



## **SEXUAL MISCONDUCT POLICY AND GRIEVANCE PROCEDURE**

### I. Policy's Purpose

Lancaster Bible College Capital Seminary & Graduate School strives to eliminate sexual discrimination on campus and otherwise in its education program and activities. The College also strives to prevent the occurrence of sexual discrimination and to address its effects. This Policy describes how to report or file sexual misconduct allegations, how to file a formal complaint of sexual misconduct, how the College responds to allegations of sexual misconduct, and the College's prompt, fair and equitable response to complaints in accordance with Title IX of the Education Amendments of 1972 ("Title IX")<sup>1</sup>.

The purpose of this policy is to ensure compliance with the provisions of Title IX, the Violence Against Women Reauthorization Act of 2013 ("VAWA")<sup>2</sup> and related Campus SaVE Act provisions ("Campus SaVE").<sup>3</sup> Sexual harassment and sexual violence are forms of sex discrimination prohibited by Title IX. Title IX also prohibits retaliation against individuals for making or participating in complaints of sex discrimination.

This policy provides information regarding the College's education, prevention, and response efforts related to allegations of sexual misconduct, including descriptions of prohibited conduct, options for reporting misconduct (including confidential options), the process for resolving complaints, possible remedies and sanctions, and on and off-campus resources.

Additional information regarding the College's procedures for reporting and obtaining assistance in the event of sexual violence, stalking, domestic violence, or dating violence, can also be found on the Title IX section of the College's website.<sup>4</sup>

### II. Definitions

The following definitions apply to the use of these terms in this policy:

- A. College: means Lancaster Bible College Capital Seminary & Graduate School.
- B. Student: Includes,
  - 1. An individual taking courses at the College as a student (in either full time or part time status), as well as those participating in non-credit or off campus programs;

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<sup>1</sup> 20 U.S.C. § 1681 *et seq.*

<sup>2</sup> 34 U.S.C. § 12291.

<sup>3</sup> 20 U.S.C. § 1092.

<sup>4</sup> <https://www.lbc.edu/titleix>

2. Individuals who have been notified that they have been accepted for admission;
  3. Any individual who would otherwise qualify as a student but who withdraws from courses at the College during the pendency of the grievance process under this policy; and
  4. Any individual who was enrolled as a student the previous academic term or who has the intention to register for the current or next academic term.
- C. Faculty Member: Any individual hired by the College to conduct teaching activities or whom the College otherwise considers a member of the faculty. For the purpose of this policy, the term “faculty” does not include any individual who would qualify for the definition of a student.
- D. College official: Includes any individual employed by the College, performing assigned administrative or professional responsibilities.
- E. Member of the College community: Includes any individual who is a student, faculty member, College official, any other person employed by the College, any member of the College’s Board of Trustees, or anyone who is participating or attempting to participate in the College’s education programs or activities.
- F. College property: Includes all land, buildings, facilities, and other property in the possession of or owned, leased, used, or controlled by the College (including adjacent streets and sidewalks).
- G. Complainant: An individual alleged to be the victim of conduct that could constitute sexual misconduct, as that term is defined in this policy.
- H. Formal complaint: A document filed by a complainant or signed by the College’s Title IX Coordinator alleging sexual misconduct against a respondent and requesting that the College investigate the allegation of sexual misconduct. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the College’s education program or activity. The Title IX Coordinator may not be considered a “complainant” under this policy, even in those situations when the Title IX Coordinator signs the formal complaint.
- I. Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct under this policy.
- J. Sexual misconduct: Discrimination on the basis of sex that takes the form of sexual harassment, sexual assault, sexual violence, domestic violence, dating violence, and stalking.
- K. Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. A College employee conditions the provision of aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct that a reasonable person would consider to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education programs or activities; or
3. "Sexual assault," "domestic violence," "dating violence," or "stalking" as defined in this policy.

L. Sexual assault:

1. Any anal or vaginal penetration of another against that person's will or without that person's consent;
2. Any oral penetration of another by a sexual organ against that person's will or without that person's consent;
3. Any insertion of another's genitals into another's mouth, anus, or vagina against that person's will or without that person's consent;
4. Any attempt to make or the making of physical contact with another for the purpose of sexual gratification, against that person's will or without that person's consent; or
5. The use of physical force, coercion, intentional impairment, or threat of harm to commit any of these acts.

M. Coercion: Occurs when a sexual initiator engages in sexually pressuring or oppressive behavior that causes the behavior's target to engage in unwanted sexual behavior.

N. Domestic violence: An act of violence committed against an individual,

1. By a current or former spouse or intimate partner of an individual;
2. By a person with whom the alleged victim shares a child in common;
3. By a person who is cohabitating with or has cohabitated with the alleged victim as a spouse or intimate partner;
4. By a person similarly situated to a spouse under the domestic or family violence law of the jurisdiction in which the act of violence allegedly occurred; or

5. By any other person against the alleged victim, if the relationship is such that the alleged victim is protected from that person's acts under Pennsylvania law regarding domestic or family violence.
- O. Dating violence: An act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the alleged victim. Whether such a relationship existed must be determined by taking into consideration the relationship's length, type, and frequency of interaction between the persons involved in the relationship.
- P. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to –
1. Fear for his or her safety or the safety of others; or
  2. Suffer substantial emotional distress.
- Examples of conduct qualifying as stalking include,
- (a) Following a person without proper authority, under circumstances that a reasonable person would believe demonstrate an intention to cause physical harm or emotional distress to the person being followed; and
  - (b) Repeatedly communicating with a person under circumstances that a reasonable recipient of such communications would believe demonstrate an intention to cause physical harm or emotional distress to the recipient of such communications.
- Q. Retaliation: Intimidation, threats, coercion, or discrimination against a person for the purpose of interfering with any right or privilege provided by this policy, or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing regarding sexual misconduct allegations.
- R. Supportive measures: Non-disciplinary, non-punitive individualized services offered—as appropriate, and if reasonably available, and without fee or charge—to the complainant or respondent before or after the filing of a formal complainant or if no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or to deter sexual harassment. "Supportive measures" may include the following:
- Counseling services;
  - Deadline extensions or other course-related adjustments;

- Modifications of work or class schedules;
- Campus escort services;
- Mutual restrictions on contact between the parties;
- Changes in working conditions;
- Leaves of absence;
- Increased security and monitoring of certain campus areas; and
- Other similar measures.

