

**TITLE: TITLE IX POLICY**

**DATE OF POLICY: October 2, 2024**

### Statement of Nondiscrimination

Luzerne County Community College does not discriminate based on sex and prohibits sex discrimination in any education program or activity that it operates, including in admission and employment, as required by Title IX and its regulations.

#### **1. 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 makes a Title IX Complaint alleging sexual harassment or retaliation . A complainant may include a student or employee of Luzerne County Community college who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or a person other than a student or employee of Luzerne County Community College who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the recipient’s education program or activity at the time of the alleged sex discrimination; A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or Luzerne County Community College’s Title IX Coordinator.
- *Complaint* means an allegation of Sex Based Harassment or retaliation for engaging in a protected activity against a Respondent which requests that Luzerne County Community College investigate the allegation.
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when Luzerne County Community College is in normal operation.
- *Education program or activity* means locations, events, or circumstances over which Luzerne County Community College retains disciplinary authority and includes but is not limited to any building owned or controlled by a student organization that is officially recognized by Luzerne County Community College.

- *Final Determination*: A conclusion by preponderance of evidence that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by preponderance of evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Grievance Process* means a method of formal resolution designated by Luzerne County Community College to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations.
- *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 Officer or Decision-maker* refers to those who have decision-making and sanctioning authority within Luzerne County Community College’s Formal Grievance process.
- *Investigator* means the person or persons charged by Luzerne County 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 Luzerne County Community College who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator [and supervisor].<sup>1</sup>
- *Notice* means that a non-Confidential employee learns of conduct which may constitute sex-based harassment and/or retaliatory conduct.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Pregnancy or Related Conditions*. Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.

---

<sup>1</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Luzerne County Community College's educational program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute Sex Based Harassment or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Retaliation* means intimidation, threats, coercion, or discrimination against any person for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part...
- *Sanction* means a consequence imposed by the Recipient on a Respondent who is found to have violated this policy.
- *Sex Based Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence, and discrimination based on sex, gender, sex stereotypes, characteristics, orientation, gender identity and pregnancy or pregnancy related condition.
- *Student*. Any person who has attempted to participate in Luzerne County Community College's education program or activity.
- *Title IX Coordinator* is at least one official designated by Luzerne County Community College to ensure compliance with Title IX and Luzerne County 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 and any member of the Grievance Process Pool.

## **2. Sex Discrimination Policy-Rationale**

Luzerne County Community College adheres to all federal, state, and local civil rights laws prohibiting discrimination and harassment in employment and education. Luzerne County Community College does not discriminate in its admissions practices, employment practices, or educational programs or activities on the basis of sex, except as may be permitted by law. As a recipient of federal financial assistance for education activities, Luzerne County Community College is required by Title IX of the Education Amendments of 1972 (Title IX) to ensure that all of its education programs and activities do not discriminate on the basis of sex. Sex includes sex, sex stereotypes, sex characteristics, gender identity, sexual orientation, and pregnancy or related conditions. Sex discrimination is prohibited under Title IX and by Luzerne County Community College Policy, and it includes sex-based harassment, sexual assault,

dating and domestic violence, stalking, quid pro quo harassment, hostile environment harassment, disparate treatment, and disparate impact.

Luzerne County Community College also prohibits retaliation against any person opposing discrimination or harassment or participating in any internal or external investigation or complaint process related to allegations of sex discrimination.

Any Luzerne County Community College faculty member, employee, or student who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities, and/or benefits of any member of the Luzerne County Community College community on the basis of sex is in violation of this policy.

Any person may report sex discrimination (whether or not the person reporting is alleged to have experienced the conduct) in person, by mail, by telephone, by video, or by email, using the contact information listed for the Title IX Coordinator. A report may be made at any time (including during non-business hours). Luzerne County Community College Title IX Coordinator is Graceann L. Platukus, Ed.D., Vice President of Enrollment Management and Student Affairs. Contact information: 570-740-0243, [gplatukus@luzerne.edu](mailto:gplatukus@luzerne.edu), Enrollment and Admissions Center (Building 5), room 516A.

