

### **Purpose**

Pennsylvania College of Health Sciences (“PA College” or the “College”) is committed to providing an educational environment that promotes personal integrity, civility, and mutual respect free from discrimination on the basis of sex. Consistent with the U.S. Department of Education’s implementing regulations for Title IX of the Education Amendments of 1972 (“Title IX”) (see 34 C.F.R. § 106 et seq.), PA College prohibits Sexual Harassment that occurs within its Education Programs or Activities. For purposes of this policy, Sexual Harassment includes Quid Pro Quo Harassment, Hostile Environment Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking. Such offenses constitute a violation of this policy and will not be tolerated. All employees (defined in this policy as faculty, staff, and administrators) at PA College are designated as “mandatory reporters” with the duty to promptly report any and all sexual discrimination to which they become aware to the Title IX Coordinator.

Administrators, faculty member, staff, students, contractors, guests, and other members of PA College community who commit Sexual Harassment are subject to the full range of College discipline including verbal reprimand; written reprimand; mandatory training, coaching, or counseling; mandatory monitoring; partial or full probation; partial or full suspension; fines; permanent separation from the institution (that is, termination or dismissal); physical restriction from College property; cancellation of contracts; and any combination of the same.

PA College will provide persons who have experienced Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to PA College’s Education Programs or Activities.

### **Scope**

This policy applies to all members of the PA College community, including: staff, faculty, administrators, students, applicants for employment, customers, third-party contractors, visitors, and all other persons engaging in a PA College Education Program or Activity (including all operations of PA College) within the United States. This policy prohibits Sexual Harassment whether the Complainant (defined in this policy as the individual who is alleged to be the victim of conduct that could constitute Sexual Harassment) and alleged Respondent (defined in this policy as the individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment) are of the same or opposite sex, and it applies regardless of national origin, immigration status, or citizenship status. PA College’s prohibition on Sexual Harassment extends to all aspects of PA College’s Education Programs and Activities including, but not limited to, admissions, hiring, academic instruction, student services, and sponsored student organization activities.

### **Jurisdiction**

This policy applies to students from the moment they enroll in classes (even if they have not yet officially started) through graduation. PA College will investigate Formal Complaints made under this policy and, if necessary, take action to prevent the recurrence of Sexual Harassment, as well as remedy its effects. PA College may investigate alleged conduct covered by this policy that occurred on campus, during or at an official PA College Education Program or Activity, or

at an activity that otherwise has taken place during a PA College Education Program or Activity, or otherwise impacts the operation of the institution. PA College reserves the right to take any action it deems appropriate to address a report of Sexual Harassment under this policy and provide the necessary resources to those individuals impacted, including the broader campus community, when necessary, even where one or more of the parties involved are not members of the PA College community. In situations where the alleged Sexual Harassment occurred outside of the context of a PA College Education Program or Activity where the Respondent is not a member of the PA College community (including when the Respondent has graduated or otherwise left PA College), an investigation will typically not be undertaken, however the situation may still be addressed by providing appropriate resources to impacted individuals and, where appropriate, the broader PA College community.

This policy does not apply to Sexual Harassment that occurs off-campus, in a private setting, and outside the scope of PA College's Education Programs or Activities; such sexual misconduct may be prohibited by the other College policies and standards.

Consistent with the U.S. Department of Education's implementing regulations for Title IX, this policy does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in PA College's Education Programs or Activities. Sexual Harassment that occurs outside the geographic boundaries of the United States is governed by other College policies and standards.

### **Definitions (Not Otherwise Provided in the Policy)**

#### *Sexual Harassment*

Conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.

#### *Formal Complaint*

A document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that PA College investigate the allegation of Sexual Harassment in accordance with this policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in PA College's Education Programs or Activities. A "document filed by a Complainant" means a document or electronic

submission (such as an email) that contains the Complainant's physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.

*Education Programs or Activities*

All the operations of PA College, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by PA College. It also includes off-campus locations, events, or circumstances over which PA College exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs.

Note: Words used in this policy will have those meanings defined herein and if not defined herein will be construed according to their plain and ordinary meaning.

**Policy Detail**

*Individuals who wish to report Sexual Harassment should submit a report with the Title IX Coordinator via phone or email (available below), internet form (available on the PA College website at [PACollege.edu/TitleIX](http://PACollege.edu/TitleIX)), or in person, if preferred.*

Title IX Statement

It is the policy of PA College to comply with Title IX of the Education Amendments of 1972 and its implementing regulations, which prohibit discrimination based on sex in PA College's educational programs and activities. Title IX and its implementing regulations also prohibit retaliation for asserting claims of sex discrimination. PA College has designated a Title IX Coordinator to coordinate its compliance with Title IX and to receive inquiries regarding Title IX, including complaints of sex discrimination.

Any person may report Sexual Harassment to the Title IX Coordinator. Reports may be made in person, by regular mail, telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. In-person reports must be made during normal business hours, but reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours.

Title IX Coordinator		
Joseph Peltzer	Director, Compliance and Risk Management/Title IX Coordinator	850 Greenfield Road, 2 <sup>nd</sup> Floor Stoudt Building

		Lancaster, PA 17601 Phone: 717-947-6339 Email: <a href="mailto:jmpeltzer@pacollege.edu">jmpeltzer@pacollege.edu</a> <a href="mailto:TitleIX@PACollege.edu">TitleIX@PACollege.edu</a>
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Prohibited Conduct

As described below, PA College prohibits Sexual Harassment in all of its forms, including: 1) Quid Pro Quo Harassment, 2) Hostile Environment Harassment, 3) Sexual Assault, 4) Dating Violence, 5) Domestic Violence, and 6) Stalking.

*Quid Pro Quo Harassment*

Quid Pro Quo Harassment occurs when an employee of the College conditions the provision of an aid, benefit, or service of PA College on another person's participation in unwelcome sexual conduct. This type of harassment is most common when an employee holds a position of authority over a student.

*Hostile Environment Harassment*

Hostile Environment Harassment is unwelcome conduct determined by a reasonable person, to be so severe, pervasive, and objectively offensive that the conduct effectively denies a person access to the College's Education Program or Activity.

In determining whether a hostile environment exists, PA College will consider the totality of the circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the context in which the conduct occurred; and the number of persons affected. PA College will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's position.

