



Title IX Sexual Harassment Grievance Procedures

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INTRODUCTION

This Chester Career College Title IX Grievance Procedures addresses allegations of Sexual Harassment subject to the Title IX Regulations adopted by the U.S. Department of Education (USDOE) effective August 14, 2020. This Title IX Grievance Procedure and its terms supersede any policies pertaining to the investigation or adjudication of “sexual harassment” as defined in this procedure.

SCOPE

These Title IX Grievance Procedures apply to allegations that are both:

1. Conduct on the basis of sex that constitutes “sexual harassment”; and
2. Conduct that relates to the College’s “education program or activity” against a person in the United States on or after August 14, 2020.

Education Program or Activity

An education program or activity includes locations, events, or circumstances in which an institution exercises substantial control over both the respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student

organization that is officially recognized by the institution. The Title IX Regulations exclude any sexual harassment that does not occur in the United States.

Conduct that does not satisfy the USDOE's jurisdictional requirement, such as off-campus behavior that did not occur in the College's education program or activity, may be addressed under alternative procedures.

OVERVIEW OF KEY TERMS

For purposes of this Title IX Grievance Procedure, key terms are defined as follows:

Actual Knowledge: Notice of sexual harassment or allegations of sexual harassment to an institution's Title IX Coordinator or any official of the institution who has authority to institute corrective measures on behalf of the institution.

Complainant: An individual who is alleged to be the victim of conduct that could constitute sexual harassment. The following persons have a right to make a complaint of sex-based harassment:

- i. Any student or employee
- ii. A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a student, employee, or other complainant;
The Title IX Coordinator;
 - A. Any person other than a student or employee who was participating in or attempting to participate in the education program or activity at the time of the alleged sexual harassment.

Formal Complaint: Under this Title IX Grievance Procedure, a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the institution investigate the allegation. At the time of the filing of a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the institution with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, email, or by an additional method designated by the institution.

Respondent: An individual alleged to be the perpetrator of conduct that could constitute sexual harassment under Title IX.

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

1. An employee of the institution conditioning the provision of the aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; and/or
3. "Sexual assault" as defined in 20 U.S.C 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Supportive Measures: Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the education program or activity without unreasonable burdening the other party, including measures designed to protect the safety of all parties or the institution's educational environment, or deter sexual harassment. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

TIME FRAME TO RESOLVE GRIEVANCE

The College will resolve grievances within a reasonably prompt time frame, typically within 30 calendar days from the receipt of a formal complaint to the conclusion of the grievance process, including resolving any appeals., The Title IX Coordinator may temporarily delay or extend the grievance process time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

FORMAL GRIEVANCE PROCESS

This section outlines the steps to initiate a grievance and procedural requirements for the College's investigations and adjudications of Formal Complaints in accordance with the federal Title IX regulations.

Filing a Formal Complaint

A formal complaint is a document filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment as defined by the Title IX Regulations against a respondent and requesting the college investigate the allegation of sexual harassment. The submission of a formal complaint and its receipt by the Title IX Coordinator triggers the Formal Grievance Process.

A formal complaint must be in writing and may be filed with the Title IX Coordinator in person, by mail, or by email. The formal complaint must contain the complainant's physical or digital signature, or some other indication that the complainant is the person filing it. At the time of filing the formal complaint, the complainant must be participating in or attempting to participate in the college's education program or activity.

When the college receives an allegation of conduct that falls within the scope of the Title IX Grievance Procedure, whereby it meets the Title IX Regulations' definition of "sexual harassment" but no formal complaint is filed, it will not undertake a formal grievance process or the imposition of any disciplinary sanctions against the respondent. Supportive measures, however, may still be offered.

Title IX Coordinator Filing Complaint

A Title IX Coordinator may sign a formal complaint to initiate or continue the Title IX Formal Grievance Procedure, if necessary, to fulfill the college's duty under Title IX to not be deliberately indifferent to actual knowledge of sexual misconduct.

Signing the formal complaint does not make the Title IX Coordinator a complainant or otherwise a party.

Withdrawal

After filing a formal complaint, a complainant may voluntarily withdraw their formal complaint at any time by providing written notice to the Title IX Coordinator. That withdrawal concludes the Title IX Formal Grievance Procedure.

Consolidation

This college, at its discretion, may consolidate formal complaints alleging 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.

