

## **TITLE IX POLICY**

### **PREFACE**

Luzerne County Community College is committed to providing a learning, working and living environment that promotes personal integrity, civility and mutual respect in an environment free of discrimination based on sex, which includes all form of sexual misconduct. Sexual harassment violates an individual's fundamental rights and personal dignity. Luzerne County Community College considers sexual harassment, in all its forms, to be a serious offense. This policy refers to all forms of sexual harassment including but not limited to, sexual harassment, sexual assault and sexual violence by employees, students or third parties.

#### **1. NOTICE TO THE COLLEGE**

Notice to the Title IX coordinator, or to an official with authority to institute corrective measures on the recipient's behalf, constitutes the actual knowledge to the College and triggers the College's response obligations.

#### **2. DEFINITION OF SEXUAL HARRASSMENT FOR TITLE IX PURPOSES**

The College adopts the "definition of sexual harassment" as set forth in the Department of Education's Title IX final rule. It defines sexual harassment broadly and includes any instance of quid pro quo harassment by a school's employee; any unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access; and any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence or stalking, as defined in the Violence Against Women Act. These definitions are set forth in more detail below.

#### **3. SEXUAL HARASSMENT**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the Commonwealth of Pennsylvania regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Luzerne County Community Collee has adopted the following definition of Sexual Harassment to address the unique environment of an academic community, which consists not only of employer and employees but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

- 1) Quid Pro Quo: an employee of the Luzerne County Community College, conditions the provision of aid, benefit, or service of the Luzerne County Community College, on

an individual's participation in unwelcome sexual conduct; and/or

- 2) **Sexual Harassment:** unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, and, objectively offensive, that it effectively denies a person equal access to the Luzerne County Community College education program or activity.<sup>1</sup>
- 3) **Sexual assault, defined as:**
  - a) **Sex Offenses, Forcible:** Any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
  - b) **Forcible Rape:** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
  - c) **Forcible Sodomy:** Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age<sup>2</sup> or because of temporary or permanent mental or physical incapacity.
  - d) **Sexual Assault with an Object:** The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - e) **Forcible Fondling:** The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - f) **Sex Offenses, Non-forcible:**
    - i) **Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Pennsylvania law.

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<sup>1</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

<sup>2</sup> Per state law.

- ii) Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent of Pennsylvania. In Pennsylvania: Children less than 13 years old cannot grant consent to sexual activity. Teens between the ages of 13 and 15 cannot consent to sexual activity with anyone who is four or more years older than them. People ages 16 and older can legally consent to sexual activity with anyone they choose, as long as the other person does not have authority over them as defined in Pennsylvania’s institutional sexual assault statute (for example, school teacher, coach.)
- 4) Dating Violence, defined as violence, on the basis of sex, committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
- i. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
  - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - iii. Dating violence does not include acts covered under the definition of domestic violence.
- 5) Domestic Violence, defined as violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the Commonwealth of Pennsylvania or by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of the Commonwealth of Pennsylvania.
- \*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.
- 6) Stalking, defined as engaging in a course of conduct, on the basis of sex, directed at a specific person, that
- i. would cause a reasonable person to fear for the person’s safety, or
  - ii. the safety of others; or
  - iii. suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or the anguish that may but does not necessarily require medical or other professional treatment or counseling.

Luzerne County Community College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

#### **4. FORCE, COERCION, CONSENT, AND INCAPACITATION**

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. The absence of resistance does not demonstrate consent. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Consent** is knowing, voluntary, with explicit permission by word or action to engage in sexual activity.<sup>3</sup>

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

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<sup>3</sup> The Pennsylvania definition of consent is applicable to criminal prosecutions for sex offenses in The Commonwealth of Pennsylvania but may differ from the definition used on campus to address policy violations.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or after that, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

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 intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the Luzerne County Community College to determine whether its policy has been violated. The existence of a consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

## 5. OTHER CIVIL RIGHTS OFFENSES

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, Luzerne County Community College additionally prohibits the following offenses as forms of discrimination outside of Title IX, when the act is based upon the Complainant's actual or perceived membership in a protected class.

