

2.2.12 Title IX Policy and Complaint Procedure

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Purpose

Westmoreland County Community College is committed to providing an environment free from sex discrimination and sexual harassment. Title IX is a federal regulation prohibiting the discrimination on the basis of sex in any College education program or activity. This Policy establishes the College's Title IX procedures for handling allegations of conduct that falls under the 2020 Title IX federal regulations.

Scope

This Policy applies to all students, employees (faculty, staff, administrators), third parties (contractors, vendors, etc.), visitors and prospective participants. Sexual Harassment under Title IX is defined when it occurs:

- In a College education program or activity, including but not limited to, classes, labs, internships, student services, student organizations, and College-sponsored events;
- On-campus or at one of the College's Education Centers, or in off-campus locations where Westmoreland has substantial control over the Respondent and the context
- When the Respondent is a person in the United States

Nondiscrimination Policy

The College does not discriminate in its educational programs, activities, or employment practices based on race, color, national origin, sex, sexual orientation, disability, age, religion, ancestry, gender identity or expression, veteran status, union membership, or any classification protected by state or federal law or the proper exercise by an Association member of their rights guaranteed by the Pennsylvania Public Employer Relations Act Number 195.

Effective Date

This Policy applies to alleged conduct occurring on or after August 14, 2020 (the effective date of the 2020 federal Title IX Regulations).

Definitions

- **Actual Knowledge:** notice of sexual harassment, or allegations thereof, to the Title IX Coordinator or to any College official who has the authority to institute corrective measures, or who is designated by the College to receive such reports.
- **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX.
- **Respondent:** an individual who is alleged to have engaged in conduct that could constitute sexual harassment under Title IX.
- **Party:** A Complainant or Respondent.
- **Formal Complaint:** a verbal or written complaint alleging sexual harassment against a Respondent that requests that the College investigate.
- **Sexual Harassment:** conduct on the basis of sex that falls under one or more of the following criteria:
 1. **Quid pro quo harassment:** an employee, agent, or other person authorized by the College to provide an aid, benefit, or service under the College's education program or activity, conditioning the provision of such aid, benefit, or service on a person's participation in unwelcome sexual conduct.
 2. **Hostile environment harassment:** Unwelcome sex-based conduct that is so severe, pervasive, and objectively offensive that it effectively limits or denies a person equal access to a College education program or activity. Factors in determining if a hostile environment have been created includes consideration of the following:
 - The degree to which the conduct affected the complainant's ability to access the College's education program or activity;
 - The type, frequency, and duration of the conduct;
 - The parties ages, roles within the College's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
 - The location of the conduct and the context in which the conduct occurred; and
 - Other sex-based harassment in the College's education program or activity
 3. **Specific offenses, as defined by The Clery Act and Violence Against Women Reauthorization Act (VAWA) as:**
 - **Sexual Assault** – an offense classified as a forcible or non-forcible sex offense.
 - **Dating Violence** – violence committed by a person who is or has been in a romantic or intimate relationship with the victim.
 - **Domestic Violence** – felony or misdemeanor crimes committed by a person who is a current or former spouse or intimate partner of the victim, is

cohabitating or has cohabitated with the victim as a spouse or intimate partner, shares a child with the victim, or commits acts against a victim who is protected from acts under family or domestic violence laws.

- **Stalking** – engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or suffer substantial emotional distress.
- **Preponderance of Evidence Standard:** standard of proof that there is a higher likelihood that the alleged misconduct did occur.
- **Investigator:** the person(s) designated to gather evidence, interview parties and witnesses, and prepare an investigative report.
- **Decision-Maker/Hearing Officer:** the person(s) who decide on responsibility, disciplinary actions, and other resolution.
- **Appeal Decision-Maker:** the person(s) who review appeals of the decision. This person must be free from bias or conflict.
- **Informal Resolution:** a process such as mediation or restorative justice, by which parties may resolve a formal complaint without a full investigation and hearing, if both parties give voluntary and informed written consent.

Title IX Coordinator Responsibilities and Designated Personnel

The Title IX Coordinator is responsible for coordinating the College's efforts to comply with this Policy and current federal regulations. The Title IX Coordinator will receive complaints, coordinate supportive measures, track compliance, and coordinate the grievance process.

The College has designated the Executive Director/Human Resources as the Title IX Coordinator for Title IX complaints from employees, and the Vice President/Student Affairs as the Title IX Coordinator for Title IX complaints from students. An individual who is not an employee or a student may contact either of these Title IX Coordinators to file a complaint. Contact information for both Title IX Coordinators is located on the College's website.

