or not a parent or guardian has the legal right to act on behalf of an individual would be determined by state law, court orders, child custody arrangements, or other sources granting legal rights to parents or guardians.

Additionally, FERPA and its implementing regulations address the circumstances under which a parent or guardian is permitted to inspect and review a student's education records. However, in circumstances in which FERPA would not grant a party the opportunity to inspect and review evidence in connection with a grievance process, pursuant to Title IX and its implementing regulations, the student has an opportunity to do so, and a parent or guardian who has a legal right to act on behalf of the student has the same opportunity.

## 1.06 Definitions Applicable to Policy and Grievance Procedures

Capitalized terms used herein are defined as follows.

**"Actual Knowledge"** means notice of Sexual Harassment or allegations of Sexual Harassment to MTCC's Title IX Coordinator, Breanna Rose. **"Notice"** as used in this paragraph includes, but is not limited to, a report of Sexual Harassment to the Title IX Coordinator.<sup>3</sup>

**"Clery Act"** refers to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, which is a federal statute codified at 20 U.S.C. § 1092(f), with implementing regulations in the U.S. Code of Federal Regulations at 34 C.F.R. § 668.46. The Clery Act requires all colleges and universities that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses.

**"Complainant"** means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment, irrespective of whether a Formal Complaint has been filed.

**"Consent"** is informed, freely and actively given, mutually understandable words or actions that indicate a willingness and readiness to participate in mutually agreed upon sexual activity. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a clear and unambiguous agreement between them to engage in certain conduct with each other. Consent cannot be gained by ignoring or acting in spite of the objections of another.

Consent cannot be inferred from: silence, passivity, or lack of resistance alone; a current or previous dating or sexual relationship alone (or the existence of such a relationship with anyone else); attire;

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<sup>3</sup> This standard is not met through imputation of knowledge based solely on vicarious liability or constructive notice. This standard also is not met when the only individual with Actual Knowledge is the Respondent. The mere ability or obligation to report Sexual Harassment or to inform a student about how to report Sexual Harassment, or having been trained to do so, does not qualify an individual as one to whom notice of Sexual Harassment or allegations of Sexual Harassment constitutes Actual Knowledge.

the buying of dinner or the spending of money on a date; or Consent previously given (i.e., Consenting to one sexual act does not imply Consent to another sexual act).

Consent is not effective if it is obtained through the use of physical force, violence, duress, deception, intimidation, coercion, or the threat, expressed or implied, of bodily injury. Whether a party used any of these means to obtain Consent will be determined by reference to the perception of a reasonable person found in the same or similar circumstances.

Consent may never be given by the following individuals: minors, even if the other participant did not know the minor's age; mentally disabled persons, if their disability was reasonably knowable to a person who is not mentally disabled; or persons who are Incapacitated. The use of alcohol or drugs does not diminish one's responsibility to obtain Consent and does not excuse conduct that constitutes Sexual Harassment.

If at any time during a sexual act any confusion or ambiguity is or should reasonably be apparent on the issue of Consent, it is incumbent upon each individual involved in the activity to stop and clarify the other's willingness and readiness to continue and capacity to Consent. Neither party should make assumptions about the other's willingness and readiness to continue.

**"Day"** means a business day, unless otherwise specified.

**"Education Program or Activity"** means all of MTCC's operations and includes (1) locations, events, or circumstances over which MTCC exercised substantial control over both the Respondent and the context in which the alleged Sexual Harassment occurred; and (2) any building owned or controlled by a student organization that is officially recognized by MTCC.

**"Education Record"** has the meaning assigned to it under FERPA.

**"FERPA"** is the Family Educational Rights and Privacy Act, a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 C.F.R. § 99. FERPA protects the privacy of student Education Records. FERPA grants to eligible students the right to access, inspect, and review Education Records, the right to challenge the content of Education Records, and the right to consent to the disclosure of Education Records.

**"Formal Complaint"** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that MTCC investigate the allegation of Sexual Harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in MTCC's Education Program or Activity. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail by using the contact information listed for the Title IX Coordinator in [Exhibit A](#). As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.

**"Incapacitated"** means lacking the physical and/or mental ability to make informed, rational judgments. A person may be Incapacitated for a variety of reasons, including but not limited to being asleep or unconscious, having consumed alcohol or taken drugs, or experiencing blackouts or flashbacks.

**"Respondent"** means an individual who has been reported to be the perpetrator of conduct alleged to constitute Sexual Harassment.

**“Retaliation”** means (1) any adverse action (including direct and indirect intimidation, threats, coercion, discrimination, or harassment (including charges for conduct violations that do not involve sex discrimination or harassment or Sexual Harassment but that arise out of the same facts or circumstances as a report or complaint of sex discrimination or harassment or a report or Formal Complaint of Sexual Harassment) that is (2) threatened or taken against a person (a) for the purpose of interfering with any right or privilege secured by Title IX; or (b) because the person has made a report or Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing related to Title IX. <sup>4</sup>

**“Sexual Harassment”** means conduct on the basis of sex that satisfies one or more of the following:

(1) an employee of the MTCC conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct. (commonly referred to *quid pro quo* harassment);

(2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to MTCC’s Education Program or Activity; or

(3) **“Sexual Assault,”** as defined in 20 U.S.C. § 1092(f)(6)(A)(v): an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;

**“Dating Violence,”** as defined in 34 U.S.C. § 12291(a)(10): violence committed by a person—(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship;

**“Domestic Violence,”** as defined in 34 U.S.C. § 12291(a)(8): felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction; or

**“Stalking,”** as defined in 34 U.S.C. § 12291(a)(30): engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

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<sup>4</sup> Retaliation does not include (1) the exercise of rights protected under the First Amendment; (2) charging an individual with making a materially false statement in bad faith in the course of a grievance proceeding (provided, however, that a determination regarding responsibility alone is not sufficient to conclude that an individual made a materially false statement in bad faith); or (3) good faith actions lawfully pursued in response to a report of prohibited conduct.

**“Supportive Measures”** are non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to a Complainant and/or a Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to MTCC’s Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or MTCC’s educational environment or deter Sexual Harassment.

Supportive Measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security, and monitoring of certain areas of the campus. MTCC will maintain as confidential any Supportive Measures provided to a Complainant or a Respondent, to the extent that maintaining such confidentiality would not impair MTCC’s ability to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.