Mandatory Dismissal

If the alleged conduct in the formal complaint does not constitute sexual harassment as defined by 34 C.F.R. Part 106 or did not occur in the college's education program or activity or in the United States, the college must dismiss the formal complaint under the grievance process.

The college will notify the parties simultaneously and in writing that the formal complaint is being dismissed for the purposes of the Title IX Grievance Procedure. Each party may appeal this dismissal using the procedures outlined in Section VIII of this policy.

Permissive Dismissal

The college may dismiss a formal complaint or any allegations therein, if at any time during the investigation or hearing:

- a. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; The college is unable to identify the respondent after taking reasonable steps to do so;

- b. The respondent is no longer enrolled in or employed by the institution or
- c. Specific circumstances prevent the college from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal, the college must notify the complainant that a dismissal may be appealed and provide the complainant with the opportunity to appeal the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the college must also notify the respondent that the dismissal may be appealed. Each party may appeal this dismissal using the procedures outlined in this Section VIII of policy.

INITIAL STEPS AND DETERMINATION OF APPROPRIATE PROCEDURES

Upon actual knowledge of a report of alleged sexual harassment, the Title IX Coordinator should perform an initial assessment which includes making initial contact with the potential complainant of the report and offering information about how to file a formal complaint and about the availability of supportive measures.

If the initial assessment reveals that the alleged conduct meets the definition of sexual harassment as contained within the USDOE's Title IX Regulations and occurred within the college's education program and activity and in the United States, the investigation must proceed pursuant to the Title IX Formal Grievance Procedures below.

INVESTIGATION

Notice

When initiating an investigation of a formal complaint, the college must provide written notice of the following to known parties:

- a. The investigation and adjudication process, including any informal processes;
- b. Allegations of sexual harassment, including sufficient details known at the time. Sufficient details 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;
- c. 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;
- d. A statement that retaliation is prohibited;
- e. A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence obtained during the investigation, including inculpatory or exculpatory evidence;
- f. The parties may have an advisor of their choice, who may be, but is not required to be an attorney;
- g. The parties may inspect and review evidence;
- h. The parties are prohibited from knowingly making false statements or knowingly submitting false information during the investigation and adjudication process; and
- i. If the college decided to investigate additional allegations not included in the original notice, it must provide notice of the additional allegations to the parties whose identities are known.

Investigation Procedure

The Title IX Coordinator shall appoint an investigator to investigate the allegations documented in the formal complaint. The Title IX Coordinator, investigator, or any decisionmakers may not have a conflict of interest or bias for or against the complainant or respondent. The Title IX decision maker may not be the same person as the Title IX Coordinator or investigator.

The investigation may include, among other steps, interviewing the complainant, the respondent, and any witnesses; reviewing law enforcement investigation documents if applicable; reviewing relevant student or employment files; and gathering and examining other relevant documents, social media posts, and other evidence.

The investigator will attempt to collect all relevant information and evidence. Following the investigation, the investigator will draft an investigation report for review by the parties that fairly summarizes the relevant evidence.

While investigating the allegations of any formal complaint of sexual harassment, the investigator will conduct an objective evaluation of all relevant evidence. Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true.

When investigating a formal complaint and throughout the investigation and adjudication process, the college must:

1. Ensure that the burden of proof and the burden of gathering evidence to reach a determination regarding responsibility rest on the college and not on the parties;
2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
3. Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible;
4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
5. Provide the parties with the same opportunities to have others present during any investigation or adjudication proceedings, including the opportunity to be accompanied by to any related meetings or proceedings by the advisor of their choice, who may be, but not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceedings; however, the college may establish restrictions regarding the extent to which an advisory may participate in the proceedings, as long as the restrictions apply equally to both parties' advisors;
6. Provide written notice to each party of the date, time, location, participants, and purposes of each Formal Grievance Process meeting in which they are invited to participate, with sufficient time for the party to prepare to participate;
7. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations

raised in a formal complaint, including the evidence upon which the college does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

- i. Prior to completion of the investigation report, the college must send the report to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
 - ii. The college must make available at any hearing all such evidence subject to the parties' inspection and review, to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the hearing, send to each party and each party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

HEARINGS

The college will provide for a live hearing. A decisionmaker will consider all of the evidence presented and determine whether a respondent is responsible for the alleged conduct in violation of this Title IX grievance procedure. The decisionmaker will not be the same person as the Title IX Coordinator or investigator. Cases will be adjudicated by a trained third-party decisionmaker.