- Sexual Exploitation is defined as taking non-consensual or abusive sexual advantage of another for their benefit or the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
  - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the 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), including the making or posting of revenge pornography
  - Prostituting another person
  - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection
  - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
  - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
  - Knowingly soliciting a minor for sexual activity
  - Engaging in sex trafficking
  - Creation, possession, or dissemination of child pornography
- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person.

- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities.
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another.
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Luzerne County Community College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity as defined further in the Anti- Hazing Policy.
- Bullying, defined as repeated and/or severe, aggressive behavior, likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally

Violation of any other Luzerne County Community College policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from censure/reprimand through dismissal /termination.

## **6. SCHOOL'S EDUCATION PROGRAM OR ACTIVITY**

The Title IX statute applies to persons in the United States with respect to education programs or activities that receive Federal Financial Assistance. Education program or activity includes locations, events, or circumstances over which the school exercises substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the Luzerne County Community College, such as a fraternity or sorority house. Title IX applies to all the school's education programs or activities, whether such programs or activities occur on campus or off campus.

## **7. REPORTING TO THE TITLE IX COORDINATOR**

The College will designate an employee to coordinate its efforts to comply with Title IX responsibilities. This individual must be referred to as the Title IX Coordinator.

In addition to notifying students and employees of the Title Coordinator's contact information, the College will also notify applicants for admission and employment, and all unions, of the name or title of the Title Coordinator, his or her office address, email address and telephone number. The College will prominently display on its website, the required contact information for the Title IX Coordinator.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by email, using the contact information

listed for the Title IX Coordinator 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.

## **8. THE COLLEGE'S RESPONSE**

The College will respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in light of the known circumstances. The College will offer supportive measures to the person alleged to be the victim (referred to as the "complainant"). The Title IX Coordinator will promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supporting measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint and explain to the complainant the process of filing a formal complaint.

The College will follow a grievance process that complies with the Final Rule of the Department of Education before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. The College will not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment and Fourteenth Amendment. The College will investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant or signed by Title IX Coordinator. A complainant's wishes with respect to whether the College investigates will be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances. If the allegations in a formal complaint do not meet the definition of sexual harassment or did not occur in the College's education program or activity against a person in the United States, the College will dismiss such allegations for the purposes of Title IX but may still address the allegations in a manner the College deems appropriate under its own code of conduct.

## **9. THE DEPARTMENT OF EDUCATION'S TITLE IX FINAL RULE DEFINITIONS**

The Final Rule defines "complainant" as an individual *who is alleged to be the victim* of conduct that could constitute sexual harassment. Any third party as well as the complainant may report sexual harassment. While parents and guardians do not become complainants (or respondents) they have legal rights to act on behalf of parties, including by filing formal complaints in Title IX matters.

The Final Rule defines "respondent" as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

The Final Rule defines "formal complaint" as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College 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 the education program or activity of the College. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, which is listed for the Title IX Coordinator by the College, and by any additional method designated by the College.



The phrase "document filed by a complainant" means a document or electronic submission such as by e-mail or through an online portal provided for this purpose by the College, that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the party filing the formal complaint. If the Title IX Coordinator signs a formal complaint, he or she is not a complainant or a party during a grievance process and will be free from conflicts and bias.

The Final Rule defines "supportive measures" as individualized services reasonably available that are non-punitive, non-disciplinary and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety or deter sexual harassment. Supportive measures and remedies will not be unreasonable in light of the known circumstances, and the College will offer supportive measures and provide remedies to a complainant whenever a respondent is found responsible.

## **10. INFORMAL RESOLUTION**

The College may proceed to offer and facilitate informal resolution options, such as mediation or restorative justice, as long as both parties give voluntary, informed, written consent to attempt informal resolution. At any time prior to agreeing a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

## **11. RETALIATION PROHIBITED**

Retaliation by any party against the other is expressly prohibited. The College must keep confidential, to the best of its ability, the identity of complainants, respondents and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. The exercise of rights protected under the First Amendment does not constitute retaliation. A complaint alleging retaliation may be filed in accordance with the College's prompt and equitable complaint procedure.