Any person may also file a Complaint with the United States Department of Education's Office of Civil Rights:

Philadelphia Office  
Office for Civil Rights  
U.S. Department of Education  
The Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323

Telephone: 215-656-8541  
FAX: 215-656-8605; TDD: 800-877-8339  
Email: [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov)

### **3. Independence and Conflict-of-Interest**

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures.

The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact Luzerne County Community College's President or other official superior to Title IX Coordinator. President John Yudichak contact information: [jyudichak@luzerne.edu](mailto:jyudichak@luzerne.edu), 570-740-0699, Campus Center (Building 14), suite 308. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Decision-maker(s)] 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 contact Luzerne County Community College's President or other official superior to Title IX Coordinator. President John Yudichak contact information: [jyudichak@luzerne.edu](mailto:jyudichak@luzerne.edu), 570-740-0699, Campus Center (Building 14), suite 308

#### **4. Sexual Harassment and Sex-Based Discrimination, Conduct Prohibited**

Acts of sexual harassment may be committed by any person upon any other person, regardless 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 based on sex that satisfies one or more of the following:

Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and discrimination based on sex, sexual orientation, gender, sex stereotypes, gender identity and/or pregnancy status.

In addition, the following types of sexual harassment are specifically identified and defined by this policy:

- 1) Quid Pro Quo Harassment:
  - a. an employee, agent or person otherwise authorized by the recipient,
  - b. conditions the provision of an aid, benefit, or service of the recipient,
  - c. on an individual's participation in unwelcome sexual conduct.
  
- 2) Sexual Harassment:

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, OR
- d. pervasive, OR,
- e. objectively offensive,
- f. that it effectively denies a person equal access to Luzerne County Community College's education program or activity.<sup>2</sup>

3) Sexual assault, defined as:

- a) Sex Offenses, Forcible:

---

<sup>2</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than 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.

- 1) Any sexual act<sup>3</sup> directed against another person<sup>4</sup>,
  - 2) without the consent of the Complainant,
  - 3) including instances in which the Complainant is incapable of giving consent.
- b) Sex Offenses, Non-forcible:
- a) Incest:
    - 1) Non-forcible sexual intercourse,
    - 2) between persons who are related to each other,
    - 3) within the degrees wherein marriage is prohibited by Pennsylvania law.
  - b) Statutory Rape:
    - 1) Non-forcible sexual intercourse,
    - 2) with a person who is under the statutory age of consent of 16.

---

<sup>3</sup> Sexual acts include:

Forcible Rape:

- a) Penetration,
- b) no matter how slight,
- c) of the vagina or anus with any body part or object, or
- d) oral penetration by a sex organ of another person,
- e) without the consent of the Complainant.

Forcible Sodomy:

- f) Oral or anal sexual intercourse with another person,
- g) forcibly,
- h) and/or against that person's will (non-consensually), or
- i) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age<sup>#</sup> or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- j) The use of an object or instrument to penetrate,
- k) however slightly,
- l) the genital or anal opening of the body of another person,
- m) forcibly,
- n) and/or against that person's will (non-consensually),
- o) 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.

Forcible Fondling:

- p) The touching of the private body parts of another person (buttocks, groin, breasts),
- q) for the purpose of sexual gratification,
- r) forcibly,
- s) and/or against that person's will (non-consensually),
- t) 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.

<sup>4</sup> This would include having another person touch you sexually, forcibly, or without their consent.

- 4) Dating Violence, defined as:
- a. violence,
  - b. on the basis of sex,
  - c. committed by a person,
  - d. 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:
- a. violence,
  - b. on the basis of sex,
  - c. committed by a current or former spouse or intimate partner of the Complainant,
  - d. by a person with whom the Complainant shares a child in common, or
  - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
  - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Pennsylvania, or
  - g. 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 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:
- a. engaging in a course of conduct,
  - b. on the basis of sex,
  - c. 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 anguish that may but does not necessarily require medical or other professional treatment or counseling.