Note: The subjective offensiveness of speech alone is not sufficient to create a hostile environment.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities

- E-mail, internet, or other electronic use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship

### *Sexual Assault*

“Sexual Assault” includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.<sup>1</sup>

- Rape - is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
- Sodomy – Oral or anal sexual intercourse with another person, without consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical capacity.
- Sexual assault with an object – Using an object or instrument (anything used by the perpetrator other than the perpetrator's genitalia) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Fondling – Touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Incest – Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by the laws of the state in which the incident occurred. In Pennsylvania, it is illegal to knowingly marry, cohabit with or engage in sexual intercourse with an ancestor, descendant, sibling or half sibling, uncle or aunt, or niece or nephew regardless of the legitimacy of blood relationships or a parenting relationship with by blood or adoption.
- Statutory Rape – Sexual intercourse with a person who is under the statutory age of consent as defined by Pennsylvania law.

### *Dating Violence*

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<sup>1</sup> PA College's definition of “Sexual Assault” is mandated by federal regulations implementing Title IX of the Education Amendments of 1972. Those regulations require PA College to adopt a definition of “Sexual Assault” that incorporates various forcible and non-forcible sex crimes as defined by the FBI's Uniform Crime Reporting System. See 34 C.F.R. § 106.30(a).

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship will be determined based on consideration of factors including the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

*Domestic Violence*

Felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse or intimate partner of the victim;
- A person with whom the victim shares a child in common;
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of Pennsylvania; or
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Pennsylvania.

*Stalking*

Engaging in a course of conduct directed at a specific individual that would cause a reasonable person to either fear for their safety or the safety of others, or suffer substantial emotional distress. Stalking can include conduct that occurs via electronic communications, including social media (i.e. cyberstalking).

***Special Guidance for Individuals Reporting Sexual Assault, Domestic Violence, Dating Violence, or Stalking***

If you believe you are the victim of Sexual Assault, Domestic Violence, or Dating Violence, get to safety and do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. For those who believe that they are victims of Sexual Assault, Domestic Violence, or Dating Violence, PA College recommends the following:

- Get to a safe place as soon as possible.
- Try to preserve all physical evidence of the crime—avoid bathing, using the toilet, rinsing one's mouth or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.
- Do not launder or discard bedding or otherwise clean the area where the assault occurred- preserve for law enforcement
- Preserve all forms of electronic communication that occurred before, during, or after the assault
- Contact law enforcement by calling 911.
- Get medical attention - all medical injuries are not immediately apparent. This will also help collect evidence that may be needed in case the individual decides to press charges. Local hospitals have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges. Take a full change of clothing, including shoes, for use after a medical examination.

- Contact a trusted person, such as a friend or family member for support.
- Talk with a professional licensed counselor or health care provider who can help explain options, give information, and provide emotional support.
- Make a report to the Title IX Coordinator.
- Explore this policy and avenues for resolution.

It is also important to take steps to preserve evidence in cases of Stalking, to the extent such evidence exists. Such evidence is more likely to be in the form of letters, emails, text messages, electronic images, etc. rather than evidence of physical contact and violence. This type of non-physical evidence will also be useful in all types of Sexual Harassment investigations.

Once a report of Sexual Assault, Domestic Violence, Dating Violence, or Stalking is made, the victim has several options such as, but not limited to:

- obtaining Supportive Measures
- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)
- pursuing legal action against the perpetrator
- filing a Formal Complaint
- requesting that no further action be taken

PA College's Office of Security can assist individuals in obtaining a protective order.

### Consent, Coercion, and Incapacitation

#### *Consent*

Consent is an affirmative act or statement that is informed, freely given, and mutually understood, agreeing to engage in sexual activity. Consent refers to words or actions that a reasonable person in the perspective of the Respondent would understand as agreement to engage in the sexual conduct at issue. Consent is never passive. Lack of consent is a critical factor in determining whether Sexual Harassment has occurred. For further explanation:

- If coercion (defined below), intimidation, threats, and/or physical force are used, there is no consent.
- If a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation (further defined below), there is no consent.
- If a person is asleep or unconscious, there is no consent.
- If a person is below the minimum age of consent in the applicable jurisdiction, there cannot be consent.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Consent can always be withdrawn. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent.

- Being in a romantic relationship with someone does not imply consent to any form of sexual activity.
- Effective consent may not exist when there is a disparity in power between the parties (e.g. faculty/student, supervisor/employee). *See also 10.5.9 Personal Relationships Policy.*

#### *Coercion*

Coercion is the direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would not have submitted. Coercion can include unreasonable and sustained pressure for physical activity.

Coercive behavior differs from seductive behavior based not on the type(s) of pressure(s) someone uses to get consent from another. A person's words or conduct cannot amount to coercion unless they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity. When a person makes it clear that said person does not want to engage in sexual activity, that said person wants to stop, or that said person does not want to go past a certain point of sexual interaction, continue pressure beyond that point can amount to coercion.

#### *Incapacitation*

Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act (e.g. to understand the "who, what, where, when, why or how" of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual activity is occurring.

Incapacitation can only be found when the respondent knew or should have known that the complainant was incapacitated when viewed from the position of a sober, reasonable person.

Incapacitation may result from the use of alcohol and /or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol and/or other drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or other drugs impacts an individual's:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments; or
- Capacity to appreciate the nature of circumstances of the act.

No single factor alone is determinative of incapacitation. Some common signs that someone is incapacitated may include:

- Slurred speech;
- Smell of alcohol on one's breath;
- Confusion;

- Shaky balance;
- Stumbling or falling;
- Vomiting;
- Combativeness or emotional volatility;
- Outrageous or unusual behavior; and/or
- Unconsciousness.

Sexual contact while under the influence of alcohol and/or other drugs poses a risk to all parties. Since alcohol and other drugs impair a person's decision-making capacity, awareness of consequences, and ability to make informed judgements, it is especially important that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt whatsoever as to the level or extent of the other person's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

#### Roles and Responsibilities

##### *Title IX Coordinator*

It is the responsibility of the Title IX Coordinator, with the assistance of the Deputy Title IX Coordinators, to:

- Ensure PA College's compliance with Title IX and its implementing regulations;
- Identify and address any patterns or systemic problems of sexual misconduct at PA College;
- Coordinate dissemination of information, education, and training programs;
- Receive reports and Formal Complaints under this policy;
- Assist members of the PA College community in understanding and following this policy;
- Ensure that employees and students are aware of the procedures for reporting and addressing complaints of sexual misconduct; and
- Implement the Complaint Resolution Procedures or designate appropriate persons for implementation.