Title IX Investigators, Decision-Makers, and other Designated Personnel

The College will provide training for individuals designated to serve as Investigators, Decision-Makers/Hearing Officers, Appeal Decision-Makers, and facilitators for Informal Resolution. Each individual serving in one of these roles during a Title IX investigation must be free from bias or conflicts of interest towards complainants or respondents.

Training for Designated Personnel

All designated personnel will receive training that includes, but not limited to, the definition of sexual harassment, the scope of the College's education programs and activities, investigatory practices, grievance and hearing procedures, appeals and informal resolution processes, technology, trauma-informed and impartial practices, and conflicts of interest and bias. The College will publish training materials on the College's website.

Mandatory Response/Supportive Measures

The College will respond promptly to actual knowledge of allegations of sexual harassment in a manner that is not clearly unreasonable in light of the known circumstances. Upon receiving a report, the Title IX Coordinator (or designee) must promptly contact the Complainant, offer supportive measures, explain options (including filing a formal complaint), and explain the grievance procedures.

Supportive measures are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee/charge to the party, to:

- Restore or preserve that party's access to the College's education program or activity
- Provide support during the grievance procedures or informal resolution process

Examples of supportive measures include counseling, extensions in modifications in assignments, changes in class schedules, no-contact orders, campus escorts, changes in work assignment, leaves of absence, increased monitoring or other similar measures. The College will keep supportive measures confidential to the extent that doing so does not interfere with their implementation.

The College may impose interim actions to remove a respondent only if there is an immediate threat to the physical health or safety of any person. Prior to removal, a safety and risk analysis will be conducted. The Respondent will be given notice and an opportunity to challenge the decision immediately following the removal.

If the Complainant declines to file a formal complaint, the Title IX Coordinator will evaluate if the College must initiate the grievance process without the Complainant's participation, if doing so is not clearly unreasonable under the circumstances.

The College has established the following timeframes for the major stages of the grievance procedures:

- Evaluation as to whether to dismiss or investigate the complaint: ten (10) business days
- Investigation, if necessary, will be completed within sixty (60) days with a determination to follow within 10 (ten) business days:
- Appeals from a dismissal or determination must be filed within twenty (20) days.

The College will endeavor to make a determination of all complaints within ninety (90) days of the date of filing. Reasonable extension of time frames will be made on a case-by-case basis for good cause, and written notice and explanation of any extension will be provided to the parties.

Formal Complaint & Grievance Procedures

1. **Filing a Formal Complaint** – A formal complaint must be a written, signed document that alleges sexual harassment and requests investigation. The Complainant must be participating in or attempting to participate in the College’s education programs or activities at the time the complaint is filed.

Upon receipt of a formal complaint, the designated Title IX Coordinator will provide written notice to the Respondent of the formal complaint which will include:

- Relevant allegations of the complaint
 - Sufficient details known at the time
 - A statement that the Respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the grievance procedures
 - A statement that each party may have an advisor of their choice (who may be, but not need be, an attorney)
 - A statement of rights to inspect and review evidence
 - A statement prohibiting retaliation
 - The College’s Standards of Student Conduct and Employee Conduct Policy, prohibiting knowingly making false statements or knowingly submitting false information during the grievance procedures
2. **Dismissal of a Title IX Complaint** – The College must dismiss a formal complaint if:
 - The College is unable to identify the respondent after taking reasonable steps to do so;
 - The allegations do not meet the definition of sexual harassment under Title IX;
 - The respondent is not participating in the College’s education programs or activities and is not employed by the College;

- The Complainant voluntarily withdraws the allegations in writing; or
- The conduct did not occur in a College education program or activity or did not occur in the United States;

If the complaint is dismissed the College may still investigate and address the allegations in any manner the College deems appropriate under other applicable policies, and both parties will receive a notice that includes their rights to appeal. Supportive measures will be offered to the complainant and/or respondent as appropriate.

3. **Investigation** – The Title IX Coordinator will select a trained Title IX Investigator to conduct a prompt, thorough, and impartial investigation. The College may consolidate formal complaints when allegations arise out of the same facts. During the investigation:
 - The Title IX Investigator will gather evidence.
 - The parties will have equal opportunity to provide list of witnesses, documents, or other information.
 - The parties will receive advanced written notice of any investigative interviews, meetings, or hearings at which the party is expected to be present.
 - The parties may have an advisor of their choice (who may be, but not need be, an attorney)
 - The Title IX Investigator may collect other documents/information and interview parties or witnesses.
 - After the Title IX Investigator has concluded collection of evidence, the Investigator will send the parties and their advisors all evidence directly related to the allegations (as long as it is not protected from disclosure), and will provide at least ten (10) calendar days for each party to review and respond in writing. Any new evidence or rebuttal evidence can be provided by either party at this time.