### c. Force, Coercion, Consent, and Incapacitation<sup>5</sup>

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. Consent is not demonstrated by the absence of resistance. 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, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

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

---

<sup>5</sup> The state 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 thereafter, 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 Luzerne County Community College to determine whether its policy has been violated. The existence of 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.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>6</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Luzerne County Community College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**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 that assumes that a reasonable person is both sober and exercising sound judgment.

---

<sup>6</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

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, 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. Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Luzerne County Community College will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Luzerne County Community College and any member of its community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Filing a complaint or counterclaim within the grievance process outlined below could be considered retaliatory if those charges are made for the purpose of interfering with or circumventing any right or privilege provided for by Title IX. The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **6. Confidential v. Mandatory Reporters**

All Luzerne County Community College employees, except those designated by this policy as Confidential employees, are mandatory reporters of violations of this policy.

Mandatory reporters are obligated to report to the Title IX Coordinator any time they learn of conduct which may constitute a violation of this policy.

Confidential employees are Natalie Staron, Finance Division Administrator, contact information: [nstaron@luzerne.edu](mailto:nstaron@luzerne.edu), 570-740-0353, Educational Conference Center (Building 10) room 122; and Libby Yeager, Dean of Curriculum, contact information: [lyeager@luzerne.edu](mailto:lyeager@luzerne.edu), 570-740-0398, Enrollment and Admissions Center (Building 5), room 515D.

## 7. Reporting Sexual Harassment

Reports of Sexual Harassment can be made by contacting the Title IX Coordinator and communicating a desire to make a Title IX Complaint. A Title IX Complaint is a formal reporting of the allegations and a request for Luzerne County Community College to investigate the allegations.

Because Luzerne County Community College has no duty to investigate where an investigation is not requested by the Complainant, unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows Luzerne County Community College to discuss and/or provide supportive measures.

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act,<sup>7</sup> Luzerne County Community College must issue timely warnings for incidents

---

<sup>7</sup> Certain campus officials—those deemed Campus Security Authorities—have a duty to report the following for federal statistical reporting purposes (Clery Act):

1. All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson.
2. Hate crimes, which include any bias, motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property.
3. VAWA (the Violence Against Women Act) based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
4. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. Luzerne County Community College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions considering the potential danger.

## **8. Supportive Measures**

Luzerne County Community College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged Sexual Harassment and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to Luzerne County Community College's education program or activity, including measures designed to protect the safety of all parties or Luzerne County Community College's educational environment, and/or deter Sexual Harassment and/or retaliation.

The Title IX Coordinator will promptly make supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Luzerne County Community College will inform the Complainant, in writing, that they may file a complaint with Luzerne County Community College either at that time or in the future, if they have not done so already.

The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

Luzerne County Community College will maintain the privacy of the supportive measures, provided that privacy does not impair Luzerne County Community College's ability to provide the supportive measures. Luzerne County Community College will act to ensure as minimal an academic/occupational impact on the parties as possible.

Luzerne County Community College will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

---

All personally identifiable information is kept private, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include student affairs/student conduct staff, campus law enforcement/public safety/security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders]
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

### **9. Emergency Removal/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 based on 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.

Luzerne County Community College can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

This risk analysis is performed by the Title IX Coordinator in conjunction with the Office of Public Safety, the Thoughtful Assessment Group using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate.

When this meeting is not requested, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

Luzerne County Community College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions

could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the Respondent is an employee, existing provisions for interim action are applicable.

## **10. Response to Title IX Complaint**

Luzerne County Community College has adopted grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

Following receipt of a Title IX Complaint, the Title IX Coordinator will initiate one of the following responses:

- 1) Offering supportive measures because the Complainant does not want to make a complaint and does not want Luzerne County Community College to investigate the allegation; or
- 2) An informal resolution process, provided that (a) the Complainant does not allege sex-based harassment against a Luzerne County Community College employee, (b) both parties voluntarily submit to the informal resolution process, and (c) the informal resolution process would not conflict with federal, state or local law (; and/or
- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a complaint and request for investigation being made to the Title IX Coordinator).