##### *Administrators, Department Chairs, and Other Managers*

It is the responsibility of administrators, department chairs, and other supervisors (i.e. those that formally supervise other employees) to:

- Inform employees under their direction or supervision of this policy;
- Work with the Title IX Coordinator to implement education and training programs for students and employees; and
- Implement any corrective actions that are imposed as a result of findings of a violation of this policy.

##### *Employees – REPORTING REQUIREMENT*

All PA College employees have a duty to report Sexual Harassment to the Title IX Coordinator when they receive a report of such conduct, witness such conduct, or otherwise obtain information about such conduct. This includes employees who may have a professional license requiring confidentiality if they are not employed by PA College in that professional role. An

employee not reporting sexual misconduct as required by this policy may be disciplined accordingly, up to and including termination.

#### *Students*

It is the responsibility of all students to review this policy and comply with all aspects of it.

#### Complaints and Resolution

PA College will resolve complaints of violations of this policy in accordance with the Complaint Resolution Procedures referenced herein.

A “Complainant” is an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment. A “Respondent” an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

#### *Preliminary Assessment*

After receiving a report under “Reporting Sexual Harassment,” the Title IX Coordinator will conduct a preliminary assessment to determine:

- Whether the conduct, as reported, falls or could fall within the scope of this policy; and
- Whether the conduct, as reported, constitutes or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of the policy, and/or could not constitute Sexual Harassment, even if investigated, the Title Coordinator will close the matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act (“FERPA”). The Title IX Coordinator may refer the report to other College offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of the policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if it is not apparent from the report.

#### *Contacting the Complainant*

If a report is not closed as a result of the preliminary assessment and the Complainant’s identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures; to discuss and consider the Complainant’s wishes with respect to Supportive Measures; to inform the Complainant about the availability of Supportive Measures with or without filing a Formal Complaint; and to explain the process for filing and pursuing a Formal Complaint. The Complainant will also be provided options for filing complaints with the local police and information about resources that are available on campus and in the community.

#### *Types of Resolution: Formal Resolution and Informal Resolution*

Formal resolution of a Formal Complaint begins with an investigation conducted by neutral third-party (the investigator), contracted by PA College. Said third party is charged with fact-finding only, not in reaching a conclusion. The investigation is conducted in accordance with the procedures listed below. The investigator shall present the facts of the investigation to a hearing panel, which is tasked with reaching a conclusion as to the existence of a policy violation and any sanctions resulting from. The hearing panel shall be comprised of one (1) faculty member, one (1) staff member, and one (1) student, as well as a member of the Penn Medicine/Lancaster General Health General Counsel's office, serving as chairperson in a non-voting capacity.

The conclusion of the hearing may or may not result in a finding of a policy violation, based on a preponderance of the evidence standard (defined below). For Formal Complaints where a policy violation is found, PA College will impose disciplinary action, including and up to termination or expulsion.

As an alternative to pursuing a investigation, a Complainant may seek an informal resolution through the Title IX Coordinator. An informal resolution may result in implementing protective measures and accommodations, targeted or general educational programming or training, and/or direct intervention with the Respondent. However, informal resolution does not result in formal disciplinary measures.

Informal resolution is available in matters in which the Title IX Coordinator determines it is appropriate and will only be used after all parties have received a full disclosure of the allegations and their options for formal resolution. All parties must voluntarily elect to engage in informal resolution. During an informal resolution process, any part may elect to end the process at any time and invoke their right to the formal process.

Alternatively, at the conclusion of the initial investigation and following review of the collected evidence, the Complainant or Respondent may choose the option of an administrative adjudication as a form of informal resolution. Both parties must agree to proceed in this way. In such a case, the Title IX Coordinator will evaluate the collected evidence and reach a conclusion that may or may not result in a finding of a policy violation, based on a preponderance of the evidence standard (defined below). For Formal Complaints where a policy violation is found, PA College, through the Title IX Coordinator, will impose disciplinary action, including and up to termination or expulsion.

#### *Making a Complaint*

Individuals who wish to report Sexual Harassment should submit a report with the Title IX Coordinator via phone, email, internet form (available on the PA College website at [PACollege.edu/TitleIX](http://PACollege.edu/TitleIX)), or in person, if preferred. Contact information is available on Page 2 of this policy for the Title IX Coordinator.

#### *Conduct that May Constitute a Crime*

Any person who wishes to make a report of Sexual Harassment that may also constitute a crime (including Sexual Assault, Domestic Violence, Dating Violence, or Stalking) is encouraged to

make a complaint to local law enforcement. If requested, PA College will assist the complainant in notifying the appropriate law enforcement authorities. In the event of an emergency, please contact 911 immediately.

An individual reporting Sexual Harassment to PA College may also decline to notify such authorities.

#### *Timing of Complaints*

There is no time limit for when an incident of Sexual Harassment may be reported; however, reports should be made as soon as possible after the incident, preferably within one (1) year, due to the difficulties encountered with the review and reliability of evidence and the memories of involved parties with the passage of time.

#### *Bad Faith Complaints*

While PA College encourages all good faith reports of Sexual Harassment, PA College has the responsibility to balance the rights of all parties. Therefore, if PA College's investigation reveals that a report or Formal Complaint was knowingly false, the Formal Complaint will be dismissed and the person who filed the knowingly false complaint may be subject to discipline within the purview of the appropriate PA College policy.

#### *Treatment of Records and Other Privileged Information*

During the investigation and adjudication processes, the investigator and adjudicator, as the case may be, are not permitted to access, consider, disclose, permit questioning concerning, 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 or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party; or
- Information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege.

...unless PA College has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or adjudicator, as the case may be, may consider any such records or information otherwise covered by this Section if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense, as the case may be.

#### *Sexual History*

During the investigation and adjudication processes, questioning regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, 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, or if the questions and evidence concern specific

Pennsylvania College of Health Sciences  
ADMINISTRATIVE POLICY STATEMENT

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incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this Section for the purpose of supporting the Complainant’s allegations, may be deemed to have waived the protections of this Section.