The College will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the College's ability to provide supportive measures. The Title IX Coordinator is responsible for coordinating effective implementation of supportive measures.

- S. Title IX Coordinator: The College official responsible for coordinating implementation and compliance with this policy and Title IX. Currently, the College's Title IX Coordinator is:

Chris McNamara  
 Director of People & Culture and Title IX Coordinator  
 901 Eden Road  
 Lancaster, PA 17601-5036  
 Email: CMcNamara@lbc.edu  
 Telephone: 717-560-8200 extension 5545

The following College employee serves as the College's Deputy Title IX Coordinator:

Robert Wegman  
 Director of Public Safety  
 901 Eden Road  
 Lancaster, PA 17601-5036  
 Email: RWegman@lbc.edu  
 Telephone: 717-560-8200 extension 5338

Ordinarily, the Deputy Title IX Coordinator and the Title IX Coordinator will serve as the investigators for allegations of violation of this policy. The College's legal counsel may also serve as an investigator when the College deems that necessary and appropriate.

The College will provide this contact information to all applicants for admission or employment, and to all students and employees.

- T. Hearing: A formal hearing before the Sexual Conduct Hearing Board. Such a hearing must comply with Part X.C of this policy.
- U. Sexual Conduct Hearing Board or the Hearing Board: The group of College officials selected, trained, and designated by the Provost or the Director of People & Culture to hear and decide allegations that a student or employee has violated the College's Sexual Misconduct Policy. Each Sexual Conduct Hearing Board panel will have three members. The Title IX Coordinator and the Deputy Title IX Coordinator shall not serve as a member of the Sexual Conduct Hearing Board. The Sexual Conduct Hearing Board will decide whether an accused individual is responsible for violating this policy and, if so, what remedy to impose as a result. The College shall appoint a Hearing Officer to preside over the Sexual Conduct Hearing.
- V. Sanction: Requirements imposed by the Sexual Conduct Hearing Board on a respondent found responsible for violations of the College's Sexual Misconduct Policy. The scope of permissible sanctions is discussed at Part X.F of this policy.
- W. Appeal Officer: The Executive Vice President shall serve as the Appeal Officer. The Executive Vice President may not serve as a member of the Sexual Conduct Hearing Board. If a conflict of interest arises, another member of the Cabinet shall be appointed by the President to serve as the Appeal Officer.
- X. Clear and Convincing Evidence: Evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the fact or facts for which it is offered as proof. The College will apply the clear and convincing evidence standard when evaluating whether a violation of the Sexual Misconduct Policy has occurred.
- Y. Advisor: A support person for a student or employee involved in an investigation or hearing of allegations that the Sexual Misconduct Policy has been violated. Both the complainant and the respondent are entitled to be accompanied by an advisor during any investigation or hearing regarding allegations that the Sexual Misconduct Policy has been violated. If the complainant or respondent does not have an advisor, the College will provide a trained advisor, free of charge. The advisor may be anyone who the party believes will help him/her during the investigation, hearing, and appeal of allegations that the Sexual Misconduct Policy has been violated. The complainant and the respondent must notify the Title IX Coordinator of the name, phone number, and email address of their selected advisor and, if applicable, must agree to permit disclosure of the party's FERPA-protected information<sup>5</sup> for the purposes of this policy. Individuals may select an attorney as

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<sup>5</sup> "FERPA" is the Family Educational and Privacy Act, 20 U.S.C. § 1232g.

an advisor. The College, however, will not pay for the services of an attorney as an advisor.

Z. Consent: A knowing and voluntary agreement to engage in specific sexual activity at the time of the activity. To be valid, consent must be knowing, voluntary, active, present, and ongoing. Consent must also be clear and unambiguous, expressed in mutually understandable words or actions. Individuals should keep the following principles in mind:

- Consent may be expressed verbally or nonverbally.
- Consent may be withdrawn at any time.
- An individual may consent to certain sexual activities, but not others.
- The College will consider all of the circumstances of the relationship between the parties when determining whether consent has occurred. But the fact that an individual has previously engaged in consensual sexual activities does not mean that all future sexual activities qualify as consensual.
- A person who is in incapacitated is unable to consent to sexual activity.

AA. Incapacity, incapacitated, and incapacitation: Refer to a person who is unable to consent to sexual activity. Individuals are unable to consent to sexual activities if they are mentally incapacitated, cognitively limited, unconscious, or incapacitated due to the use of alcohol or other drugs. Likewise, an individual may be incapacitated due to the person's age. For example, individuals who are under the age of 13 are unable to consent to sexual activity under any circumstances. Similarly, individuals who are ages 14 and 15 are unable to consent to sexual activities with individuals who are at least four years older than they are. When alcohol is involved, incapacitation is a state beyond drunkenness or mere intoxication. When drug use is involved, incapacitation is a state beyond being under the influence of or impaired by the use of the drug. Alcohol and other drugs affect each individual differently. Determining whether an individual is incapacitated requires an individualized determination. When determining whether a person has the capacity to provide consent, the College will consider whether a sober and reasonable person in the same circumstances would have known that the other party could or could not consent to sexual activity.

BB. Responsible College Employee: The Title IX Coordinator, the Deputy Title IX Coordinator, the Assistant Athletic Director, the Athletics Training Coach, the Associate Provost for Student Success, the Associate Dean, The Director of Student Care, the Director of Residence Life , the Executive Vice President and any staff member (not to include student workers) of the College's Public Safety Department.