## **11. Title IX Coordinator's Initial Assessment**



Following receipt of a Title IX Complaint, the Title IX Coordinator<sup>8</sup> engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a complaint and requests that Luzerne County Community College initiate an investigation into the allegation and will assist the person impacted to make a complaint and request an investigation, 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 complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure the Complaint is recorded by Luzerne County Community College
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works 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 works with the Complainant to identify their wishes, assesses the request, and implements accordingly. 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 assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available 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 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 concern, 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 Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit Luzerne County Community College’s authority to address a complaint with an appropriate process and remedies.

---

<sup>8</sup> If circumstances require, the President 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 their duties.

## 12. Dismissal

Luzerne County Community College may 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 Sex Based Harassment as defined above, even if proved; and/or

2. The conduct did not occur in an educational program or activity subject to the disciplinary authority of Luzerne County Community College (including but not limited to the buildings or property controlled by recognized student organizations), and/or Luzerne County Community College does not have control of the Respondent; and/or

3. 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 the recipient.<sup>9</sup>

4. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the complaint or any allegations therein; or

5. The Respondent is no longer enrolled in or employed by the recipient; or

6. Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the complaint or allegations therein.

Upon dismissal, Luzerne County Community College will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then Luzerne County Community College will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing. Luzerne County Community College will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then Luzerne County Community College will also notify the respondent that the dismissal may be appealed. 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.

---

<sup>9</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not available within reason when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If the dismissal is appealed, Luzerne County Community College will:

- Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, Luzerne County Community College will, at a minimum:

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within Luzerne County Community College's education program or activity.

### **13. Informal Resolution**

In lieu of resolving a complaint through the formal grievance process, the parties may elect to participate in an information resolution process. Luzerne County Community College will consider all circumstances when assessing whether informal resolution is appropriate and reserves the right to refuse to implement an Informal Resolution Process when the respondent is an employee.

Luzerne County Community College does not offer informal resolution in any cases that involve allegations of sexual harassment engaged in by a Luzerne County Community College employee. Additionally, Informal Resolution is not available when such a process would conflict with Federal, State, or Local law.

Luzerne County Community College will inform the parties in writing of any informal resolution process it offers and determines is appropriate. Before the initiation of an informal resolution process, Luzerne County Community College will explain, in writing:

- The allegations
  - The requirements of the Informal Resolution Process
  - That any party has the right to withdraw from the informal resolution process and initiate or resume the formal grievance process at any time prior to agreeing to a resolution
  - That if the parties agree to a resolution at the end of the informal resolution process, they cannot initiate or resume the formal grievance process for the same allegations
  - The potential terms that may be requested or offered in an information resolution agreement, including notice that an informal resolution agreement is binding only on the parties
- The information Luzerne County Community College will maintain and whether and how Luzerne County Community College could disclose such information for use in the Formal Grievance Process if the Process is initiated or resumed.

#### **14. Formal Grievance Process<sup>10</sup>**

##### **a. 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 of 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

---

<sup>10</sup> Upon written request to the Title IX Coordinator, Luzerne County Community College will allow for the reasonable extension of time periods on a case-by-case basis for worthy cause with notice to the parties that includes the reason for the delay.

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 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.

If, during an investigation, Luzerne County Community College decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, Luzerne County Community College will notify the parties of the additional 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 address(es) of the parties 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.

#### **b. 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.

#### **c. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints an Investigator to conduct the investigation, usually within five (5) business days of determining that an investigation should proceed.

#### **d. Investigation**

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.

Luzerne County 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.

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's action(s) or processes 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.

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):

1. Determine the identity and contact information of the Complainant
2. In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
3. Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated

4. Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
5. 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
6. Meet with the Complainant to finalize their interview/statement, if necessary
7. Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - a. Notice should inform the parties of their right to have the assistance of an Advisor of their choosing present for all meetings attended by the party
8. 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
9. Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
10. 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
11. Interview all available, relevant witnesses and conduct follow-up interviews as necessary
12. 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
13. Complete the investigation promptly and without unreasonable deviation from the intended timeline
14. Provide regular status updates to the parties throughout the investigation
15. 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
16. 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
17. 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
18. 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 the Recipient does not intend to rely in reaching a determination, for a five (5) business day review and comment period so that each party may meaningfully respond to the evidence. 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).
19. 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

20. 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
21. The Investigator(s) shares the report with the Title IX Coordinator for their review and feedback
22. 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 five (5) 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

### 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.

Although 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. 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.