Confidential Resources

If a Complainant desires to talk confidentiality about an incident of Sexual Harassment, there are resources available. The following resources are available to assist and will not further disclose the information you provide, unless otherwise required to do so by law.

Resource Name	Details	Contact Information
Quest Behavioral Health & EAP Services	Administrative Hours: 8am – 4:30pm, Monday through Friday  Clinical Services Hours: Available 24 hours a day, 7 days a week	Phone: 717-851-1486  Toll-free: 1-800-364-6352
YWCA Sexual Assault Hotline	Available 24 Hours a day, 7 days a week	Phone: 717-393-1735
Domestic Violence and Complainant Resources in Pennsylvania	Sexual Assault/Rape Crisis Centers  Pennsylvania Coalition Against Domestic Violence	Phone: 1-888-772-7227  Website: <a href="http://pcadv.org/Find-Help/Complainant-Resources-PA/">http://pcadv.org/Find-Help/Complainant-Resources-PA/</a>
RAINN (Rape, Abuse & Incest National Network)	National Sexual Assault Hotline	Phone: 1-800-656-4673 Website: <a href="http://hotline.rainn.org/">http://hotline.rainn.org/</a> (online hotline)

PA College also provides individuals with an on-campus confidential resource option. This resource is available to assist and will not further disclose the information provided, unless otherwise required to do so by law. While the resource listed below will maintain confidentiality, non-identifiable aggregated data may be periodically reported to the Title IX Coordinator so that PA College can analyze whether there are patterns or systemic problems of Sexual Harassment on campus.

Designated Confidential Resource of PA College		
TBD	College Nurse, Health & Wellness Services	Phone: 717-947-6189 Email:

*Retaliation*

It is a violation of this policy to retaliate against any member of the PA College community who reports or assists in making a report or Formal Complaint of Sexual Harassment or who participates in the investigation, hearing, adjudication, or appeal of a Formal Complaint in any

way. PA College will not only take steps to prevent retaliation, but will also take strong responsive action if it occurs. Persons who believe that they have been retaliated against in violation of this policy should make a report with the Title IX Coordinator via phone, email, internet form (available on the PA College website at [PACollege.edu/TitleIX](http://PACollege.edu/TitleIX)), or in person, if preferred. PA College retains discretion to consolidate a Formal Complaint of Retaliation with a Formal Complaint of Sexual Harassment for investigation and/or adjudication purposes if the two Formal Complaints share a common nexus.

#### *Amnesty*

PA College recognizes that an individual who has been drinking alcohol or using drugs may be hesitant to report Sexual Harassment. To encourage reporting, PA College will not take disciplinary action for drug or alcohol use against an individual making a good faith report of Sexual Harassment, either as the Complainant or as a witness, provided that these conduct violations did not and do not place the health or safety of any other person at risk. PA College may, however, require the reporting individual to attend a course or pursue other educational interventions related to alcohol and other drugs.

PA College's commitment to amnesty in these situations does not prevent action by police or other legal authorities against an individual who has illegally consumed alcohol or other drugs.

#### *Limitations of Confidentiality*

PA College considers reports, investigations, adjudications, and appeals conducted under this policy to be private matters for the parties involved and will make reasonable and appropriate efforts to preserve all parties' privacy when investigating and resolving a Formal Complaint. For that reason, PA College, through the Title IX Coordinator, will protect the identity of persons involved in reports of Sexual Harassment to the best of its ability (though complete confidentiality cannot be guaranteed). PA College will only share personally identifiable information with persons who have a "need to know" in order for PA College to investigate and respond to the complaint or to deliver resources or support services. PA College does not publish the names nor post identifiable information about persons involved in a report of Sexual Harassment.

If a Complainant insists that Complainant's name not be disclosed to the Respondent, PA College's ability to respond may be limited. PA College reserves the right to initiate an investigation despite a Complainant's request for confidentiality in limited circumstances involving serious or repeated conduct, or where the alleged perpetrator may pose a continuing threat to the PA College community.

Note that certain types of Sexual Harassment are considered crimes for which PA College must disclose crime statistics in the Annual Security Report, in accordance with The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990, that is provided to the campus community and available to the public. These disclosures will be made without including personally identifying information.

While PA College will maintain confidentiality specified in this Section, PA College will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties are advised, however, that the manner in which they communicate about, or discuss a particular case, may constitute Sexual Harassment or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in this policy.

#### *Academic Freedom*

PA College is firmly committed to free expression and academic freedom. PA College is equally committed to creating and maintaining a safe, healthy, a harassment-free environment for all members of its community, and firmly believes that these two legitimate interests can coexist. Discrimination, harassment, and retaliation against members of PA College community are not protected expressions or the proper exercise of academic freedom. PA College will consider academic freedom in the investigation of reports of sexual misconduct or retaliation that involve an individual's statements or speech. In no case will a Respondent be found to have committed Sexual Harassment based on expressive conduct that is protected by the principles of academic freedom.

#### *Education and Training*

Because PA College recognizes that the prevention of Sexual Harassment is important, it offers educational programming to a variety of groups including campus personnel, incoming students and new employees, and members of student organizations. Among other elements, such training will cover relevant definitions, procedures, and sanctions while providing safe and positive options for bystander intervention and risk reduction information, including warning signs of abusive behavior. To learn more about educational resources, please contact the Title IX Coordinator.

PA College will ensure that College officials acting under this policy, including but not limited to the Title IX Coordinator, investigators, Hearing Panels, administrative officers, informal resolution facilitators, College provided advisors, and appeals officers receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law.

### Complaint Resolution

#### **Preliminary Review**

In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and must dismiss it if the Title IX Coordinator determines:

1. The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
2. The conduct alleged in the Formal Complaint falls outside the scope of the policy (that is, because the alleged conduct did not occur in PA College's Education Programs or Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

In the event the Title IX Coordinator determines the Formal Complaint should be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in "Appeal." The Title IX

Coordinator may refer the subject matter of the Formal Complaint to other College offices, as appropriate.

### **Procedures**

The following Complaint Resolution Procedures apply to the resolution of all reports and Formal Complaints under the Sexual Harassment Policy. They apply to the resolution of reports and Formal Complaints against students, faculty, administrators, staff, and third parties, and they are the exclusive means of resolving reports and Complaints of Sexual Harassment. To the extent there is a conflict between these procedures and PA College's Sexual Harassment Policy, the Sexual Harassment Policy shall control.