### III. Prohibited Conduct

- A. The College prohibits any individual from engaging in sexual misconduct, including sexual harassment, sexual assault, dating violence, domestic violence, and stalking.
- B. The College prohibits any individual from retaliating against any individual for making a report, filing a formal complaint, testifying, assisting, participating or refusing to participate in any manner in an investigation, proceeding, or hearing regarding allegations of sexual misconduct.
  - 1. Prohibited retaliation may include threatening to or actually filing of charges against an individual alleging non-sexual misconduct violations that arise out of the same facts or circumstances as a report or complaint of alleged sexual misconduct, if such actions are undertaken to punish a person for exercising his/her rights under this policy or Title IX.
  - 2. Nothing in this policy prohibits the College from taking disciplinary action against any individual for a materially false statement made in bad faith in a formal complaint or during an investigation, hearing, or appeal concerning allegations of violations of this policy.
    - (a) A determination of responsibility alone, however, is not sufficient to conclude that a party made a false statement in bad faith.
  - 3. Allegations of violation of Part III.B are subject to the same grievance procedure as allegations of sexual misconduct under this policy.
  - 4. The exercise of rights protected under the First Amendment to the United States Constitution does not constitute prohibited retaliation under Part III.B of this policy.

### IV. Scope of Sexual Misconduct Policy's Application

- A. This policy's prohibitions apply to conduct that occurs in the College's educational programs or activities. To occur "in the College's educational programs or activities," the conduct must satisfy one of the following criteria:
  - 1. The conduct is alleged to have occurred on campus or on other property owned, controlled, used, or managed by the College;
  - 2. The conduct occurs in any building owned or controlled by a student organization that is officially recognized by the College; or
  - 3. The conduct occurs in any other location, event, or circumstance over which the College exercised substantial control over both the respondent and the context in which the conduct is alleged to have occurred.



- B. Conduct that occurs off-campus or online is covered under this policy if the conduct meets the definition of Part IV.3 of this policy.
- C. This policy’s prohibition of sexual misconduct applies only if the person alleged to be the victim of such misconduct was located within the United States when the alleged conduct occurred.
- D. If the conduct in question occurred in the College’s educational program or activities, this policy’s prohibition of sexual misconduct applies regardless of whether the conduct in question is directed at a member of the College community or someone outside the College community, such as a visitor, guest, vendor, or contractor.
- E. Nothing in this policy prevents the College from taking disciplinary action against an individual under other College policies, provided that the conduct—if proven—would fall outside the scope of prohibited conduct under this policy.

V. Presumption of Non-Responsibility

A person accused of violating the Sexual Misconduct Policy is presumed to be not responsible for violating the policy, unless and until the person is found responsible through the grievance process described in Part X of this policy. The mere fact that an allegation has been made or that a formal complaint has been filed will not result in any presumption that the accused is responsible for the alleged violations. The determination regarding responsibility is made at the completion of the grievance process.

VI. Reporting Allegations

- A. Any individual may file a good faith report alleging violation of the College’s Sexual Misconduct Policy.
  - 1. That report may be filed with any “Responsible College Employee.”<sup>6</sup>
- B. Any Responsible College Employee who receives an allegation of violation of Part III of this policy must directly communicate the substance of that report to the Title IX Coordinator as soon as practicable.
- C. Upon receipt of an allegation of violation of the prohibition against sexual misconduct, either the Title IX Coordinator or the complainant may sign a formal complaint requesting an investigation.
  - 1. To file a formal complaint, the complainant must provide the Title IX Coordinator with a document that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person

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<sup>6</sup> See definition at Part II.BB

filing the formal complaint and wishes for an investigation to be conducted.

2. A complainant may file a formal complaint with the Title IX Coordinator in person, by mail, or by email.
- D. In the absence of the filing or issuance of a formal complaint, the Title IX Coordinator must also contact the complainant for the following purposes:
1. To discuss the availability of supportive measure;
  2. To consider the alleged victim's wishes regarding supportive measures;
  3. To inform the alleged victim that supportive measures are available regardless of whether a formal complaint is filed; and
  4. To explain to the alleged victim the process for filing a formal complaint.

## VII. Supportive Measures

- A. Upon receipt of a report of sexual misconduct, the Title IX Coordinator will offer appropriate supportive measures to both the complainant and the respondent, without fee or charge to the party.
- B. In the absence of the filing or issuance of a formal complaint, the Title IX Coordinator must also promptly contact a party alleged to be the victim of sexual misconduct for the following purposes:
1. To discuss the availability of supportive measures;
  2. To consider the alleged victim's wishes regarding supportive measures;
  3. To inform the alleged victim that supportive measures are available regardless of whether a formal complaint is filed; and
  4. To explain to the alleged victim the process for filing a formal complaint.
- C. If the Title IX Coordinator determines that a requested supportive measure is inappropriate, the Title IX Coordinator must document the reasons for denying the requested accommodation.
- D. Upon a finding of responsibility, the remedies and sanctions in the written determination will replace supportive measures.
- E. Supportive measures may be continued even after a dismissal of a formal complaint or a finding of non-responsibility. A party may request continued supportive measure by submitting a written request to the Title IX Coordinator.

## VIII. Emergency Removals and Administrative Leave

- A. At any time following receipt of information suggesting that a violation of the prohibition against sexual misconduct may have occurred, the Title IX Coordinator may remove a respondent—entirely or partially—from the College’s education programs and activities on an emergency basis, provided that the Title IX Coordinator,
1. Has undertaken an individualized safety and risk analysis regarding the respondent,
  2. Has determined that the emergency removal is justified based on an immediate threat to the physical health or safety of any other student or individual arising from the allegations of sexual misconduct, and
  3. Provides the subject of the emergency removal with notice of the emergency removal decision and an opportunity to lodge an immediate challenge of the removal decision.
    - (a) The subject of a removal order wishing to challenge that order must provide the Title IX Coordinator with written notice of such a challenge. The respondent bears the burden of demonstrating that the emergency removal decision was incorrect.
    - (b) The College’s Executive Vice President will decide any challenges of removal orders filed by students or employees.
- B. After the filing of a formal complaint, the College may place a non-student employee respondent on administrative leave (with or without pay) during the pendency of an investigation, hearing, or appeal process under this policy.
- C. Any emergency removal or administrative leave decision may be amended or removed during the pendency of the grievance procedure described in Part X. Any emergency removal or administrative leave decision will expire upon the conclusion of the grievance procedure.
- D. Nothing in Part VII of this policy restricts the College’s rights under either Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973.
- E. Nothing in this policy restricts the College’s ability to implement or continue an emergency removal or order administrative leave (even after conclusion of the grievance process), if the reason the respondent poses an immediate threat is unrelated to the allegations of sexual misconduct.