### 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]<sup>11</sup> audio and/or video recording.

### Evidentiary Considerations in the Investigation

---

<sup>11</sup> Consent of the interviewer and interviewee is required in "dual-party recording" states.



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.

#### **e. 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 final investigation report will be transmitted to the parties and the Decision-maker five (5) business days before the hearing.

The Title IX Coordinator will select an appropriate Decision-maker from the Pool depending on whether the Respondent is an employee or a student. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker depending on the context and nature of the alleged misconduct.

#### **Hearing Decisionmaker**

The Title IX Coordinator will designate a single Hearing Officer from the Pool. The single Hearing Officer will conduct the hearing.

The Hearing Officer(s) 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 hearing 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 Officers 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.

#### **Evidentiary Considerations in the Hearing**

Any evidence that the Hearing Officer(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. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

The Hearing Officer will not consider evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.

The Hearing Officer will also not consider a party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless Luzerne County Community College obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and

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 and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Hearing Officer(s) 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.

#### 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,

#4458870.1

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(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 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(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 the Recipient 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(s) about the matter, unless they have been provided already.<sup>12</sup>
- An invitation to each party to submit to the Decision Maker 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.
- Whether parties can/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 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.

#### Alternative Hearing Participation Options

---

<sup>12</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

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.

### Pre-Hearing Preparation

The Hearing Officer after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide to the parties the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report at least five (5) 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 may 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(s) at least five (5) 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 one day 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).

Any Hearing Officer who cannot make an objective determination based on the identity of any party, witness, or Advisor 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 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 Hearing Officer at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Hearing Officer.

### Pre-Hearing Meetings

The Decision maker or 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 they (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 a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Hearing Officer must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Hearing Officer, **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 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.

### Hearing Procedures

At the hearing, the Hearing Officer(s) has the authority to hear and make determinations on all allegations of Sex Based Harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the Sex Based Harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Policy.

Participants at the hearing will include the Hearing officer, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) 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 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(s) and the parties and will then be excused.

### 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.

### 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(s) 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 AND/OR hearing facilitator then conducts the hearing according to the procedure outlined below. 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 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.

### 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(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 Hearing Officer(s) 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.

### 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(s) 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 if agreed to by all parties and the Hearing Officer), the proceeding will pause to allow the Hearing Officer to consider it (and state it if it has not been stated aloud), and the Hearing Officer will determine whether the question will be permitted, disallowed, or rephrased.

The Hearing Officer may invite explanations or persuasive statements 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 final say on all questions and determinations of relevance. 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.

#### Refusal to Submit to Cross-Examination and Inferences

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing or because they attend but refuse to participate in some or all questioning. The Hearing Officer can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Hearing Officer may draw an adverse inference from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

Statements made by the parties or witnesses during the investigation, emails or texts exchanges between the parties leading up to the alleged sexual harassment, statements made in police reports, statements contained in Sexual Assault Nurse Examiner (SANE) reports, and statements in medical reports may be considered by the Hearing Officer in their decision making. (DOE letter August 24, 2021)

Police reports, reports from the police of the results of a rape kit, DNA or alcohol/drug substance, reports from SANE nurse or physician, medical records. are admissible without testimony from the author, police or medical authority. The Title IX Hearing Officer will determine relevance of the reports.

The Decision-maker may rely on text messages, email, or video even though only one party in the message or video presents testimony or witness statement, if the Decision-maker determines the evidence to be relevant.

If charges of policy violations other than Sex Based Harassment are considered at the same hearing, the Hearing Officer(s) 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 recipient-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.

#### 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(s), the parties, their Advisors, and appropriate administrators of 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.

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

The Hearing Officer(s) 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(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s). The Hearing Officer will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Hearing Officer(s) may – at their discretion – consider the statements, but they are not binding.

The Hearing Officer(s) will review the statements, and any pertinent conduct history provided by the 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 not relied upon in its determination, credibility assessments, and any sanctions

This report is typically 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.