#### *Promptness, Fairness and Impartiality*

These procedures provide for prompt, fair, and impartial investigations and adjudications. All PA College officials involved in the investigation, hearing, adjudication, or appeal process shall discharge their obligations under these Complaint Resolution Procedures fairly and impartially. Any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties shall be disclosed (and shall be eliminated to the extent possible). If an involved PA College official is unable to apply these procedures fairly and impartially due to any conflict of interest or bias, another appropriate individual will be designated to administer these procedures.

#### *Guiding Principles for Investigation and Resolution of the Complaint*

##### a. Formal Complaint

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that PA College investigate and adjudicate a report of Sexual Harassment in accordance with the provisions in this policy. Provided, however, that at the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of PA College's Education Programs or Activities.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified above. No person may submit a Formal Complaint on the Complainant's behalf.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of PA College if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to PA College Community. Factors the Title IX Coordinator may consider include (but are not limited to): (a) was a weapon involved in the incident; (b) were multiple assailants involved in the incident; (c) is the accused a repeat offender; and (d) does the incident create a risk of occurring again.

If the Complainant or the Title IX Coordinator files a Formal Complaint, then PA College will commence an investigation and proceed to adjudicate the matter. In all cases where a Formal

Complaint is filed, the Complainant will be treated as a party, irrespective of the party's level of participation.

In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

PA College may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in this policy to the singular "party," "Complainant," or "Respondent" include the plural, as applicable. A Formal Complaint of Retaliation may be consolidated with a Formal Complaint of Sexual Harassment. **Notice of Formal Complaint**

Within five (5) days of the Title IX Coordinator receiving a Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

1. A physical copy of this policy or a hyperlink to this policy;
2. Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known);
3. A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
4. Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice;
5. Notifying the Complainant and Respondent of their right to inspect and review evidence;
6. Notifying the Complainant and Respondent of PA College's prohibitions on retaliation and false statements; and
7. Information about resources that are available on campus and in the community.

Should PA College elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, PA College will provide a supplemental written notice describing the additional allegations to be investigated.

**b. Timing of the Investigation**

PA College will endeavor to conclude its investigation and resolution of the Formal Complaint within ninety (90) calendar days of receiving it. Both the Complainant and the Respondent will be given periodic updates regarding the status of the investigation. If additional time is needed for the investigation, the investigator shall notify the Complainant and Respondent in writing explaining how much additional time is needed and why.

**Option for Informal Resolution**

As mentioned in this policy, informal means of resolution, such as mediation, may be used in lieu of formal investigation, adjudication, and resolution procedures. At any time after the parties are provided written notice of the Formal Complaint and before the completion of any appeal, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties. The following standards apply to any informal resolution method that may be utilized:

- The informal process can only be used with both parties' voluntary cooperation and appropriate involvement by the institution (e.g. the Title IX Coordinator);
- The Complainant will not be required to "work out" the problem directly with the Respondent; and
- Either party may terminate the informal process at any time and elevate the Formal Complaint to the formal investigation procedures described below.

Additionally, at the conclusion of the investigation, after the evidence has been shared with both parties, either party may request the informal resolution option in the form of an administrative adjudication. If selected, the Title IX Coordinator will make the final determination (with the option to appeal) as to whether or not there was a policy violation; the matter will not proceed to a hearing.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

- Describes the parameters and requirements of the informal resolution process to be utilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another College official, or a suitable third-party);
- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence.

During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for

their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by PA College, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to PA College. Notwithstanding the foregoing if the form of informal resolution is Administrative Adjudication as specified in "Administrative Adjudication," there shall not be an agreed resolution requiring the parties' signatures; instead, the determination issued by the administrative officer shall serve as the resolution and conclude the informal resolution process, subject only to any right of appeal. With the exception of a resolution resulting from the Administrative Adjudication process specified in "Administrative Adjudication," all other forms of informal resolution pursuant to this Section are not subject to appeal.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) days. If an informal resolution process does not result in a resolution within twenty-one (21) days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

Other language in this Section notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

c. Support Measures

Supportive Measures are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to PA College's Education Programs or Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or PA College's education environment, or to deter Sexual Harassment. Supportive measures may include: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

Interim measures are reasonable measures that PA College can put in place for an individual who reports having experienced Sexual Harassment, or an individual who has been accused of a policy violation. The Title IX Coordinator shall review the report and may determine that reasonable support measures for the parties involved, or witnesses, are appropriate both during an investigation and/or informal resolution, as well as beyond the complaint process.

Interim measures are available regardless of whether an individual chooses pursue a Formal Complaint. PA College will keep confidential any support measures and accommodations provided to the extent that maintaining such confidentiality would not impair the ability of the institution to provide these measures.

Failure to comply with the terms of support measures may constitute a separate violation of PA College's policies.

To seek a support measure where one (or more) has otherwise not been provided, students, staff, and faculty should contact the Title IX Coordinator.

d. Interim Removal

At any time after receiving a report of Sexual Harassment, the Title IX Coordinator may remove a student Respondent from one or more of PA College's Education Programs or Activities on a temporary basis if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. In the event the Title IX Coordinator imposes an interim removal, the Title IX Coordinator must offer to meet with the Respondent within twenty-four hours and provide the Respondent an opportunity to challenge the interim removal.

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff), and in its discretion, PA College may place the Respondent on administrative leave at any time after receiving a report of Sexual Harassment, including during the pendency of the investigation and adjudication process.

For all other Respondents, including independent contractors and guests, PA College retains broad discretion to prohibit such persons from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

e. Evidentiary Standard: Preponderance of the Evidence

In making any determination on the resolution of the complaint, the evidentiary standard is the preponderance of the evidence; that is, whether it is more likely than not that Sexual Harassment occurred.

e. Support Person/Advisor of Choice

From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process.

PA College will assist in identifying such a person should the individual request it. In cases involving multiple complainants and respondents, the support person/advisor cannot be another Complainant or Respondent, or a potential witness. The support person/advisor does not serve as an advocate on behalf of the Complainant or Respondent, may not be actively involved in the investigation, and must agree to maintain the confidentiality of the process. A support

person/advisor may be removed if the person becomes disruptive or does not abide by the limitations detailed herein.