## **GRIEVANCE PROCESS- NOTICE, INVESTIGATION, HEARING, DETERMINATION, AND APPEAL**

### **1. Overview**

Luzerne County Community College will act on any formal or informal notice/complaint of a violation of this policy ("the Policy") that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures, formal hearing process

The procedures below apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations will proceed using these same grievance procedures, clarifying which policies above are applicable. While the effect of the Title IX regulations can be confusing, these grievance procedures apply to all policies above.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the current Discrimination Complaint Procedure.

## **2. Notice/Complaint**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, Luzerne County Community College will initiate a prompt initial assessment to determine the next steps the Luzerne County Community College needs to take.

Luzerne County Community College will initiate at least one of two responses:

- 1) Offering supportive measures because the Complainant does not want to proceed formally; and/or
- 2) A Formal Grievance Process including an investigation and a hearing.

The investigation and grievance process will determine whether or not the policy has been violated. If so, the Luzerne County Community College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

## **3. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>4</sup> engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure he or she is aware of the right to have an Advisor.

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<sup>4</sup> If the circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill his or her duties.

- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify his or her wishes and then seeks to facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later if desired.
  - If a formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
      - an incident, and/or
      - a pattern of alleged misconduct, and/or
      - a culture/climate issue based on the nature of the complaint.
    - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, and will refer the matter accordingly. Please note that dismissing a complaint under Title IX is just procedural and does not limit Luzerne County Community College’s authority to address a complaint with an appropriate process and remedies.

**a. Violence Risk Assessment**

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by a subgroup of the Care team consisting of the Director of the Counseling Center or counselor designee, the Executive Director of Campus Safety and Security, Associate Vice President for Academic Success and Director of the Student Health Center, or designee, as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of the immediate threat to physical health/safety.
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant.
- Whether to put the investigation as an incident and/or pattern and/or climate.
- To help identify potential predatory conduct.
- To help assess/identify grooming behaviors.
- Whether to permit a voluntary withdrawal by the Respondent.
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or

- Whether a Clery Act Timely Warning or No Trespass is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers or student conduct officers. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in charge of failure to comply with the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

**b. Dismissal (Mandatory and Discretionary)<sup>5</sup>**

Luzerne County Community College must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy hereinabove, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by Luzerne County Community College (including buildings or property controlled by recognized student organizations), and/or Luzerne County Community College does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of Luzerne County Community College.

Luzerne County Community College may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein: or
- 2) The Respondent is no longer enrolled in or employed by Luzerne County Community College; or

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<sup>5</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.

- 3) Specific circumstances prevent Luzerne County Community College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, Luzerne County Community College will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

#### **4. Counterclaims**

Luzerne County Community College is obligated to ensure that the grievance process is not abused for retaliatory purposes. Luzerne County Community College permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after the resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

#### **Regulation Providing False or Misleading Statements, Student Handbook, Regulation**

**It is prohibited for students to** provide false or inaccurate information intentionally or records to College or local authorities and/or knowingly providing false statements, evidence, or testimony during an investigation or College proceeding. The intentional omission of information during an investigation, hearing, interview, or college proceeding is providing inaccurate information.

#### **5. Right to an Advisor**

The parties may each have an Advisor<sup>6</sup> of their choice present with them for all meetings and interviews within the resolution process if they so choose. The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>7</sup>

Choosing an Advisor who is also a witness in the process creates the potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing officer.

Luzerne County Community College may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

#### **a. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of Luzerne County Community College community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from Luzerne County Community College, the Advisor will be trained by Luzerne County Community College and be familiar with Luzerne County Community College's resolution process.

If the parties choose an Advisor from outside the pool of those identified by Luzerne County Community College, the Advisor may not have been trained by Luzerne County Community College and may not be familiar with Luzerne County Community College policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

#### **b. Advisors in Hearings/Luzerne County Community College-Appointed Advisor**

Under the U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to cross-examine each other or any witnesses directly. If a party does not have an Advisor for a hearing, Luzerne County Community College will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

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<sup>6</sup> This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally), but sometimes some Luzerne County Community College may permit more than one advisor per party. If Luzern County Community College allows more than one Advisor for one party, it shall do so for all parties.

<sup>7</sup> "Available" means the party cannot insist on an Advisor who simply does not have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct cross-examination, Luzerne County Community College will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Hearing Officer during the hearing.

### **c. Advisor's Role**

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and initial interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Luzerne County Community College cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not or cannot afford an attorney, Luzerne County Community College is not obligated to provide an attorney.

