

# **Resolution Process for Alleged Violations of the Policy on Non-discrimination, Harassment, and Retaliation on the Basis of Sex**

## **1. Overview**

Pennsylvania Highlands Community College will act on any formal or informal notice/complaint of violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures.

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined below) involving students, staff, administrators, or faculty members.

## **2. Notice/Complaint**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, Pennsylvania Highlands Community College will begin a prompt, initial assessment to determine the next steps needing to be taken by Pennsylvania Highlands Community College.

Pennsylvania Highlands Community College will initiate at least one of three responses:

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

The investigation and grievance process will determine whether the Policy has been violated. If so, Pennsylvania Highlands 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 will engage 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 will determine 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 will assess its sufficiency and will work with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator will reach out to the Complainant to offer supportive measures.

- The Title IX Coordinator will work with the Complainant to ensure they are aware of their right to have an Advisor.
- The Title IX Coordinator will work with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator will work with the Complainant to identify their wishes and then seek to facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an informal resolution option is preferred, the Title IX Coordinator will assess whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.
  - If a Formal Grievance Process is preferred, the Title IX Coordinator will determine 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 will determine that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any) and will assess which policies may apply. Please note that dismissing a complaint under Title IX is just procedural and does not limit Pennsylvania Highlands Community College’s authority to address a complaint with an appropriate process and remedies.

**a. Risk Assessment**

In some cases, the Title IX Coordinator may determine that a risk assessment should be conducted by the Behavior Intervention Team (BIT) as part of the initial assessment. A risk assessment can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of 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 on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- 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/Trespass order/Persona-non-grata is needed.

Risk assessment is the process of evaluating the actionability of aggressive or violent behavior by an individual against another person or group following the issuance of a direct or conditional threat. It is used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

A risk assessment authorized by the Title IX Coordinator should occur in collaboration with the BIT. Where a risk assessment is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

**b. Dismissal (Mandatory and Discretionary)**

Pennsylvania Highlands 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 Pennsylvania Highlands Community College (including buildings or property controlled by recognized student organizations), and/or Pennsylvania Highlands 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 an activity of Pennsylvania Highlands Community College.

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

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

This dismissal decision is appealable by any party under the procedures for appeal.

#### **4. Counterclaims**

Pennsylvania Highlands Community College is obligated to ensure that the grievance process is not abused for retaliatory purposes. Pennsylvania Highlands 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 determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after 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.

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

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor if the Advisor is eligible and available. Parties are advised to keep in mind potential conflicts of interest when selecting an Advisor.

Pennsylvania Highlands 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, 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 the Pennsylvania Highlands 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 Pennsylvania Highlands Community College, the Advisor will be trained by Pennsylvania Highlands Community College and be familiar with Pennsylvania Highlands Community College's resolution process.

##### **b. Advisors in Hearings/Pennsylvania Highlands Community College-Appointed Advisor**

Under 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 directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, Pennsylvania Highlands Community College will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

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, Pennsylvania Highlands 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 Decision-maker(s) 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 interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Pennsylvania Highlands 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, Pennsylvania Highlands 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 Pennsylvania Highlands Community College's policies and procedures.

### **e. Advisor Violations of Pennsylvania Highlands Community College Policy**

All Advisors are subject to the same Pennsylvania Highlands 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 Pennsylvania Highlands Community College officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) 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 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**

Pennsylvania Highlands Community College expects that the parties may wish to share documentation and evidence with their Advisors related to the allegations. 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.

**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 Pennsylvania Highlands Community College. Pennsylvania Highlands 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 Pennsylvania Highlands Community College's privacy expectations.

**h. Expectations of an Advisor**

Pennsylvania Highlands Community College generally expects an Advisor to adjust their schedule to allow them to attend Pennsylvania Highlands 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.

Pennsylvania Highlands 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 provide timely notice to the Title IX Coordinator if they change Advisors at any time. The parties are also 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).