The support person/advisor shall, during the hearing stage in a formal resolution, conduct questioning and cross examination of the Complainant/Respondent in accordance with the guidelines set forth within this policy.

PA College also permits the parties to have their lawyer(s) participate in the process as an advisor of choice/support person(s). The lawyers' participation is limited to consultation with their party/client during the investigation stage. This and any other school-imposed limitation shall be applied to all parties.

f. Pending Criminal Investigation

This policy sets forth PA College's processes for responding to reports and Formal Complaints of Sexual Harassment. PA College's processes are separate, distinct, and independent of any criminal processes. While PA College may temporarily delay its processes under this policy to avoid interfering with law enforcement efforts if requested by law enforcement, PA College will otherwise apply this policy and its processes without regard to the status or outcome of any criminal process.

g. Intersection with other Policies and Procedures

The Complaint Resolution Procedures detailed herein are the exclusive means of resolving reports alleging violations of the Sexual Harassment policy. To the extent there are any inconsistencies between these Complaint Resolution Procedures and other PA College grievance, complaint, or discipline policies and procedures, or handbooks, these procedures shall control the resolution of complaints alleging violations of the Sexual Misconduct policy. Complaints of other forms of sex discrimination are governed by PA College's Discrimination and Harassment Policy. Alleged violations of this policy, other than violations of the prohibitions on Sexual Harassment and Retaliation, will be subject to review under the other PA College policies and standards for employees.

*Rights of the Parties*

During the investigation and resolution of a Formal Complaint, the Complainant and Respondent shall have equal rights, including:

- Equal opportunity to identify and have considered witnesses and other relevant evidence;
- Similar and timely access to all information considered by the investigator no less than 10 days prior to a hearing;
- Equal opportunity to review any statements or evidence provided by the other party;
- Equal access to review and comment upon any information independently identified by the investigator; and
- Equal opportunity to appeal determinations pursuant to the appeals process, detailed herein.

*Preserving Evidence*

PA College strongly encourages individuals who have experienced Sexual Harassment and individuals who have been accused of a violation under this policy to preserve relevant evidence to the greatest extent possible.

Below are suggestions for preserving evidence related to an incident of Sexual Harassment. It is important to keep in mind that each suggestion may not apply in every incident.

a. General Evidence Preservation Suggestions

- Individuals should consider not altering, disposing of, or destroying any physical evidence of Sexual Harassment.
- If there is suspicion that a drink may have been drugged, an individual should inform a medical assistance provider and/or law enforcement as soon as possible so they can attempt to collect possible evidence (e.g. from the drink, through urine, or through blood sample).
- Individuals can preserve evidence of electronic communications by saving them and/or by taking screen shots of text messages, instant messages, social networking pages, or other electronic communications, and by keeping pictures, logs, or copies of documents that relate to the incident and/or perpetrator.
- Even if an individual chooses not to make a report or Formal Complaint with PA College regarding Sexual Harassment, the individual may consider speaking with law enforcement to preserve evidence.

b. Evidence Preservation Suggestions Specific to Sexual Assault (for Survivors)

- Because some evidence, particularly evidence that may be located on the body, dissipates quickly (within 48-96 hours), individuals who have been sexually assaulted and wish to preserve evidence should go to a hospital or medical facility immediately to seek a medical examination and/or evidence collection.
- An individual who has been sexually assaulted and wishes to preserve evidence should, if possible, not shower, bathe, douche, smoke, brush teeth, eat, drink, use the bathroom, or change clothes or bedding before going to the hospital or seeking medical attention.
- If an individual who has been sexually assaulted decides to change clothes or bedding and wishes to preserve evidence, the individual should not wash the clothes worn or bedding used during the assault and should bring them to a hospital, medical facility, or the police in a non-plastic (e.g. paper) bag.

*Process of a Formal Investigation*

Once a Formal Complaint is made, the Title IX Coordinator will assign an investigator to begin an investigation as soon as practicable, but no later than seven (7) calendar days from the date the Formal Complaint is signed. The purpose of the investigation is to determine whether it is more likely than not that the alleged behavior occurred and, if so, whether it constitutes Sexual Harassment. During the course of the investigation, the investigator may receive counsel from PA College administrators, PA College's attorneys, or other parties, as needed.

In certain narrow circumstances, the investigator may commence an investigation even if the Complainant requests that the matter not be pursued. In such circumstances, the investigator will

take all reasonable steps to investigate and respond to the matter in a manner that is informed by the Complainant's articulated concerns.

a. Content of the Investigation

The investigator will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with PA College and not with the parties. During the investigation, the Complainant will have the opportunity to describe the allegations and present supporting witnesses, as well as other evidence. The Respondent will also have the opportunity to respond to the allegations and present supporting witnesses, as well as other evidence. The investigator will review the statements and evidence presented and may, depending on the circumstances, interview others with relevant knowledge, review documentary materials, and take any other appropriate action to gather and consider information relevant to the allegations.

During the investigation, the investigator will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence. Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant. The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party's opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Formal Complaint. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect. The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator's notes, audio recorded, video recorded, or transcribed. The particular method utilized to record the interviews of parties and witnesses will be determined by the investigator in the investigator's sole discretion, although whatever method is chosen shall be used consistently throughout a particular investigation.

b. Access to Evidence

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the report, the investigator will transmit to each party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence PA College may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a party or some other source. Thereafter, the parties will have ten (10) days in which to submit to the investigator

a written response, which the investigator will consider prior to completing the investigation report.

The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not duplicate or disseminate the evidence to the public.

c. Resolution

At the conclusion of the investigation, the investigator will prepare a written report. The written report will explain the scope of the investigation, fairly summarize the various steps taken during the investigation, summarize the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the investigator will transmit a copy to the Title IX Coordinator. The investigator will also transmit the investigation report to each party and their advisor, in either electronic or hard copy form. The report will be provided at the same time to both parties for review and comment, at least ten (10) days prior to the hearing. Both parties will be permitted to review the investigator's report, as well as all evidence, and provide comments.