### **d. Pre-Interview Meetings**

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Luzerne County Community College's policies and procedures.

### **e. Advisor Violations of Luzerne County Community College Policy**

All Advisors are subject to the same Luzerne County Community College policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Luzerne County Community College officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Hearing Officer except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their advisors should ask for breaks to allow for a private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

### **f. Sharing Information with the Advisor**

Luzerne County Community College expects that the parties may wish to have Luzerne County Community College share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

Luzerne County Community College also provides a consent form that authorizes Luzerne County Community College to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before Luzerne County Community College is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, Luzerne County Community College will comply with that request at the discretion of the Title IX Coordinator.

#### **g. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Luzerne County Community College. Luzerne County Community College may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by Luzerne County Community College's privacy expectations.

#### **h. Expectations of an Advisor**

Luzerne County Community College generally expects an Advisor to adjust their schedule to allow them to attend Luzerne County Community College meetings when planned but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

Luzerne County Community College may also make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### **i. Expectations of the Parties with Respect to Advisors**

A party may elect to change advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

#### **j. Assistance in Securing an Advisor**



For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.]
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/> ]
- Victims Resource Center

## **7. Grievance Process Pool**

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees.

The list of Pool members and a description of the Pool can be found at (college’s website).

### **a. Pool Member Roles**

Members of the Pool are trained annually, and can serve in in the following roles, at the direction of the Title IX Coordinator:

- To provide an appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To investigate complaints
- To serve as a Hearing Officer regarding the complaint
- To serve as an Appeal Hearing Officer

The Title IX Coordinator, acts with independence and impartiality. While members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, Luzerne County Community College can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

## **b. Pool Member Training**

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of Luzerne County Community College's Discrimination and Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct the questioning
- How to assess the credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the Luzerne County Community College with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings and appeals.
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of the relevance of questions and evidence
- Issues of relevance to creating an investigation report that fairly summarizes relevant evidence

- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

Specific training is also provided for Appeal Hearing Officers, Advisors (who are Luzerne County Community College employees), and Hearing Officers. All Pool members are required to attend these trainings annually.

### **8. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany him/her. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of the allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Luzerne County Community College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be allowed to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about Luzerne County Community College’s policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that Luzerne County Community College’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview

process,

- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Luzerne County Community College records, or emailed to the parties' Luzerne County Community College-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **9. Resolution Timeline**

Luzerne County Community College will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

## **10. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

## **11. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), and Hearing Officer may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the President of the College.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a

Complainant, Respondent, or witness.

Luzerne County Community College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by a preponderance of the evidence. (106.45, iv)

## **12. Investigation Timeline**

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Luzerne County Community College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

## **13. Delays in the Investigation Process and Interactions with Law Enforcement**

Luzerne County Community College may undertake a short delay in its investigation (several days to two weeks) if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

Luzerne County Community College will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. Luzerne County Community College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Luzerne County Community College will implement supportive measures as deemed appropriate.

Luzerne County Community College action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

## **14. Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant

- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize his or her interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - The notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding

- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including the evidence upon which Luzerne County Community College does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, including any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The Investigator(s) shares the report with the Title IX Coordinator for their review and feedback
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report

### **15. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of Luzerne County Community College are expected to cooperate with and participate in Luzerne County Community College's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Zoom or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or

efficiency dictates a need for remote interviewing. Luzerne County Community College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred. If a witness submits a written statement but does not intend to be and is not present for cross-examination at a hearing, their written statement may not be used as evidence.

### **16. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

### **17. Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

### **18. Referral for Hearing**

Once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Hearing Officer—unless all parties and the Hearing Officer agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Hearing Officer depending on whether the Respondent is an employee or a student. Allegations involving student-employees will be directed to the appropriate Hearing Officer, depending on the context of the alleged misconduct.

### **19. Hearing Officer**

Luzerne County Community College will designate a single Hearing Officer, at the discretion of the Title IX Coordinator. The single Hearing Officer will conduct the hearing.

The Hearing Officer will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the resolution process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Hearing Officers. Those who are serving as Advisors for any party may not serve as



Hearing Officer in that matter.