As a public entity, Pennsylvania Highlands Community College fully respects and accords the Weingarten rights of employees. For parties who are entitled to union representation, Pennsylvania Highlands Community College will allow the unionized

employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses are not permitted to have union representation or Advisors in grievance process interviews or meetings.

## **6. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Pennsylvania Highlands Community College policy. While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. Pennsylvania Highlands Community College encourages parties to discuss this with their Advisors before doing so.

### **a. Informal Resolution**

An Informal Resolution can include three different approaches:

- When the parties agree to resolve the matter through an alternate resolution mechanism;
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they should contact the Title IX Coordinator to so indicate.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, Pennsylvania Highlands Community College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by Pennsylvania Highlands Community College.

Pennsylvania Highlands Community College will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

**Pennsylvania Highlands Community College does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a**

**student.**

### **b. Alternate Resolution**

Alternate Resolution is an informal process that may include mediation or restorative practices, by which a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of Alternate Resolution.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Cleared violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of complaint;
- Complaint complexity;
- Emotional investment/intelligence of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

### **c. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria in that section above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and Pennsylvania Highlands Community College are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of Pennsylvania Highlands Community College policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

#### **d. Negotiated Resolution**

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and Pennsylvania Highlands Community College. Negotiated Resolutions are not appealable.

#### **Grievance Process Pool Members**

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are:

**Trish A. Corle**, Senior Vice President of Strategic Initiatives, Title IX Coordinator  
Pennsylvania Highlands Community College  
101 Community College Way  
Johnstown, PA 15904  
Phone: 814.262.3841  
Email: [TCorle@pennhighlands.edu](mailto:TCorle@pennhighlands.edu)

**Benjamin Mostoller, Sr Advising Specialist, Title IX Investigator**  
Pennsylvania Highlands Community College  
101 Community College Way  
Johnstown, PA 15904  
Phone: 814.262.6457  
Email: [Bmostoller2@pennhighlands.edu](mailto:Bmostoller2@pennhighlands.edu)

**Suzanne Brugh**, Director of Student Activities and Athletics, Title IX Investigator  
Pennsylvania Highlands Community College  
101 Community College Way  
Johnstown, PA 15904  
Phone: 814.262.6463  
Email: [Sbrugh@pennhighlands.edu](mailto:Sbrugh@pennhighlands.edu)

**Cregg Dibert**, Director of Security and Safety, Title IX Investigator  
Pennsylvania Highlands Community College

101 Community College Way  
Johnstown, PA 15904  
Phone: 814.262.3837  
Email: [Cdibert@pennhighlands.edu](mailto:Cdibert@pennhighlands.edu)

**Susan Fisher**, Assistant Vice President of Human Resources, Title IX Investigator  
Pennsylvania Highlands Community College  
101 Community College Way  
Johnstown, PA 15904  
Phone: 814.262.3833  
Email: [Sfisher@pennhighlands.edu](mailto:Sfisher@pennhighlands.edu)

Regional Center Directors will act as Title IX Deputy Coordinators. These positions exist at the Pennsylvania Highlands Center locations. These locations are currently:

Michaela Long, Regional Center Director, 814-701-2628 [Mlong@pennhighlands.edu](mailto:Mlong@pennhighlands.edu)

Marissa Davis, Regional Center Director Bellefonte and Huntingdon 814.506.8318  
[MDavis@pennhighlands.edu](mailto:MDavis@pennhighlands.edu)

Sabrina Lane, Regional Center Director, Blair and Ebensburg 814-262-3844  
[Slane@pennhighlands.edu](mailto:Slane@pennhighlands.edu)

The Title IX Coordinator, in consultation with the President, appoints the Pool, which acts with independence and impartiality.