A party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history or for any other reason;
- A list of any witnesses that the party contends should be requested to attend the hearing;
- A list of any witnesses that the party intends to bring to the hearing;
- Any objection that the party has to the hearing Procedures;
- Any request that the parties be separated physically during the hearing;
- Any other accommodations that the party seeks with respect to the hearing;
- The name and contact information of the advisor who will accompany the party at the hearing;
- If the party does not have an advisor who will accompany the party at the hearing, a request that PA College provide an advisor for purposes of conducting questioning.

A party's written response to the investigation report may also include:

- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

c. Title IX Investigation Hearing Panel

The investigator's report, along with any comments received from the parties, will be provided to the Title IX Investigation Hearing Panel ("Panel"), who will then conduct a hearing with the

parties to determine whether any allegations in the Formal Complaint can be substantiated by a preponderance of the evidence. Said hearing may be held in-person or virtually via a college-approved platform. The panel shall be chaired by a member of the Penn Medicine/Lancaster General Hospital's General Counsel's Office who will serve in a non-voting role. The chair shall be tasked with general conducting of the hearing, as well as determinations of the relevance of presented evidence. When a determination regarding relevance of evidence leads to exclusion of said evidence, the chair shall explain the decision for the record.

#### *Pre-Hearing Conference*

Prior to the hearing, the hearing panel will conduct a pre-hearing conference with the parties and their advisors. The pre-hearing conference will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the pre-hearing conference will be conducted with the Hearing Panel, the parties, the advisors, and other necessary College personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing panel's discretion, the pre-hearing conference may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

During the pre-hearing conference, the hearing panel will discuss the hearing procedures with the parties; address matters raised in the parties' written responses to the investigation report, as the Hearing Panel deems appropriate; discuss whether any stipulations may be made to expedite the hearing; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolve any other matters that the Hearing Panel determines, in the Hearing Panel's discretion, should be resolved before the hearing.

#### *Notice of Attendance*

After the pre-hearing conference, the Hearing Panel will transmit notices of attendance to any College employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise the subject to contact the Hearing Panel immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

PA College will not issue a notice of attendance to any witness who is not an employee or a student.

### *Hearing*

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the hearing will be conducted with the Hearing Panel, the parties, the advisors, witnesses, and other necessary College personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the Hearing Panel's discretion, the hearing may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

The Hearing Panel will have discretion to set the overall length of the hearing and may set time limits for statements of the parties, questioning of parties and witnesses, and closing arguments. A hearing will not exceed seven (7) hours in length absent extraordinary circumstances. Once a hearing is commenced, it will be continued only for good cause as determined by the hearing officer.

In the event that any party or witness refuses to attend the hearing, or attends but refuses to submit to questioning by the parties' advisors, the statements of that party or witness, as the case may be, whether given during the investigation or during the hearing, will not be considered by the Hearing Panel in reaching a determination of responsibility.

Notwithstanding the foregoing, the Hearing Panel may consider the testimony of any party or witness, whether given during the investigation or during the hearing, if the parties jointly stipulate that the testimony may be considered or in the case where neither party requested attendance of the witness at the hearing.

In applying this Section ("Subjection to Questioning"), the Hearing Panel will not draw an inference about the determination regarding responsibility based solely on a party or a witness's absence from the live hearing and/or refusal to submit to questioning by the parties' advisors.

While the Hearing Procedures and rulings from the Hearing Panel will govern the particulars of the hearing, each hearing will include, at a minimum:

- Testimony of the investigator
- Statement and questioning of the Complainant
- Statement and questioning of the Respondent
- Questioning of witness(es)
- Closing statement by the Complainant
- Closing statement by the Respondent
- Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility;

- Opportunity for each party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the Hearing Panel and a reason for the ruling provided;
- Opportunity for each party to submit evidence that the party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect;

Note: Witnesses shall only be present as they are called to testify and sequestered during other portions of the hearing

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply. The Hearing Panel will have discretion to modify the Hearing Procedures, when good cause exists to do so, and provided the minimal requirements specified in this section are met.

After the hearing is complete, the Hearing Panel will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The Hearing Panel will take care to exclude from consideration any evidence that was ruled inadmissible. The Hearing Panel will resolve disputed facts using a preponderance of the evidence standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

This decision will be communicated in writing to both parties at the same time and will include the following:

- An analysis of the Panel's conclusion, including:
  - Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
  - A description of the procedural steps taken by PA College upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.
  - Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
  - A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
- Reasonable steps to correct the effects of such conduct on the Complainant and others;
- Reasonable steps to prevent the recurrence of Sexual Harassment or Retaliation and to correct its discriminatory effects on the Complainant and others, if appropriate; and
- A description of the appeal procedures.

*Sanctioning*

Pennsylvania College of Health Sciences  
**ADMINISTRATIVE POLICY STATEMENT**

Effective Date: 6/5/18  
Last Revised: 8/14/20  
Last Reviewed: 8/14/20

Policy 10.2.7

Sexual Harassment (Title IX)

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In the event a policy violation is determined to have occurred, the decision will also be communicated to the appropriate sanctioning official listed below who will be responsible for determining discipline for the Respondent (see possible sanctions below). The sanctioning official will have three (3) business days in which to determine a sanction and communicate that decision to the parties in a manner consistent with Title IX, FERPA, and the Clery Act.

<b>Sanctioning Officials</b>		
For Students: Erika Wilkinson	Associate Vice President of Strategic Enrollment Management	Phone: 717-947-6067 Email: <a href="mailto:elwilkinson@pacollege.edu">elwilkinson@pacollege.edu</a>
For Employees (including Faculty): Nancy Florey	Vice President of Human Resources	Phone: 717-947-6098 Email: <a href="mailto:neflorey@PACollege.edu">neflorey@PACollege.edu</a>

The written determination of the Investigator, final written review of the Panel, and any sanction issues by the sanctioning official shall be final subject only to the right of appeal set forth below.

Violations of this policy may result in sanctions and corrective actions, which can include, but are not limited to:

- Verbal warning;
- Written warning;
- Disciplinary hold on academic and/or financial records;
- Performance improvement/management process;
- Required counseling;
- Required training or education;
- Campus access restrictions;
- No trespass order (with respect to campus locations);
- No contact directive (with respect to an individual);
- Loss of privileges;
- Loss of oversight, teaching, and/or supervisory responsibility;
- Probation;
- Demotion;
- Loss of pay increase;
- Transfer (employment);
- Revocation of offer (admissions or employment);
- Disciplinary suspension;
- Suspension with or without pay;
- Expulsion;
- Degree revocation;
- Termination of employment; and
- Termination of contract (for contractors).