The Title IX Coordinator may not serve as a Hearing Officer in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Hearing Officer or designee.

## **20. Evidentiary Considerations in the Hearing**

Any evidence that the Hearing Officer determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming Luzerne County Community College uses a progressive discipline system. This information is only considered at the sanction stage of the process.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Hearing Officer at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Hearing Officer renders a determination based on the preponderance of the evidence, whether it is more likely than not that the Respondent violated the Policy as alleged.

## **21. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Hearing Officer will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.

- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Hearing Officer and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Hearing Officer on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Hearing Officer. For compelling reasons, the Hearing Officer may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and Luzerne County Community College will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Hearing Officer about the matter unless they have been provided already. The materials will be available on a file-sharing site (One hub) to view but cannot be copied or printed.
- An invitation to each party to submit to the Hearing Officer an impact statement pre-hearing that the Hearing Officer will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Parties must provide to the Hearing Office a list of anticipated questions for cross-examination at least two business days prior to the hearing. The Hearing Officer will review the questions for relevance and avoid repetition in questions.
- Whether parties cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of the term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by Luzerne County Community College and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student

facing charges under this Policy is not in good standing to graduate.

## **22. Alternative Hearing Participation Options (Zoom or other technology)**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Hearing Officer at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Hearing Officer can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Hearing know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

## **23. Pre-Hearing Preparation**

The Hearing Officer, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Hearing Officer assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Hearing Officer do not assent to the admission of evidence newly offered at the hearing, the Hearing Officer will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given the name of the Hearing Officer at least ten (10) business days in advance of the hearing. All objections to any Hearing Officer must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two business days prior to the hearing. Hearing Officers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Hearing Officer a list of the names of all parties, witnesses, and Advisors at least five business days in advance of the hearing. Any Hearing Officer who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Hearing Officer is unsure of whether bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Hearing Officer at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Hearing Officer.

Parties must provide to the Hearing Office a list of anticipated questions for cross-examination at least two business days prior to the hearing. The Hearing Officer will review the questions for relevance and avoid repetition in questions.

#### **24. Pre-Hearing Meetings**

The Hearing Officer may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics the parties and/or their Advisors wish to ask or discuss at the hearing so that the Hearing Officer can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for reconsideration based on any new information or testimony offered at the hearing. The Hearing Officer must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

The Hearing Officer, only with the full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Hearing Officer will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Hearing Officer may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Hearing Officer may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded.

#### **25. Hearing Procedures**

At the hearing, the Hearing Officer has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Harassment, and Nondiscrimination.

Participants at the hearing will include the Hearing Officer, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services. The Title IX Coordinator will not be present at the hearing but will be available to the Hearing Officer for consultation on the hearing procedures.

The Hearing Officer will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Hearing Officer will allow witnesses who have relevant information to appear at a portion of

the hearing in order to respond to specific questions from the Hearing Officer and the parties and will then be excused.

## **26. Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

## **27. The Order of the Hearing – Introductions and Explanation of Procedure**

The Hearing Officer explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Hearing Officer on the basis of bias or conflict of interest. The Hearing Officer will rule on any such challenge unless the Hearing Officer is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Hearing Officer then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The Hearing Officer may attend to logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

## **28. Investigator Presents the Final Investigation Report**

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Hearing Officer and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Hearing Officer should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Hearing Officer will direct that it be disregarded.

## **29. Testimony and Questioning**

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Hearing Officer. The parties/witnesses will submit to questioning by the Hearing Officer and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Hearing Officer. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Hearing Officer upon request or agreed to by the parties and the Hearing Officer), the proceeding will pause to allow the Hearing Officer to consider it, and the Hearing Officer will determine whether the question will be permitted, disallowed, or rephrased.

The Hearing Officer may explore arguments regarding relevance with the Advisors if the Hearing Officer so chooses. The Hearing Officer will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Hearing Officer will explain any decision to exclude a question as not relevant or to reframe it for relevance.

The Hearing Officer will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Officer has the final say on all questions and determinations of relevance, subject to any appeal. The Hearing Officer may consult with legal counsel on any questions of admissibility. The Hearing Officer may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the advisors on relevance once the Hearing Officer has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Hearing Officer at the hearing, the Hearing Officer may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Hearing Officer should not permit irrelevant questions that probe for bias.