IX. Informal Resolution Process

- A. The College will make available an informal resolution process that does not involve a full investigation and adjudication, subject to the following restrictions:
1. The complainant and respondent must provide voluntary, written consent to the informal process; and
  2. The parties must receive written notification disclosing the following:
    - (a) The allegations;
    - (b) The requirements of the informal resolution process, including any circumstances under which a party would be precluded from resuming a formal complaint arising from the same allegations;
    - (c) That at any point before agreeing to a resolution, either party may withdraw from the informal process and resume the grievance process; and
    - (d) That documentation of any resolution agreed upon by the parties will be maintained in the College's records for at least seven years and could become part of the parties' permanent education records.
  3. The informal resolution process may not be utilized for situations involving allegations that a College employee engaged in sexual misconduct toward a student.
  4. To utilize the informal resolution process, both parties must provide the Title IX Coordinator with their written consent to participate no later than 14 days after receipt of the written notice of investigation mentioned in Part X.A.3.
  5. Unless terminated by either party earlier, the informal resolution process must be completed within 21 days after receipt of written consent from both complainant and respondent to participate in the informal resolution process.
  6. The College will not condition employment, enrollment, or any other right on the waiver of an adjudication under this policy.

X. Grievance Procedure

A. Investigations

1. If the complainant files a formal complaint, the Title IX Coordinator will ensure that an appropriate investigation of those allegations occurs.

2. The Title IX Coordinator must also order an investigation even in the absence of a formal complaint signed by a complainant, if the Title IX Coordinator is in possession of information suggesting that a violation of the College's prohibition against sexual misconduct may have occurred.
3. Upon initiation of an investigation, the Title IX Coordinator must issue a written notice to the parties who are known at that time. That notice must contain the following:
  - (a) A statement notifying the parties that an investigation of violation of the College's Sexual Misconduct Policy has been initiated;
  - (b) A copy of the College's Sexual Misconduct Policy and Grievance Procedure;
  - (c) A statement of the alleged conduct potentially constituting sexual misconduct with sufficient details including the following, if known at the time:
    - (i) The identities of the party allegedly involved; and
    - (ii) The date and location of the alleged incident;
  - (d) A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
  - (e) A statement that the parties may utilize the services of an advisor of their choice, who may be—but is not required to be—an attorney;
  - (f) A statement that the party will be permitted to inspect and review any evidence gathered during the investigation that directly relates to the incident that is the subject of the investigation; and
  - (g) A statement that the College's Code of Conduct prohibits any person from knowingly making a false statement or knowingly submitting false information during the investigation and grievance process.
4. Both the complainant and the respondent will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory or exculpatory evidence during the Title IX Coordinator's investigation. "Inculpatory evidence" is evidence that tends to suggest that the respondent is responsible for the alleged sexual misconduct. "Exculpatory evidence" is evidence that tends to suggest that the respondent is not responsible for the alleged sexual misconduct.

5. The College may not restrict the ability of either the complainant or the respondent to discuss the allegations under investigation or to gather and present evidence.
6. The Title IX Coordinator will provide a party whose participation is invited or expected with written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings.
  - (a) Such notice will be provided sufficiently in advance of such events to provide the party with sufficient time to prepare.
7. Once the initial investigation is complete, the Title IX Coordinator will provide the parties and their advisors with all evidence gathered during the investigation that directly relates to the allegations in the formal complaint, including the evidence that the College does not intend to rely upon in reaching a determination regarding responsibility and regardless of whether the evidence was obtained from a party or other source.
  - (a) Some evidence gathered during an investigation might contain information normally protected from disclosure under FERPA or which is otherwise confidential. The College, therefore, will require that the parties and their advisors must sign a reasonable non-disclosure agreement as a condition for reviewing and accessing the evidence gathered during the Title IX Coordinator's investigation.
  - (b) The evidence gathered will be provided in either hard copy or electronic format.
  - (c) Notwithstanding the requirements in Part XII.A.7, no information will be provided to the respondent regarding the complainant's sexual predisposition or prior sexual behavior unless,
    - (i) Such evidence addresses the issue of whether someone other than the respondent committed the conduct alleged by the complainant, or
    - (ii) Such evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and addresses whether respondent had consent to engage in the alleged conduct.
8. If, during the course of an investigation, the Title IX Coordinator decides to investigate allegations about the complainant or the respondent that were not included in the original notice to the parties, then the Title IX

Coordinator must provide notice of the additional allegations to the parties whose identities are known at that time.

9. The Title IX Coordinator is responsible for gathering evidence sufficient to reach a determination regarding responsibility. The parties are not responsible for gathering evidence.
10. Upon receipt of the directly related evidence, the parties will have ten days to submit to the Title IX Coordinator a written response, which the Title IX Coordinator will consider before completing the investigative report.
11. The Title IX Coordinator will create an investigative report that fairly summarizes the relevant evidence gathered during the investigation.
  - (a) The investigative report will be provided to the complainant and respondent at least ten days before any hearing occurs before the Sexual Conduct Hearing Board regarding the allegations addressed in the investigative report.

B. Dismissal Decisions

1. Upon completion of the investigation, the Title IX Coordinator will decide whether a formal complaint should be forwarded to the Sexual Conduct Hearing Board for a hearing or whether the formal complaint should be dismissed.
2. The Title IX Coordinator must dismiss the formal complaint if the Title IX Coordinator determines any of the following situations apply:
  - (a) The alleged conduct, even if proved, would not satisfy the definition of “sexual harassment” in this policy;<sup>7</sup>
  - (b) The alleged conduct did not occur in the College’s education programs or activities;<sup>8</sup> or
  - (c) The alleged conduct did not harm a person located in the United States when the alleged conduct occurred.
3. The Title IX Coordinator may dismiss a formal complaint at any time during the investigation or hearing if the Title IX Coordinator determines that specific circumstances prevent the College from gathering or presenting sufficient evidence to reach a determination regarding the allegations in the formal complaint.