## **7. 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 Pennsylvania Highlands 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
- 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 questioning
- How to assess 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 Pennsylvania Highlands 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, appeals, and informal resolution processes
- 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 relevance of questions and evidence
- Issues of relevance to create 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

The materials used to train all members of the Pool are posted here:

<https://atixa.org/2020-regulations-requirement-posting-of-training-materials/>

## **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 them. 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 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 Pennsylvania Highlands 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 given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about Pennsylvania Highlands 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 Pennsylvania Highlands 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,
- A link to Pennsylvania Highlands Community College’s VAWA Brochure,
- 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.

A recipient may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

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 Pennsylvania Highlands Community College records, or emailed to the parties’ Pennsylvania Highlands Community College-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **9. Resolution Timeline**

Pennsylvania Highlands 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. A business day is defined as any day on which the college is open for business.

## **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. The College may engage with trained third party professionals.

## **11. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process 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 College President.

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.

Pennsylvania Highlands 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 the applicable standard of proof.

## **12. Investigation Timeline**

Investigations are completed expeditiously, normally within forty-five (45) 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.

Pennsylvania Highlands 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**

Pennsylvania Highlands Community College may undertake a short delay in its investigation (several days to a few 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.

Pennsylvania Highlands 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. Pennsylvania Highlands Community College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Pennsylvania Highlands Community College will implement supportive measures as deemed appropriate.

Pennsylvania Highlands 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 their interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
- 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
- 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 evidence upon which Pennsylvania Highlands 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, include 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 Pennsylvania Highlands Community College are expected to cooperate with and participate in Pennsylvania Highlands 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. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. Pennsylvania Highlands 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**

Provided that the complaint is not resolved through Informal Resolution, 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 Decision-maker—unless all parties and the Decision-maker agree to an expedited timeline.

### **19. Hearing Decision-maker Composition**

Pennsylvania Highlands Community College will outsource the role of Decision-maker to qualified organizations or individuals. The single Decision-maker will Chair the hearing.

The Decision-maker(s) will not have had any previous involvement with the investigation.

The Title IX Coordinator may not serve as a Decision-maker or Decision-maker 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 Title IX Coordinator.

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

Any evidence that the Decision-maker(s) 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. 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 Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker 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 Decision-maker 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 Decision-maker(s) 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 Decision-maker 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 Decision-maker(s). For compelling reasons, the Decision-maker 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

Pennsylvania Highlands 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 Decision-maker(s) about the matter, unless they have been provided already.
- An invitation to each party to submit to the Decision-maker an impact statement pre-hearing that the Decision-maker 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 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 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 Pennsylvania Highlands 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**

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 at least five (5) business days prior to the hearing.

The Title IX Coordinator 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 know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

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

The Decision-maker, 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) unless all parties and the Decision-maker 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 Decision-maker do not assent to the admission of evidence newly offered at the hearing, the

Decision-maker will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker 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 one day prior to the hearing. Decision-makers 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 Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker 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 Decision-maker is unsure of whether a 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 Decision-maker at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Decision-maker.

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

The Decision-maker may convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they (the parties and their Advisors) wish to ask or discuss at the hearing, so that the Decision-maker 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 a reconsideration based on any new information or testimony offered at the hearing. The Decision-maker must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

The Decision-maker, **only** with 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 Decision-maker 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 Decision-maker 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 Decision-maker 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 Decision-maker(s) 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 Decision-maker, the Investigator(s) who conducted the investigation, the parties or organizational representatives when an organization is the Respondent, Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

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

The Decision-maker will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) 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 Decision-maker explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Decision-maker will rule on any such challenge unless the Decision-maker is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Decision-maker and/or hearing facilitator 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 Decision-maker(s) 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 Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from gathering of or questions about these assessments. If such information is introduced, the Decision-maker will direct that it be disregarded.

## **29. Testimony and Questioning**

The Parties and witnesses may provide relevant information in turn, beginning with the Complainant's opening statement, then the Respondent's, and then questioning in the order determined by the Decision-maker. The Decision-maker will facilitate questioning of the Parties and witnesses first by the Decision-maker and then by the Parties through the Decision-maker.