At the request of either party, the college must provide for the live hearing to occur with the parties located in separate rooms, with technology enabling the adjudicator and parties to simultaneously see and hear the party or the witness answering questions. The college will create a transcript or recording (audio or audiovisual) of any adjudicative hearing to be made available to the parties for inspection and review pursuant to the Family Educational Rights and Privacy Act (FERPA).

At the live hearing, the decisionmaker will permit each party's advisor to ask the other party and any witnesses all relevant questions. Such cross-examination must be conducted by the party's advisor and not by a party personally. Before a complainant, respondent, or witness answers a cross-examination or other question, the decisionmaker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the institution must provide, without fee or charge to that party, an advisor of the institution's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

Other types of impermissible evidence: (1) Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality; or (2) A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the recipient obtains the party's or witness's voluntary, written consent for use in the recipient's grievance procedures.

If a party or witness does not submit to cross-examination at the live hearings, the decision maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility provided, however, that the decision-maker(s) cannot 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.

Live hearings may be conducted with all parties physically present in the same geographical location or, at the college's discretion, any or all parties, witnesses, and other participants may appear at a live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

The college must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

DETERMINATION REGARDING RESPONSIBILITY

Following the investigation, live hearing, and evaluation of all relevant and not otherwise impermissible evidence, the decisionmaker must:

- a. Use the preponderance of the evidence standard of proof to determine whether the alleged sexual harassment occurred;
- b. Notify both parties simultaneously in writing of the determination whether sexual harassment occurred under Title IX, including the allegations, investigative procedures, findings of fact, conclusions, the rationale for the determination as to each allegation, any disciplinary sanctions on the respondent, any remedies for the complainant, and the procedures and permissible bases for the complainant and respondent to appeal;
- c. If there is a determination that sexual harassment occurred, as appropriate, the Title IX Coordinator must coordinate the provision and implementation of remedies to a complainant and other persons the college identifies as having had equal access to the recipient's education program or activity limited or denied by the sexual harassment, and coordinate the imposition of any disciplinary sanctions on the respondent, including notification to the complainant of any such disciplinary sanctions.

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 is filed or, if an appeal is not filed, the date on which an appeal would no longer be considered timely.

APPEALS

The college will offer both parties an appeal of a determination regarding responsibility, and of its dismissal of a formal complaint or any allegations therein, on the following bases:

- a. A procedural irregularity that affected the outcome of the matter;
- b. New evidence that was not reasonably available at the time that the determination regarding responsibility or dismissal was made, which could affect the outcome of the matter; or
- c. The Title IX Coordinator, investigator(s), or decisionmaker(s) had a conflict

of interest or bias for or against the complainant or respondent that affected the outcome of the matter.

For all appeals, the college will:

- a. Notify the other party in writing, including notice of the allegations, when an appeal is filed and implement appeal procedures equally for both parties;
- b. Ensure that the decision maker(s) for the appeal is not the same person as the decisionmaker(s) who reached the previous determination regarding responsibility or dismissal;
- c. Ensure that the decisionmaker for the appeal has been trained on applicable Title IX standards and these Title IX grievance procedures.
- d. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- e. Issue a written decision describing the result of the appeal and the rationale for the result; and
- f. Provide the written decision simultaneously to both parties.

INFORMAL RESOLUTION

At any time prior to reaching a determination regarding responsibility, the college may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. The college may not offer an informal resolution process unless a formal complaint is filed. The college may not require the parties to participate in an informal resolution process and will not require them to waive their rights to a Title IX formal grievance process.

The college must:

1. Provide written notice to the parties disclosing:
 - a. The allegations;
 - b. The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
 - c. The fact that at any time prior to agreeing to a resolution, any party has the right to withdraw from the resolution process and resume the investigation and adjudication process with respect to the Formal Complaint; and
 - d. Any consequences resulting from participation in the informal resolution process, including the records that will be maintained or could be shared.

2. Obtain the parties' voluntary, written consent to the informal resolution process; and
3. Not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

RECORDKEEPING

The college must maintain, for seven (7) years, records of:

1. Each sexual harassment investigation, including any determination regarding responsibility and any audio or audiovisual recordings or transcript required, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the education program or activity;
2. Any appeal and the result thereof;
3. Any informal resolution process and the result there from; and
4. All materials used to train Title IX Coordinators, investigators, decision makers, and any other person who facilitates an informal resolution process.