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<sup>7</sup> See Part II.K above.

<sup>8</sup> See Part IV.A.

4. Any party may file an appeal of the Title IX Coordinator's decision either to forward the formal complaint to the Sexual Conduct Hearing Board or to dismiss a formal complaint.
  - (a) Any such appeal must be filed, in writing, with the Title IX Coordinator within three days of the issuance of the Title IX Coordinator's decision.
    - (i) The appeal may contain a written statement explaining the reasons why the appealing party believes the Title IX Coordinator's decision should be reversed.
  - (b) The Title IX Coordinator must notify all other parties of any appeal filed challenging a Hearing Board's decision.
    - (i) All other parties may file a written statement supporting or opposing the appeal.
      - (A) That written statement must be provided to the Title IX Coordinator and all other parties no later than three days of receipt of the appeal from the Title IX Coordinator.
  - (c) The basis for the appeal are the same as those listed in Part X.G.1.(a)-(c).
  - (d) The College's Executive Vice President will decide the appeal of the Title IX Coordinator's decision.
  - (e) The decision regarding such an appeal must be in writing and must describe the rationale for the result.
  - (f) The Title IX Coordinator will provide all parties with simultaneous notice of the appeal's outcome.
5. Even if a formal complaint is dismissed in accordance with Part X.B of this policy, the College may pursue discipline against the respondent for other policy violations arising out of the same event.

## C. Hearings

### 1. Hearing Roles

- (a) Complaints containing allegations of sexual misconduct will be decided by the Sexual Conduct Hearing Board, unless such complaints are dismissed in accordance with Part X.B of this policy.



- (i) The Hearing Board will decide both whether the respondent is responsible or not responsible for the alleged violation of the Sexual Misconduct Policy and, if responsible, what remedies or sanctions will be required.
- (ii) Hearing Board members are permitted to question witnesses in the manner that the hearing officer deems appropriate.
  - (A) If a witness or party refuses to answer a question posed by a Hearing Board member (and not prohibited by the hearing officer), any party to the hearing may submit a prior statement from that witness or party that addresses the topic of the question that the witness refused to answer.
  - (B) If a complainant or respondent refuses to answer a question posed by a Hearing Board member (and not prohibited by the hearing officer), the Hearing Board may—but is not required to—determine that the answer to the question would be adverse to the refusing party’s position in the matter.
    - 1) The Hearing Board, however, may not find the respondent responsible or not responsible based solely on a witness’s refusal to answer a question.
- (b) A hearing officer will preside over hearings regarding alleged violations of the Sexual Misconduct Policy. The hearing officer will decide procedural questions and any challenges to evidence and testimony. The hearing officer must exclude evidence that is irrelevant, duplicative, or is prohibited from consideration under this policy. The hearing officer may participate in the Sexual Conduct Board’s deliberations as a non-voting member of that board.
- (c) The complainant, the respondent, and a representative of the College will be permitted to attend the entire hearing before the Hearing Board, other than Board deliberations. Only the Hearing Board members and the hearing officer may participate in the Board’s deliberations.
- (d) Advisors

- (i) The complainant, the respondent, and the College are permitted to utilize an advisor during the hearing, subject to the following restrictions:
  - (A) The party's advisor must agree to comply with Rules of Decorum for Sexual Misconduct hearings. No party's advisor may participate in the hearing unless she/he signs an agreement indicating willingness to abide by the Rules of Decorum.
  - (B) The person selected as a party's advisor must sign a non-disclosure agreement, provided by the College, to participate as an advisor at the hearing.
  - (C) The College may impose other restrictions related to an advisor's participation in a hearing to comply with privacy considerations under the Family Educational Rights & Privacy Act ("FERPA"), provided those restrictions apply equally to the complaint's and the respondent's advisors.
- (ii) The party's advisor will be permitted to attend the entire hearing before the Sexual Conduct Hearing Board, other than Board deliberations, provided that the advisor complies with the Rules of Decorum. The hearing officer may exclude an advisor who fails to comply with the Rules of Decorum.
- (iii) The parties are permitted to have their advisors participate as much or as little as the party deems necessary or appropriate. The parties may permit their advisors to present information or argument directly to the Hearing Board on behalf of that party.
- (iv) The advisor may be any person, including a licensed attorney. The Title IX Coordinator and the Deputy Title IX Coordinator, however, may not serve as an advisor for the complainant or the respondent.
  - (A) Unless the College receives advanced notice that a party intends to retain her/his own advisor, the College will assign an advisor to assist the party during the hearing.
    - 1) Such advisor will be provided to the party at no charge to the party.

- 2) Any advisor provided by the College will be trained in accordance with the requirements in Part XII.B of this policy.
  - (B) The complainant and the respondent must notify the Title IX Coordinator the identity of any attorney the party intends to use as the advisor at a hearing before the Sexual Conduct Hearing Board. Such notice must be provided at least seven days before the scheduled hearing.
    - 1) If a complainant or respondent fails to provide that notice, the hearing officer will, upon request of the College's representative, permit the re-scheduling of the hearing to allow the College to retain an attorney to represent its interests during the hearing.
2. The Title IX Coordinator, in her/his discretion, is permitted to require that allegations of sexual misconduct against multiple respondents are presented in a single hearing before the Sexual Conduct Board, if the Title IX Coordinator determines that the allegations against the respondents arise from the same incident.
    - (i) The Title IX Coordinator's decision to consolidate or not consolidate allegations against multiple respondents is not subject to the pre-hearing appeal process discussed in Part X.B of this policy. A party, however, may challenge the decision through the appeal process provided in Part X.G of this policy.
  3. The College will create an audio or audiovisual recording or written transcript of all hearings under this policy.
    - (a) By participating in the hearing, all parties consent to the recording of their voices in accordance with Pennsylvania law.
    - (b) The College will retain the recording or transcript for a period of at least seven years following the hearing.
  4. Witnesses
    - (a) All parties will have equal opportunity to present fact and expert witnesses during the hearing.
      - (i) A complainant or respondent wishing to present a fact witness during the hearing must provide all other parties

and the Title IX Coordinator with the identity and contact information of all fact witnesses that party wishes to address the Hearing Board. That notice must be provided at least seven days before the scheduled hearing.