#### 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 7 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 articulate 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 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 the Recipient 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 the Luzerne County Community College 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.

Luzerne County Community College will not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

## **15. Sanctions**

If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate: Coordinate the provision and implementation of remedies to a complainant and other people Luzerne County Community College identifies as having had equal access to Luzerne County Community College's education program or activity limited or denied by sex discrimination; Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within Luzerne County Community College's education program or activity.

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

The following are some of the sanctions that may be imposed upon students or organizations individually or in combination (this list is not exhaustive):

- 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 violates any institutional policy, procedure, or directive within a specified time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from 34 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: Student status terminated for not exceeding two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the rest of their tenure 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.

The following are some of the sanctions that may be imposed upon employees individually or in combination (this list is not exhaustive):

- 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.

Following a determination that sex-based harassment occurred, Luzerne County Community College may impose disciplinary sanctions, which can include a range of consequences up to and including expulsion and/or termination of employment. Any sanctions imposed because 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 (about 2 days) 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.

Luzerne County Community College may also provide remedies, which may include 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.

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.

## **16. Advisors**

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 the Luzerne County Community College community, but a party cannot insist on an Advisor who simply does not have inclination, time, or availability.

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 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.

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.

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.

Under governing law, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. 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 questioning of the other party and witnesses.

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 questioning, Luzerne County Community College will appoint an Advisor who will do so thoroughly. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

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.

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.

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 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.

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.

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 the Luzerne County Community College privacy expectations.

Luzerne County Community College generally expects an Advisor to adjust their schedule to allow them to attend Luzerne County Community College's 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.

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.

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>

## 16. Privacy

Luzerne County Community College will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures.

## 17. Statement of Rights of the Parties

Rights of the Complainant and Respondent:

- To have a fair and proper review of the complaint.
- To have the complaint resolved in a timely fashion, usually within 60 days, unless extenuating circumstances require 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.
- To 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 Sex Based 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.

## 18. Appeals

Luzerne County Community College offers the following process for appeals from a determination whether sex discrimination occurred:

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.

Appeals are limited to the following grounds:

- (A) Procedural irregularity affected the outcome of the matter.



(B) New evidence that was not 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 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.

This appeal process will be, at a minimum, the same as Luzerne County Community offers in all other comparable proceedings, including proceedings relating to other discrimination complaints.

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 consultations 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.

## 19. 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 descriptions are 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 distinct 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 skills, aptitudes, or talents identified in members of the Pool that make them best suited to roles.

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 investigate and grievance, 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 training courses annually.

## 20. Recordkeeping

Luzerne County Community College will maintain for a period of at least seven years, the following records:

(1) For each Title IX complaint, records documenting the informal resolution process or formal grievance process and the resulting outcome.

(2) For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX, regardless of whether a Title IX Complaint is made, records documenting the actions Luzerne County Community College took to meet its obligations under Title IX.

(3) All materials used to provide Title IX training. Luzerne County Community College's training materials are available upon request for inspection by members of the public.

## 21. Withdrawal or Resignation while Charges are Pending

a. Students: If a student has an allegation pending for violation of the Policy, 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 to not 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 Sex Based Harassment 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 Recipient. A hold will be placed on their ability to be readmitted. They may also be barred from Recipient 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.

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

#4458870.1

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 retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with Luzerne County Community College or any campus of 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.

## 22. Disability Accommodations

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. A student in need of such accommodations or support should contact the Counselor of Accessibilities Services, Debra Ann Passarella. Contact information: [dpassarella@luzerne.edu](mailto:dpassarella@luzerne.edu), 570-740-0397, Campus Center (Building 14), room 125 on the lower level. An employee in need of such accommodations or support should contact Ashley Shaw, Human Resources Generalist. Contact information: [ashaw@luzerne.edu](mailto:ashaw@luzerne.edu), 570-740-0392, Enrollment and Admissions Center (Building 5), room 517D. The appropriate official 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.

## 23. 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 the 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 owed by Luzerne County Community College to the Respondent to ensure educational access is not limited.

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

#### 24. Revision of this Policy and Procedures

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 which frame such policies and codes, generally.