PA College may assign other sanctions as appropriate in each situation. To the greatest extent possible, sanctions and corrective actions will be imposed in accordance with relevant policies

and/or procedures and other requirements set forth in the applicable Employee Handbook, Faculty Supplement, Student Handbook, or other policies, handbooks, and contracts that may be applicable or developed over time. In addition, PA College may take steps to remediate the effects of a violation on the complainants and others.

### *Appeals*

#### a. Grounds for Appeal

- Either party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:
  - A procedural irregularity affected the outcome;
  - There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
  - The Title IX Coordinator, investigator, Hearing Panel, or administrative officer, as the case may be, had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome.

No other grounds for appeal are permitted.

#### b. Method of Appeal

Appeals must be filed with the Associate Vice President of Academic Affairs (“Appeals Officer”) within five (5) business days of receipt of the final written report determining the outcome of the Formal Complaint, or sanction, whichever is later. The appeal must be in writing (via email, below) and contain the following:

- Name of Complainant;
- Name of Respondent;
- A statement of the determination of the Formal Complaint, including corrective action, if any;
- A detailed statement of the basis for the appeal, including the specific facts, circumstances, and argument in support; and
- Requested action, if any.

Promptly upon receipt of an appeal, the Appeals Officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, the Appeals Officer will dismiss the appeal and provide written notice of the same to the parties.

If the Appeals Officer confirms that the appeal is timely and invokes at least one permitted ground for appeal, the Appeals Officer will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within seven (7) days. The Appeals officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the Appeals Officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

<b>Appeals Officer</b>		
Jean Hershey	Associate Vice President of Academic Affairs	Phone: 717-947-6150 Email: jlhershe@PACollege.edu

c. Resolution of the Appeal

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, PA College strives to issue the appeal officer’s written decision within ten (10) days of an appeal being filed.

Resources for Complainants and Respondents

In addition to the confidential resources listed within the policy, PA College provides the following additional information as a resource to the PA College community.

*General Resources*

Please contact the Title IX Coordinator if you have any questions about the resources listed below or need assistance in accessing additional information about existing counseling, health, mental health, complainant advocacy, legal assistance, visa and immigration assistance, and other services available for complainants of sexual misconduct.

a. Counseling

Resource Name	Details	Contact Information
Quest Behavioral Health & EAP Services	Administrative Hours: 8am – 4:30pm, Monday through Friday  Clinical Services Hours: Available 24 hours a day, 7 days a week	Phone: 717-851-1486  Toll-free: 1-800-364-6352
YWCA Sexual Assault Hotline	Available 24 Hours a day, 7 days a week	Phone: 717-393-1735

Pennsylvania College of Health Sciences  
ADMINISTRATIVE POLICY STATEMENT

Effective Date: 6/5/18  
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Domestic Violence and Complainant Resources in Pennsylvania	Sexual Assault/Rape Crisis Centers  Pennsylvania Coalition Against Domestic Violence	Phone: 1-888-772-7227  Website: <a href="http://pcadv.org/Find-Help/Complainant-Resources-PA/">http://pcadv.org/Find-Help/Complainant-Resources-PA/</a>
RAINN (Rape, Abuse & Incest National Network)	National Sexual Assault Hotline	Phone: 1-800-656-4673  Website: <a href="http://hotline.rainn.org/">http://hotline.rainn.org/</a> (online hotline)

b. Immigration

Resource Name	Details	Contact Information
HIAS & Council Migration Service of Philadelphia	Nonprofit Legal and Social Services for Immigrants and Refugees	Phone: 215-832-0900  Website: <a href="http://www.hiaspa.org/">http://www.hiaspa.org/</a>
Nationalities Service Center	A non-profit organization that provides social, educational, senior, translation and interpretation, and legal services for immigrants and refugees in the Greater Philadelphia area.	Phone: 215-893-8400  Website: <a href="http://nscphila.org/">http://nscphila.org/</a>
Pennsylvania Immigration Resource Center	PIRC is a non-profit organization that provides access to justice through legal services – direct representation, coordination of pro bono legal assistance, and pro se assistance.	Phone: 717-600-8099  Website: <a href="http://www.pirclaw.org/">http://www.pirclaw.org/</a>

Presumption of Non-Responsibility

From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

Conflicts of Interest, Bias, and Procedural Complaints

The Title IX Coordinator, investigator, Hearing Panel, administrative officer, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these College officials has a material conflict of interest or material bias must raise the concern promptly so that PA College may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal specified in “Appeal,” or otherwise.

Objections Generally

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that PA College may evaluate the matter and address it, if appropriate.

#### Recordings

Wherever this policy specifies that an audio or video recording will be made, the recording will be made only by PA College and is considered property of PA College, subject to any right of access that a party may have under this policy, FERPA, and other applicable federal, state, or local laws. Only PA College is permitted to make audio or video recordings under this policy. The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated under this policy is strictly prohibited. Any party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the Hearing Panel.

#### Vendors, Contractors and Other Third Parties

PA College does business with various vendors, contractors, and other third-parties who are not students or employees of PA College. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this policy, PA College retains its right to limit any vendor, contractor, or third-party's access to campus for any reason. And PA College retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this policy.

#### Signatures and Form of Consent

For purposes of this policy, either a physical signature or digital signature will be sufficient to satisfy any obligation that a document be signed. Where this policy provides that written consent must be provided, consent in either physical or electronic form, containing a physical or digital signature, as the case may be, will suffice.

#### Recordkeeping

PA College will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in PA College's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

#### Discretion in Application

PA College retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if PA College's interpretation or application differs from the interpretation of the parties.

Despite PA College's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case PA College retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

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The provisions of this policy and the Hearing Procedures referenced in “Hearing ” are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, PA College retains discretion to revise this policy and the Hearing Procedures at any time, and for any reason. PA College may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

**References:** Education Amendments of 1972; 2020 Department of Education Title IX Rule Revisions

<b>Audience:</b>	All College
<b>Date Issued:</b>	6/5/18
<b>Date Revised:</b>	9/26/19; 8/14/20
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<b>Owner:</b>	Title IX Coordinator