(ii) Any party wishing to present expert witness testimony must provide all other parties with notice of that intention.

(A) That notice must be provided to all other parties no later than seven days before the scheduled hearing date.

(B) That notice must include,

1) The name, telephone number, and email address of such witness,

2) The curriculum vitae or resume of such witness (including a statement of the witness's qualifications and all publications authored during the previous ten years),

3) A statement of the compensation (if any) that the witness is receiving related to her/his testimony, and

4) A complete statement of all opinions that the witness intends to offer during the hearing, the facts and data that the witness considered in forming those opinions, and any exhibits that the witness intends to use as part of her/his testimony.

(b) The hearing officer may require a party to provide an explanation regarding the expected statement of any witness before that witness is permitted to address the Hearing Board.

(i) The hearing officer will exclude any witness from addressing the Hearing Board or limit the scope of that witness's statement if the hearing officer determines that the proposed statement (or any portion of the proposed statement) is irrelevant.

(ii) The hearing officer will not exclude any witness from testifying regarding a matter relevant to the issue under consideration. But if the probative value of the witness's proposed testimony would be outweighed by the dangers of

unfair prejudice, confusion of the issues, or misleading the Hearing Board, the hearing officer may take any or all of the following actions:

- (A) Instruct the Hearing Board to consider the evidence only for its relevant purpose;
  - (B) Instruct the Hearing Board to evaluate objectively whether that evidence warrants a high-level or low-level of weight or credibility;
  - (C) Require the introduction of evidence sufficient to establish the relevant purpose of the witness's statement; and
  - (D) Place reasonable limits on the timing of the presentation of the witness's statement to ensure that it is considered only for a relevant purpose.
    - 1) For example, a witness's statement that is relevant only to the issue of what remedy should be imposed must not be presented to the Hearing Board unless and until the Hearing Board finds that the respondent is responsible for the allegations.
- (iii) The hearing officer must instruct a witness not to answer a question if the hearing officer determines that the question is irrelevant or would violate the Rape Shield rules.<sup>9</sup>
  - (iv) The hearing officer may exclude the testimony that would involve the needless presentation of cumulative evidence.
- (c) Witnesses who address the Hearing Board are subject to direct cross-examination.
    - (i) No party, however, may cross-examine any witness. Instead, any cross-examination of a witness must be conducted by that party's advisor, never the party herself/himself.
    - (ii) Each party's advisor will have the right to conduct appropriate direct examination and cross-examination of any witness who addresses the Hearing Board.

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<sup>9</sup> See Part X.C.5.(e) below.

- (A) The party's advisor will be permitted to conduct such examinations (and any necessary follow up questions) orally and in real time.
- (B) Only questions regarding relevant topics are appropriate for cross-examination.
- (C) Appropriate cross-examination includes questions challenging a party's or witness's credibility.
- (d) Witnesses must provide honest statements to the Hearing Board. Any witness who knowingly provides a false statement to the Hearing Board is subject to discipline by the College.

5. Evidentiary Rules

- (a) Standard of Proof: Clear and Convincing

In all hearings related to allegations of violation of the Sexual Misconduct Policy, the Sexual Conduct Board will apply a clear and convincing evidence standard. That means that a respondent will not be found responsible for violating the Sexual Misconduct Policy unless the College demonstrates that the evidence is of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the act or acts that constitute violations of the Sexual Misconduct Policy.

- (b) Burden of Proof

The College bears the burden of demonstrating that the respondent is responsible for violating the Sexual Misconduct Policy. The respondent is not required to prove non-responsibility, and the complainant is not responsible for proving responsibility. The College must demonstrate that the respondent is responsible in order to impose sanctions for violation of the Sexual Misconduct Policy.

- (c) Only relevant evidence may be presented to the Hearing Board.

- (i) Evidence is relevant if,

- (A) The evidence has any tendency to make a fact more or less likely to have occurred than it would without the evidence; and
- (B) That fact, if proven, would,

- 1) Makes it more or less likely that the respondent is responsible for violating the Sexual Misconduct Policy, or
  - 2) Demonstrates the appropriate remedy (if any) to be imposed for the alleged violation of the Sexual Misconduct Policy.
- (ii) The hearing officer must exclude from the Hearing Board's consideration any evidence that is irrelevant.
- (iii) The hearing officer may not exclude evidence that is relevant to the issue under consideration. As a result, evidence of a party's character or prior bad acts may not be excluded if that evidence is relevant. But if the probative value of any evidence is substantially outweighed by the dangers of unfair prejudice, confusion of the issues, or misleading the Hearing Board, the hearing officer may take any or all of the following actions,
- (A) Instruct the Hearing Board to consider the evidence only for its relevant purpose,
  - (B) Instruct the Hearing Board to evaluate objectively whether that evidence warrants a high-level or low-level of weight or credibility,
  - (C) Require that the proponent of such evidence introduce evidence explaining to the Hearing Board the evidence's relevant purpose, and
  - (D) Place reasonable limits on the timing of the presentation of evidence to ensure that it is considered only for a relevant purpose.
- 1) If for example, evidence that is relevant only to the issue of what remedy should be imposed shall not be presented to the Hearing Board unless and until the Hearing Board finds that the respondent is responsible for the allegations.
- (d) In reaching a decision regarding responsibility, the Hearing Board may rely on any relevant statement of a party or witness even if that party or witness refuses to submit to cross examination at the live hearing.

