

# PASSAIC COUNTY COMMUNITY COLLEGE TITLE IX GRIEVANCE PROCEDURES

## SECTION I – OVERVIEW

Passaic County Community College affirms its commitment to ensuring an environment for all students and employees that is fair, humane, and respectful. Every person is entitled to learn and work in an environment free from sex discrimination, sexual harassment, and sexual misconduct. It is the policy of Passaic County Community College that sex discrimination, sexual harassment, and sexual misconduct in any form will not be tolerated. Charges of sex discrimination, sexual harassment, and sexual misconduct will be treated seriously and pursued in accordance with established College procedures.

Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits discrimination on the basis of sex against any person in education programs and activities receiving federal funding. Programs or activities receiving federal financial assistance include virtually all public and private colleges and universities, and all public elementary and secondary schools. Sexual harassment, sex discrimination, and sexual misconduct are prohibited under PCCC Board Policy B108: *Title IX: Sex Discrimination, Sexual Harassment, and Sexual Misconduct*. (**Appendix A**).

### 1.

#### GLOSSARY

- A. **Advisor** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- B. **College and PCCC** means Passaic County Community College.
- C. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute harassment.
- D. **Complaint (formal)** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.
- E. **Confidential Resource** means an employee who is not a Mandated Reporter of notice of sexual harassment.
- F. **Day** means a business day when PCCC is in normal operation.
- G. **Education program or activity** means locations, events, or circumstances where PCCC 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 PCCC.
- H. **Finding:** A conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).

- I. ***Grievance Process Pool*** includes any investigators, hearing officers, appeal officers, Advisors and any person who facilitates an informal resolution process and shall receive training as required by Title IX regulations.
- J. ***Hearing Decision-maker or Panel*** refers to those who have decision-making and sanctioning authority within PCCC's Formal Grievance process.
- K. ***Investigator*** means the person or persons charged by PCCC with gathering facts about an alleged violation of this Procedure, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- L. ***Notice*** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of *sexually harassing conduct*.
- M. ***Official with Authority (OWA)*** means an employee of PCCC explicitly vested with the responsibility to implement corrective measures for sexual harassment on behalf of PCCC. (See List of OWA in **Appendix B**).
- N. ***Parties*** include the Complainant(s) and Respondent(s), collectively.
- O. ***Relevant Evidence*** is evidence that tends to prove or disprove an issue in the complaint.
- P. ***Remedies*** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to PCCC's educational program.
- Q. ***Respondent*** means an individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination or sexual harassment.
- R. ***Resolution*** means the result of an informal or Formal Grievance Process.
- S. ***Sanction*** means a consequence imposed by PCCC on a Respondent who is found to have committed an act of sexual harassment.
- T. ***Sexual Harassment*** is the umbrella category comprising the offenses of sexual harassment, sexual assault, stalking, dating violence and domestic violence. (See Section I Paragraph 11 B).
- U. ***Title IX Coordinator*** is the official designated by PCCC to ensure compliance with Title IX. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks. All references to the Title IX Coordinator shall include the Deputy Title IX Coordinator who shall act when the Title IX Coordinator has a conflict of interest or is otherwise unavailable.
- V. ***Title IX Team*** refers to the Title IX Coordinator, any Deputy Coordinators and any member of the Title IX Grievance Process Pool.

## 2. RATIONALE FOR PROCEDURE

This Formal Grievance Procedure is intended to comply with Title IX Rules and PCCC Board of Trustees Policy B108: *Title IX: Sex Discrimination, Sexual Harassment, and Sexual Misconduct*.

## 3. TITLE IX COORDINATOR

The Associate Vice President for Human Resources serves as the Title IX Coordinator and oversees implementation and compliance with PCCC's policies on sexual harassment. The Title IX Coordinator has the primary responsibility for coordinating PCCC's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment prohibited under these procedures. The Dean of Student Affairs and Services serves as the Deputy Title IX Coordinator.

## 4. INDEPENDENCE AND CONFLICT-OF-INTEREST

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

## 5. NOTICES/COMPLAINTS OF SEXUAL HARASSMENT – ADMINISTRATIVE CONTACT INFORMATION:

Notice or complaints of sexual harassment may be made using any of the following options:

### A. File a complaint with, or give verbal notice to, the Title IX Coordinator or Deputy Title IX Coordinator:

**José A. Fernández**

Vice President  
for Human Resources/

**Title IX Coordinator**

Office of Human Resources (E 305)  
Passaic County Community College  
One College Boulevard, Paterson, NJ  
(973) 684-6705  
Email: [jfernandez@pccc.edu](mailto:jfernandez@pccc.edu)

**Leah Brown-Johnson, PhD**

Associate Vice President/Dean of  
Student Affairs

**Deputy Title IX Coordinator**

Office of Student Affairs (A 231)  
Passaic County Community College  
One College Boulevard, Paterson, NJ  
(973) 684-6309  
Email: [lbrown-johnson@pccc.edu](mailto:lbrown-johnson@pccc.edu)

Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator, Deputy Title IX Coordinator or any other Official with Authority.