### **30. Refusal to Submit to Cross-Examination and Inferences**

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Hearing Officer may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Hearing Officer must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

Similarly, statements can be relied upon when questions are posed by the Hearing Officer, as distinguished from questions posed by Advisors through cross-examination.<sup>8</sup>

The Hearing Officer may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Hearing Officer may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with Luzerne County Community College's established rules of decorum for the hearing, Luzerne County Community College may require the party to use a different Advisor. If a Luzerne County Community College-provided Advisor refuses to comply with the rules of decorum, Luzerne County Community College may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

### **31. Recording Hearings**

Hearings (but not deliberations) are recorded by Luzerne County Community College for purposes of review in the event of an appeal. The parties may not record the proceedings, and no other unauthorized recordings are permitted.

The Hearing Officer, the parties, their Advisors, and appropriate administrators of the Luzerne County Community College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **32. Deliberation, Decision-making, and Standard of Proof**

The Hearing Officer will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Hearing Officer but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Hearing Officer may then consider the previously submitted party impact statements in determining the appropriate sanction(s).

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<sup>8</sup> While it does say this in the preamble to the Title IX regulations, it is unclear exactly what the Department of Education means by it. Proceed with caution.

The Hearing Officer will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party. The Hearing Officer may – at their discretion – consider the statements, but they are not binding.

The Hearing Officer will review the statements and any pertinent conduct history provided by Title IX Coordinator and will determine the appropriate sanction(s) in consultation with other appropriate administrators.

The Hearing Officer will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions.

This report typically should not exceed three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **33. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Hearing Officer to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within five business days of receiving the Hearing Officer's deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Luzerne County Community College records, or emailed to the parties' Luzerne County Community College issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will identify the specific policy reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by Luzerne County Community College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent Luzerne County Community College is permitted to share such information under state or federal law; any sanctions issued which Luzerne County Community College is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Luzerne County Community College's educational or employment program or activity, to the extent Luzerne County Community College is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).



The Notice of Outcome will also include information on when the results are considered by Luzerne County Community College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **34. Statement of the Rights of the Parties**

#### **Statement of Complainant Rights:**

Luzerne County Community College recognizes that sexual harassment is an offense in which the complainant often feels powerless. Luzerne County Community College assures complainants that they have the following rights throughout the trauma of being a sexual misconduct complainant in our community:

- The complainant will have the power to make decisions affecting their medical and emotional treatment.
- The complainant will have control over making decisions pursuing legal prosecution.
- The complainant will decide who is notified outside the protocol established by the College, including notification of parents (except in the case of a minor complainant).
- The complainant will receive support from the College in obtaining needed counseling or other support.
- The complainant will be aided by the College in obtaining a living environment that is safe and secure.
- The complainant will be assured of confidentiality within the protocol followed by the College.

#### **Rights of the Complainant and Respondent:**

- To have a fair and proper review of the complaint.
- To have the formal complaint resolved in a timely fashion, usually within 60 days, unless extenuating circumstances are requiring a longer period.
- To have an advisor of their choosing present at all meetings with the investigator, hearing officer, and appeal officer. The advisor may be an attorney, a family member, faculty member, staff, employee, counselor, family member, or anyone of their choosing. If you do not choose to select an advisor, Luzerne County Community College will appoint an advisor for the hearing cross-examination. The Title IX Coordinator, investigator, hearing officer, and appeal officer assigned to the case may not serve as an advisor.
- To have a hearing officer that does not have a conflict of interest with either the respondent or accuser.
- Have the opportunity to present information to the investigators and the hearing officer for consideration in the process.
- To have timely notice of all meetings.
- To have information regarding how the process is conducted (Sexual Harassment Policy)
- To receive the determination of the hearing officer in writing.
- To have their right to appeal the decision of the hearing officer to the appeal officer.

### **35. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Hearing Officer

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of and may be in addition to, other actions are taken, or sanctions imposed by external authorities.