(i) The Hearing Board must not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. However, the Hearing Board may rely on any prior relevant statement of the part or witness.

(e) Rape Shield Rules

(i) Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless,

(A) Such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or

(B) Such questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

(f) The Hearing Board may not base credibility determinations upon a person's status as a complainant, a respondent, or a witness.

6. The hearing officer will not permit questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding that privilege has waived it.

D. Virtual Hearings

1. At the request of either party, the College will conduct the hearing with the parties located in separate rooms.
2. Any technology that the College utilizes to conduct hearings in this manner must enable the Hearing Board, hearing officer, the parties and their advisors (if any) to simultaneously see and hear the party or witness answering questions.

E. Hearing Board's Findings

1. The Hearing Board must issue a written decision regarding whether the respondent is responsible for the alleged violations of the Sexual Misconduct Policy. The written decision will be issued within seven days of the conclusion of the hearing and must include,



- (a) A description of the allegations that could potentially constitute sexual misconduct, as defined in Part II.J of this policy;
  - (b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - (c) The Hearing Board’s factual findings supporting its determination;
  - (d) Conclusions regarding the application of the Hearing Board’s factual findings to the relevant definitions of “sexual misconduct” in this policy;
  - (e) A statement of, and rationale for, the result as to each allegation, including
    - (i) A determination of responsibility regarding each alleged violation of the Sexual Misconduct Policy;
    - (ii) Any disciplinary sanctions the Hearing Board decides to impose on the respondent and whether remedies designed to restore or preserve equal access to the College’s educational programs or activities will be provided to the complainant; and
    - (iii) The procedures and permissible bases for the complainant and respondent to appeal.
2. The Hearing Board’s decision must be issued within seven days of conclusion of the hearing, unless extenuating circumstances require additional time and the hearing officer notifies the Title IX Coordinator, complainant, and respondent of the need for additional time.
  3. The Title IX Coordinator will ensure that the written determination is provided to the parties simultaneously.
  4. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal has been filed, or—if an appeal is not filed—within three days after the Hearing Board’s written determination is provided to the parties.

F. Remedies and Sanctions

1. If a respondent is found responsible for any violation of the Sexual Misconduct Policy, any remedy or sanction imposed through the grievance process must be designed to restore or preserve the complainant's equal access to the College's education programs and activities. Any such remedy may include any of the supportive measures listed in Part VII of this policy.
2. If the respondent is a student and is found responsible for violating the Sexual Misconduct Policy, the student may receive a sanction in the form of a written warning, loss of privileges, no-contact directive, mandatory training, mandated counseling, other educational sanctions, disciplinary probation, suspension, expulsion, or any combination of these.
3. If the respondent is a non-student employee and is found responsible for violating the Sexual Misconduct Policy, the respondent may receive a written reprimand, final written warning, change in work assignment, loss of privileges, no-contact directive, mandatory training, mandatory counseling, suspension (with or without pay), termination of employment, or any combination of these.
4. The Hearing Board may take into account any previous violations of the Student Code of Conduct, the Sexual Misconduct Policy, or any other College policy or procedure when determining the appropriate remedy to impose. More than one sanction may be imposed.
5. The Title IX Coordinator is responsible for ensuring implementation of any remedies ordered.
  - (a) No punitive measures may be implemented against a respondent until a final determination has been made.<sup>10</sup>

G. Appeals of the Hearing Board's Decisions

1. Any party may file an appeal of the Hearing Board's decision on any or all of the following basis:
  - (a) Procedural irregularity that affected the outcome of the matter;
  - (b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made and which could affect the outcome of the matter;
  - (c) The Title IX Coordinator, the investigator, or the members of the Sexual Conduct Hearing Board had a conflict of interest or bias for

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<sup>10</sup> See Part X.E.4.

or against complainants or respondents generally or the individual complainant or respondent that affected the matter's outcome; and

2. Any such appeal must be filed, in writing, with the Title IX Coordinator within three days of the issuance of the Hearing Board's written decision.
3. The party appealing the Hearing Board's decision may submit a written statement explaining the reasons why the appealing party is challenging the Hearing Board's decision. That written statement must be provided to the Title IX Coordinator within seven days of the issuance of the Hearing Board's written decision.
4. The Title IX Coordinator must notify all other parties of any appeal filed challenging a Hearing Board's decision.
  - (a) All other parties may file a written statement supporting or opposing the appeal or hearing outcome.
    - (i) That written statement must be provided to the Title IX Coordinator and all other parties no later than 14 days of receipt of the issuance of the Hearing Board's written decision.
5. The Appeal Officer will decide any appeal challenging a Hearing Board's decision.
  - (a) The Appeal Officer must issue a written decision explaining the rationale for the result.
  - (b) That written decision must be provided to the parties and the Title IX Coordinator within five days of expiration of the period in Part X.G.4.(a).(i) for submitting statements in support of, or opposition to, the appeal.
6. The Title IX Coordinator will simultaneously provide all parties with the written decision regarding the appeal.

## XI. Confidentiality

- A. Hearings before the Sexual Conduct Board will be conducted in private.
- B. The College may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity, if the records are made and maintained in connection with the provision of treatment to the party.

1. If the party provides voluntary, written consent, then the College may access, consider, disclose, or otherwise use a party's confidential treatment records during the grievance process.
- C. The Hearing Board members, the hearing officer, and the Appeal Officer will be required to sign a reasonable non-disclosure agreement as a condition for participating in the grievance process.
- D. All College employees involved in any aspect of the grievance process (reporting allegations, filing of formal complaints, investigations of formal complaints, implementation of emergency removals or supportive measures, hearings, or appeals) are subject to the following confidentiality rules:
1. The identity of the following individuals must be kept confidential:
    - (a) Any individual who has made a report or complaint of sexual misconduct;
    - (b) Any individual who is alleged to be the perpetrator of sexual misconduct;
    - (c) Any respondent; and
    - (d) Any witness.
  2. Notwithstanding these restrictions, the identities of the individuals mentioned in Part XI.D.1.(a)-(d) may be disclosed if,
    - (a) Such disclosure is permitted under FERPA,
    - (b) Such disclosure is required by law, or
    - (c) Such disclosure is necessary to conduct any investigation, hearing, or appeal under this policy.