Inquiries about or concerns regarding Title IX policy and procedures can be made to the Title IX Coordinator. Inquiries may also be made to:

**Office for Civil Rights (OCR)**  
**U.S. Department of Education**  
32 Old Slip Road, 26th floor  
New York, NY 10005-2500  
Telephone: (646) 428 -3900  
Facsimile: (646) 428 -3843  
TDD#: (800) 877-8339  
Email: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

## **6. SUPPORTIVE MEASURES**

PCCC will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment.

Supportive measures are 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 access to PCCC's education program or activity, including measures designed to protect the safety of all parties or the College's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, PCCC will inform the Complainant, in writing, that they may file a formal complaint with PCCC either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the parties with respect to the supportive measures that are planned and implemented.

PCCC will maintain the confidentiality of the supportive measures to the extent possible, provided that privacy does not impair PCCC's ability to provide the supportive measures. PCCC will act to ensure as minimal an academic/occupational impact on the parties as possible. PCCC will implement measures in a way that does not unreasonably burden the other party.

## **7. EMERGENCY REMOVAL AND CONTESTING NO CONTACT ORDERS/SUPPORTIVE MEASURES**

PCCC can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. At the request of the Title IX Coordinator, this risk analysis is performed by the College Behavioral Intervention Team [CBIT] using its standard objective violence risk assessment procedures.

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

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within one day from receipt of notice, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

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

The Title IX Coordinator has sole discretion under this procedure to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency

removal under this policy will be grounds for discipline, which may include expulsion or termination.

PCCC will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a course, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

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

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

Both Respondent and the Complainant will, upon request and consistent with PCCC policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and will be allowed to submit evidence in support of this request.

Both the Respondent and the Complainant, upon request and consistent with PCCC policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any supportive measure that directly affects a party, and will be allowed to submit evidence in support of this request.

## **8. PROMPTNESS**

All allegations are acted upon promptly by PCCC once it has received notice or a formal complaint. Complaints can take 90 days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but PCCC will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in PCCC procedures will be delayed, PCCC will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

PCCC's resolution process will run concurrently with any criminal justice investigation and proceeding, except for temporary delays as requested by law enforcement while it gathers evidence. Temporary delays should not last more than three days except when law enforcement specifically requests and justifies a longer delay.

## **9. JURISDICTION**

These procedures apply to the education program and activities of PCCC, to conduct that takes place on the campus or on property owned or controlled by PCCC, at PCCC-sponsored events, or in buildings owned or controlled by PCCC's recognized student organizations. The Respondent must be a member of PCCC's community in order for its policies to apply.

This procedure can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to PCCC's educational program. PCCC may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial PCCC interest.

Regardless of where the conduct occurred, PCCC will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.

If the Respondent is unknown or is not a member of the PCCC community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report.

In addition, PCCC may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from PCCC property and/or events.

## **10. TIME LIMITS ON REPORTING**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to PCCC's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

## **11. SEX DISCRIMINATION AND SEXUAL HARASSMENT**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discrimination based on sex including sexual harassment. PCCC's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The paragraphs below describe the specific forms of legally prohibited harassment that are also prohibited under PCCC policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of PCCC policy, though supportive measures will be offered to those impacted. All policies encompass actual and/or attempted offenses.

### **A. SEX DISCRIMINATION**

Pursuant to law under Title IX and PCCC policy, no member of the PCCC community shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity of the College.

When a member of the PCCC community is denied the benefits of, or is subject to discrimination under any education program or activity of the College because of sex, PCCC may also impose sanctions on the Respondent through application of the grievance process below.

When offensive conduct and/or harassment that 1) does not rise to the level of sex discrimination under Title IX and the regulations promulgated thereunder, or 2) that is of a generic nature and not based on a protected status, PCCC will respond pursuant to

procedures contained in the current student code of conduct and applicable employment policies.

## **B. *SEXUAL HARASSMENT***

The Department of Education's Office for Civil Rights (OCR) regards Sexual Harassment as a specific form of unlawful sex discrimination under Title IX and the regulations thereunder.

Title IX regulations define Sexual Harassment as conduct on the basis of sex that encompasses one or more of the following:

1. An employee of the College conditioning the provision of an aid, benefit, or service of the College 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 College's education program or activity; 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). (For more details please see **Appendix C**)

## **12. RETALIATION**

Any person who participates in the Title IX reporting and investigation process, either as a complainant, respondent, witness, or other party, may do so without fear of retaliation. Retaliation by any College employee or student is prohibited and grounds for disciplinary action pursuant to the grievance procedure set forth herein. Individuals found responsible for retaliation shall be sanctioned in accordance with Section II Paragraph 30.

## **13. WHEN A COMPLAINANT DOES NOT WISH TO PROCEED**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make a written request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law. If there is a verbal request, the same will be confirmed in writing and delivered via email, hand delivery and/or regular mail by the Title IX Coordinator.