#### **a. Student Sanctions**

The following are the usual sanctions that may be imposed upon students or organizations individually or in combination:

- *Censure/Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Luzerne County Community College policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Monetary fines*
- *Restitution for damages*
- *Required Counseling*: A mandate to meet with and engage in either Luzerne County Community College -sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions if the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from

co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

- *Parental Notification:* if the student is placed on probation, suspended, or dismissed.
- *Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Luzerne County Community College.
- *Dismissal:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Luzerne County Community College-sponsored events.
- *Other Actions:* In addition to or in place of the above sanctions, the Luzerne County Community College may assign any other sanctions as deemed appropriate.

#### **b. Employee Sanctions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, the Luzerne County Community College may assign any other sanctions as deemed appropriate.

#### **36. Withdrawal or Resignation While Charges Pending**

Students: If a student has an allegation pending for violation of the Policy on Equal Opportunity, Harassment, and Nondiscrimination, Luzerne County Community College may place a hold on a

student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide not to participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from Luzerne County Community College, the resolution process ends, as Luzerne County Community College no longer has disciplinary jurisdiction over the withdrawn student.

However, Luzerne County Community College will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to Luzerne County Community College. Such exclusion applies to all campuses of Luzerne County Community College. A hold will be placed on their ability to be readmitted. They may also be barred from Luzerne County Community College property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely, and that student is not permitted to return to Luzerne County Community College unless and until all sanctions have been satisfied.

During the resolution process, Luzerne County Community College may put a hold on a responding student's transcript or place a notation on a responding student's transcript or dean's disciplinary certification that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the Luzerne County Community College no longer has disciplinary jurisdiction over the resigned employee.

However, Luzerne County Community College will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with Luzerne County Community College or any campus of the Luzerne County Community College, and the records retained by the Title IX Coordinator will reflect that status.

All Luzerne County Community College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

### **37. Appeals**

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within five days of the delivery of the Notice of Outcome.

A single Appeal Hearing Officer will hear the appeal. No Hearing Officer will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Hearing Officer for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

**a. Grounds for Appeal**

Appeals are limited to the following grounds:

- (A) Procedural irregularity affected the outcome of the matter.
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Officer and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Officer will notify the other party and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Officer.

The other party and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Officer will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given five business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appeal Officer to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Officer and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s), and/or original Hearing Officer, as necessary, who will submit their responses in five business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Officer will collect any additional information needed, and all documentation regarding the approved grounds and the subsequent responses and the Hearing Officer will render a decision in no more than five business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or

reconsideration, any sanctions that may result which Luzerne County Community College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the Luzerne County Community College is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' Luzerne County Community College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### **b. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

Luzerne County Community College may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

### **c. Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Officers to substitute their judgment for that of the original Hearing Officer merely because they disagree with the finding and/or sanction(s).
- The Appeal Officer may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Hearing Officer for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).

- In rare cases where a procedural error cannot be cured by the original Hearing Officer (as in cases of bias), the appeal may order a new hearing with a new Hearing Officer.
- The results of a remand to a Hearing Officer cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to Luzerne County Community College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **38. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to an Employee Assistance Program.
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties, even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owned by Luzerne County Community College to the Respondent to ensure no effective denial of educational access.

Luzerne County Community College will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair Luzerne County Community College's ability to provide these services.

### **39. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Hearing Officer, including the Appeal Hearing Officer.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the Luzerne County Community College and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **40. Recordkeeping**

Luzerne County Community College will maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation.
2. Any disciplinary sanctions imposed on the Respondent.
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the Luzerne County Community College's education program or activity.
4. Any appeal and the result therefrom.
5. All materials used to train Title IX Coordinators, Investigators, and Hearing Officers. Luzerne County Community College will make these training materials publicly available on Luzerne County Community College's website.
6. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent.
  - b. Any measures designed to restore or preserve equal access to the Luzerne County Community College's education program or activity; and
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable considering the known circumstances.

Luzerne County Community College will also maintain any and all records in accordance with state and federal laws.

### **41. Disabilities Accommodations in the Resolution Process**



Luzerne County Community College is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to Luzerne County Community College's resolution process.

Anyone needing such accommodations or support should contact the Director of Academic Skills and Disability Services or Human Resources if employee, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### **42. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policy addressing harassment, sexual misconduct, discrimination, and/or retaliation and will be reviewed and updated annually by the Title IX Coordinator. Luzerne County Community College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws that frame such policies and codes, generally.

This Policy and procedures are effective August 14, 2020.