## XII. Miscellaneous

### A. Conflicts of Interest

No person may serve as the Title IX Coordinator, a Deputy Title IX Coordinator, an investigator, the hearing officer, a member of the Hearing Board or Appeal Board, or as a facilitator for the informal resolution process if that person has a conflict of interest or bias for or against complaints or respondents generally or the individual complainant or respondent in the particular matter.

### B. Training

1. The College will ensure that the Title IX Coordinator and any Deputy Title IX Coordinator, investigator, hearing officer, Hearing Board or Appeal Board member, and facilitator of the informal process receive training on the following topics:
  - (a) The definition of sexual harassment in this policy, including the College's definition of "consent";
  - (b) The clear and convincing evidence standard;
  - (c) The presumption of non-responsibility;
  - (d) Confidentiality rules under this policy;
  - (e) The scope of the College's education programs and activities;
  - (f) How an appropriate investigation is conducted;
  - (g) The College's Sexual Misconduct Policy and Grievance Process, including the College's processes regarding,
    - (i) Hearings,
    - (ii) Appeals, and
    - (iii) The informal resolution process
  - (h) The scope of potential remedies for violations of the Sexual Misconduct Policy.
  - (i) Available support measures.
  - (j) How to serve impartially, including the importance of avoiding prejudgment of the facts, conflicts of interest, and bias.
2. The College will ensure that any hearing officer, the Title IX Coordinator and the members of the Hearing Board and Appeal Board receive training regarding the following topics:
  - (a) Any technology used at a live hearing;
  - (b) Relevant questions and evidence; and
  - (c) The Rape Shield Rules.
3. The College will ensure that the Title IX Coordinator and any Deputy Title IX Coordinator or investigator receives training regarding

responsibilities associated with the creation of an investigative report that fairly summarizes the relevant evidence.

4. No training provided in accordance with Part XII.B of this policy will rely on sex stereotypes.
5. All training provided in accordance with Part XII.B of this policy must promote impartial investigations and adjudications of formal complaints.

C. Record Keeping

1. The College must maintain the following records for a period of seven years:
  - (a) Each sexual misconduct allegation, including any determination regarding responsibility, the recording or transcript of any hearings, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the College's education programs and activities;
  - (b) Any appeals filed under this policy and the written decisions regarding those appeals;
  - (c) Any informal resolution process and the result of such informal resolution process;
  - (d) Documentation of any actions the College takes in response to a report or formal complaint of sexual misconduct, which must include,
    - (i) Any supportive measures provided;
    - (ii) Measures that the College has taken to restore or preserve equal access to its education program or activity; and
    - (iii) The basis for the College's determination that its response was not deliberately indifferent;
  - (e) If the College does not provide the complainant with supportive measures, the College must document the reasons why its response to the complaint or report was not clearly unreasonable in light of the known circumstances.
  - (f) All materials used to train the Title IX Coordinators, the Deputy Title IX Coordinators, investigators, members of the Sexual Conduct Hearing Board, the Appeal Board, and the hearing officer.

These training materials will also be posted on the College's website.

D. Singular/Plural

When required by the context, whenever the singular number is used in this policy that also refers to the plural. Likewise, reference to the plural refers to the singular.

E. Deadlines for Completing Process

1. The initial notice to the parties<sup>11</sup> will be provided no later than three days after the formal complaint is filed.
2. The disclosure of the evidence gathered during the investigation<sup>12</sup> will be provided to the parties no later than 45 days after the formal complaint is filed.
3. The Title IX Coordinator's investigative report<sup>13</sup> will be provided to the parties no later than 60 days after the formal complaint is filed.
4. The live hearing,<sup>14</sup> if any, will occur no later than 75 days after the formal complaint is filed.
5. The written decision of the Sexual Conduct Hearing Board will be issued no later than 80 days after the formal complaint is filed.
6. The written decision regarding any appeal<sup>15</sup> will be issued within 100 days after the filing of the formal complaint.
7. The entire grievance process<sup>16</sup> will conclude within 100 days after the filing of the formal complaint.
8. Any time related to the informal resolution process<sup>17</sup> will not count toward any deadline in Part XII.E of this policy.

F. Extensions of Time

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<sup>11</sup> See Part X.A.3 above.

<sup>12</sup> See Part X.A.7 above.

<sup>13</sup> See Part X.A.11 above.

<sup>14</sup> See Part X.C.1.(a) above.

<sup>15</sup> See Parts X.G.5 and X.G.6 above.

<sup>16</sup> See Part X above.

<sup>17</sup> See Part IX above.

1. The Title IX Coordinator will work with the Hearing Board members, the parties, their advisors, the hearing officer, and any witnesses to arrange for a mutually convenient time for conducting the hearing, if feasible.
  2. Extensions of time and requests to reschedule or delay hearings, however, must be directed to the Title IX Coordinator. No such requests, however, will be granted absent a demonstration of good cause. The Title IX Coordinator's decision to grant or deny such an extension is not subject to appeal through the appeal process outlined in Part X.B of this policy.
    - (a) Good cause may include considerations such as
      - (i) The absence of a party, the party's advisor, or a witness,
      - (ii) Concurrent law enforcement activity,
      - (iii) The filing of an appeal of a dismissal decision,
      - (iv) The need for foreign language assistance, or
      - (v) Disability-related accommodations.
  3. If any deadline in this policy falls on Saturday, Sunday, or recognized College holiday, or if the College is closed due to unforeseen circumstances, then the deadline for compliance will be the next business day that the College is open.
- G. Nothing in this policy is designed to inhibit any party's rights under Title IX of the Educational Amendments Act, the Pennsylvania Human Relations Act, the Pennsylvania Fair Educational Opportunities Act, or any other similar federal, state, or local law. To the extent there is any conflict between these laws and this policy, those legal requirements prevail and must be adhered to.