Investigative Report – After the Title IX Investigator has completed the investigation and considered written responses to evidence provided by either party, the Title IX Investigator will complete an Investigative Report that fairly summarizes the relevant evidence. The Title IX Coordinator will make the Investigative Report available to the parties and their advisors, with at least ten (10) calendar days for the parties to respond in writing.

4. **Hearing/Determination** – A Hearing Officer will preside over the hearing and will be identified to the parties at least three days prior to the hearing. The Hearing Officer may or may not be a College employee, but will have appropriate Title IX training.

A hearing may be conducted with any or all parties, witnesses, and other participants appearing at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other, or with all parties physically present in the same geographic location. Hearings will be recorded through audio or audiovisual means or transcribed, and the college will make the recording or transcript available to the parties for inspection and review upon request. If a party does not have an advisor present at the hearing, the college will provide one without fee or charge. Such an advisor of the college's choice may or may not be an attorney.

Hearing procedures:

- The hearing may take place in person or virtually, and parties may be located in separate rooms with technology allowing them to see and hear each other.
- The advisor for each party may conduct cross-examination of the other party and witnesses. The parties themselves may not directly cross-examine.
- The Hearing Officer will ensure the advisors are conducting cross-examination in a professional and courteous manner, and badgering or harassment of witnesses or parties is not permitted.
- The Hearing Officer will determine if a cross-examination question is relevant and will explain any decision to exclude a question as irrelevant. Irrelevant cross-examination must be excluded, including sexual history questions protected by rape shield rules, unless otherwise permitted under the rule.
- The Title IX Investigator will be at the hearing to answer any questions from the Hearing Officer about the investigation.
- The Decision-Maker must evaluate all relevant evidence (both inculpatory and exculpatory) and avoid bias or credibility presumptions.

After conclusion of the hearing, the Hearing Officer shall simultaneously issue to each party a Written Determination Regarding Responsibility, applying the preponderance of evidence standard, which shall include:

- Identification of the allegations potentially constituting Title IX sexual harassment
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, methods to gather evidence, and hearings held
- Findings of fact, with rationale on whether the alleged Title IX sexual harassment occurred
- Conclusions applying the preponderance of evidence standard
- Rationale/statement of responsibility or non-responsibility for each allegation
- Any disciplinary sanctions to be imposed on the Respondent
- Remedies or other supportive measures to restore or preserve equal access to the

- College's programs for the Complainant
- A notice of appeal rights and permissible bases for appeal

Disciplinary Sanctions and Remedies

If the Respondent is found responsible, the College will issue appropriate disciplinary actions (e.g. suspension, termination, etc.) and will provide remedies to the Complainant. Disciplinary actions are taken to eliminate the harassment and prevent recurrence. Disciplinary actions may include but are not limited to those included in the College's Standards of Student Conduct and Employee Conduct Policy.

Appeal Process

Either party may appeal a dismissal of a formal complaint or a determination regarding responsibility of allegations, on the following grounds for appeal:

- Procedural irregularity affecting outcome
- Newly discovered evidence not reasonably available sooner that could affect the outcome
- Conflict of interest or bias by Designated Title IX personnel

If a party appeals a dismissal or determination, the College will:

- Notify the parties in writing
- Implement appeal procedures equally for the parties
- Ensure the decision-maker for the appeal did not take part in the investigation of allegations or dismissal of the complaint
- Ensure the decision-maker for the appeal has received adequate Title IX training
- Notify the parties in writing of the result of the appeal

Informal Resolution

The College at its discretion may choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as the parties give voluntary, informed, written consent to attempt informal resolution. The College will not offer informal resolution process unless a formal complaint has been filed. The College will not offer informal resolution to resolve any allegations that an employee sexually harassed a student.

At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. Any

person who facilitates an informal resolution will be trained to do so. The College will not require as a condition of enrollment, continued enrollment, employment or continued employment the waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment.

Prohibition of Retaliation

The College prohibits retaliation against any person for participating in or refusing to participate in any aspect of the Title IX process.

Recordkeeping

The College will retain all Title IX records (complaints, investigations, hearing decisions, disciplinary sanctions/remedies, appeals, and training materials) for at least 7 years.