All questions must be directed toward and asked through the Decision-maker and are subject to a relevance determination before they are asked. The Decision-maker will determine the method by which the Parties will submit their questions to the Decision-maker for their review and, if approved, to be posed. Questions that the Parties wish to have posed can be questions for that party themselves, another party, or witnesses.

The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker will limit or disallow questions they deem not appropriate on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), seek or pertain to impermissible evidence, or are abusive. The Decision-maker has final say on all questions and determinations of relevance and appropriateness. The Decision-maker may consult with legal counsel on any questions of admissibility.

The Decision-maker then poses the questions deemed relevant, not impermissible, and appropriate to each party and/or witness. Each parties Advisor then has the opportunity to cross-examine the other party and all witnesses. The Decision-maker will determine the relevance of questions asked during cross examination.

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

The Decision-maker will allow witnesses who have relevant and not impermissible information to appear at a portion of the hearing to respond to specific questions from the Decision-maker, and the witnesses will then be excused.

### **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 Decision-maker(s) 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 Decision-maker(s) 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.

The Decision-maker(s) 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 a party's Advisor of choice refuses to comply with Pennsylvania Highlands Community College's established rules of decorum for the hearing, Pennsylvania Highlands Community College may require the party to use a different Advisor. If a Pennsylvania Highlands Community College-provided Advisor refuses to comply with the rules of decorum, Pennsylvania Highlands 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 Pennsylvania Highlands 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 Decision-maker(s), the parties, their Advisors, and appropriate administrators of Pennsylvania Highlands 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 Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Decision-maker, 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 Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent conduct history provided by the Title IX Coordinator and will recommend the appropriate sanction(s) in consultation with the Title IX Coordinator.

The Decision-maker 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 recommended 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 seven (7) 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 Decision-maker 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 5 business days of receiving the Decision-maker(s) deliberation statement.

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 Pennsylvania Highlands Community College records, or emailed to the parties' Pennsylvania Highlands 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(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by Pennsylvania Highlands 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 Pennsylvania Highlands Community College is permitted to share such information under state or federal law; any sanctions issued which Pennsylvania Highlands Community College is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Pennsylvania Highlands Community College's educational or employment program or activity, to the extent Pennsylvania Highlands 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 Pennsylvania Highlands Community College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **34. 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 the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

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.

A list of possible sanctions for employees and students can be found in the Policy on Non-Discrimination, Harassment, Retaliation on the Basis of Sex.

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

Students: If a student has an allegation pending for violation of the Policy on Non-Discrimination, Harassment, Retaliation on the Basis of Sex, Pennsylvania Highlands 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 to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from Pennsylvania Highlands Community College, the resolution process ends, as Pennsylvania Highlands Community College no longer has disciplinary jurisdiction over the withdrawn student.

However, Pennsylvania Highlands 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 Pennsylvania Highlands Community College. Such exclusion applies to all campuses of Pennsylvania Highlands Community College. A hold will be placed on their ability to be readmitted. They may also be barred from Pennsylvania Highlands 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 Pennsylvania Highlands Community College unless and until the matter has been resolved and all sanctions fulfilled.

During the resolution process, Pennsylvania Highlands 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 Pennsylvania Highlands Community College no longer has disciplinary jurisdiction over the resigned employee.

However, Pennsylvania Highlands 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 Pennsylvania Highlands Community College and the records retained by the Title IX Coordinator will reflect that status.

### **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 5 days of the delivery of the Notice of Outcome.

A single Decision-maker will Chair the appeal. No Decision-maker 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 Decision-maker for consideration to determine if the request meets the grounds for appeal.

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 that 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 Decision-maker(s) 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 Decision-maker 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 Decision-maker will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 5 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 Decision-maker 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 Decision-maker 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 Decision-maker(s), as necessary, who will submit their responses in 5 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 Decision-maker will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than 5 business days, barring exigent circumstances.

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, and the rationale supporting the essential findings.

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' Pennsylvania Highlands 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.

Pennsylvania Highlands 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 Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-maker 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 Decision-maker(s) 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 [or substantive] error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- 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 Pennsylvania Highlands 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
- Education to the individual and/or the community
- 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 owed by Pennsylvania Highlands Community College to the Respondent to ensure no effective denial of educational access.

Pennsylvania Highlands Community College will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair Pennsylvania Highlands 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 Decision-maker(s) (including the Appeal Chair/Panel).

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 Pennsylvania Highlands Community College.

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

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

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

Anyone needing such accommodations or support should contact the Director of Disability Services or [Appropriate HR individual 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.

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

These procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation and will be reviewed and updated annually by the Title IX Coordinator. Pennsylvania Highlands 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 procedural alterations not reflected in these 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 which frame such policies and codes, generally.

This Policy and procedures are effective August 14, 2020.

## Glossary

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the Pennsylvania Highlands Community College investigate the allegation.
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when Pennsylvania Highlands Community College is in normal operation.
- *Education program or activity* means locations, events, or circumstances where Pennsylvania Highlands Community College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the Pennsylvania Highlands Community College.
- *Final Determination*: A conclusion by the preponderance of evidence that the alleged conduct occurred and whether it did or did not violate policy.
- *Finding*: A conclusion by the preponderance of evidence that the conduct did or did not occur as alleged.
- *Formal Grievance Process* means a method of formal resolution designated by Pennsylvania Highlands Community College to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.
- *Grievance Process Pool* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).

- *Hearing Decision-maker* refers to those who have decision-making and sanctioning authority within Pennsylvania Highlands Community College's Formal Grievance process.
- *Investigator* means the person or persons charged by Pennsylvania Highlands Community College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of Pennsylvania Highlands Community College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of Pennsylvania Highlands Community College explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the Pennsylvania Highlands Community College.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Recipient* means a postsecondary education program that is a Pennsylvania Highlands Community College of federal funding.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the Pennsylvania Highlands Community College's educational program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by Pennsylvania Highlands Community College on a Respondent who is found to have violated this policy.
- *Title IX Coordinator* is at least one official designated by Pennsylvania Highlands Community College to ensure compliance with Title IX and the Pennsylvania Highlands Community College's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

- *Title IX Team* refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See below for greater detail.
  - a. Conduct on the basis of sex that satisfies one or more of the following:
    - i. Quid Pro Quo:
      1. an employee of Pennsylvania Highlands Community College, conditions the provision of an aid, benefit, or service of the Pennsylvania Highlands Community College, on an individual's participation in unwelcome sexual conduct; and/or
    - ii. Sexual Harassment:
      1. 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 Pennsylvania Highlands Community College's education program or activity.
  - ii. Sexual assault, defined as:
    - a) Sex Offenses, Forcible:
      - i) 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:
      - i) 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:
      - i) 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 or because of temporary or permanent mental or physical incapacity.
    - d) Sexual Assault with an Object:
      - i) 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) Criminal sexual Contact:
  - i) the intentional, non-consensual touching of any part of a person's body for the purpose of sexual degradation, gratification, or humiliation.
  - ii)
- f) Sex Offenses, Non-forcible:
  - i) Incest:
    - 1) Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Pennsylvania law.
  - ii) Statutory Rape:
    - 1) Non-forcible sexual intercourse, with a person who is under the statutory age of consent.

2. **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.

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, dating violence includes, but is not limited to:

- Sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

3. **Domestic Violence**, defined as:

Violence, on the basis of sex, committed by:

- a current or former spouse or intimate partner of the Complainant,
- a person with whom the Complainant shares a child in common, or
- a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Pennsylvania or
- 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 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.

4. **Stalking**, defined as:

Engaging in a course of conduct, on the basis of sex, directed at a specific person,

that:

- would cause a reasonable person to fear for the person's safety, or
- the safety of others; or
- Suffer substantial emotional distress.

For the purposes of this definition,

- 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.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.