The Title IX Coordinator has discretion to sign a formal complaint where doing so is not clearly unreasonable in light of the known circumstances. The Title IX Coordinator may consider a variety of factors, including a pattern of alleged misconduct by a particular respondent, in deciding whether to sign a formal complaint. Title IX Coordinator's decision to sign a formal complaint may occur only after the Title IX Coordinator has promptly contacted the complainant (i.e., the person alleged to have been victimized by sexual harassment) to discuss availability of supportive measures, consider the complainant's wishes with respect to supportive measures, and explain to the complainant the process for filing a formal complaint. Thus, the Title IX Coordinator's decision to sign a formal complaint includes taking into account the complainant's wishes regarding how the recipient should respond to the complainant's allegations.

One of the factors in the Title IX Coordinator's decision will be the results of the violence risk assessment completed by the College Behavioral Intervention Team (CBIT) that shows a compelling risk to health and/or safety such as patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence and requires PCCC to pursue formal action to protect the community. PCCC may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and PCCC's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When PCCC proceeds with an investigation, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may, with the Complainant's written consent, act as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that PCCC's ability to remedy and respond to notice may be limited if the Complainant does not want PCCC to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the College to honor that request, PCCC will offer supportive measures to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by PCCC, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

#### **14. FALSE ALLEGATIONS AND EVIDENCE**

Deliberately false and/or malicious accusations under these procedures are a serious offense and will subject the individual to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline.



## **15. AMNESTY FOR COMPLAINANTS AND WITNESSES**

The College encourages reporting and seeks to remove any barriers to reporting by making the reporting procedure transparent and straightforward. PCCC recognizes that an individual, particularly a student, who has been drinking or using drugs at the time of the incident, may be reluctant to make a report of sexual misconduct or harassment for fear of being charged with other college policy violations. An individual who reports sexual misconduct either as a complainant or a third party witness, will not be subject to disciplinary action by the College for his/her own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The College may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

## **16. IMMEDIATE ASSISTANCE FOR A VICTIM OF SEXUAL ASSAULT OR VIOLENCE**

An individual who has been the victim of a crime, such as sexual assault or violence, is encouraged to get to a safe place and contact 911 or PCCC Public Safety (973-684-5403) immediately. Even if the individual does not wish to report the criminal conduct to the College or to local law enforcement they should still consider going to a hospital, both for their own health and well-being and so that evidence can be collected and preserved.

A victim should not shower, bathe, douche, brush their teeth, drink or change clothing, as evidence may be destroyed that will be needed in the event the crime is prosecuted. Medical providers may also facilitate and provide the following: (1) Emergency or follow-up medical services. The medical examination has two goals: first, to treat the full extent of any injury or physical trauma and to consider the possibilities of sexually transmitted disease or pregnancy; and second, to collect and preserve evidence as part of a “rape kit” or sexual assault examination for potential use in a criminal prosecution (provided only by a trained professional in a hospital) (2) HIV and STD testing and (3) Pregnancy testing. Any evidence collected will be critically important should the individual decide to make an official report at a later time.

Upon receiving a report of sexual misconduct, the College will provide the victim with a list of resources:

- A.** PCCC Center for Violence Prevention: 973-684-8093
- B.** Passaic County Women’s Center: 973-881-1450;
- C.** Passaic County Prosecutor’s Office Sexual Assault Response Team (SART) and the Sexual Assault Nurse Examiner (SANE): 973- 881-4800;
- D.** New Jersey Domestic Violence Hotline: 800-572-SAFE; or
- E.** National Domestic Violence Hotline: 800-799-SAFE.

## **SECTION II - RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON SEXUAL HARASSMENT UNDER TITLE IX**

### **1. OVERVIEW**

PCCC will act on any formal or informal notice/complaint of violation of the policy on Sexual Harassment under Title IX (“the Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures.

The procedures below apply **only** to qualifying allegations of sexual harassment (as defined in the Section I Paragraph 1-Glossary and Section I Paragraph 11.B - Sexual Harassment) and retaliation (as described in Section I Paragraph 12 above) involving students, staff, administrators, faculty members or third parties.

All other allegations of misconduct unrelated to incidents covered by the Title IX Sexual Harassment Policy (B108 - *Title IX: Sex Discrimination, Sexual Harassment, and Sexual Misconduct*) herein will be addressed through procedures described in PCCC policies affecting students, staff, administrators, faculty members or third parties.

### **2. NOTICE/COMPLAINT**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps that PCCC needs to take and will initiate at least one of the following responses:

- A. Offering supportive measures; and/or
- B. An informal resolution (upon submission of a formal complaint); and/or
- C. A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

PCCC uses the Formal Grievance Process to determine whether or not the Title IX Policy has been violated. If the Title IX Policy has been violated, PCCC will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment their potential recurrence, or their effects.

### **3. INITIAL ASSESSMENT**

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator engages in an initial assessment, typically within one to five days. The steps in an initial assessment can include:

- A. If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - 1. If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint.
- B. If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.

- C. The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- D. The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- E. The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - 1. If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. The Title IX Coordinator will determine whether to initiate a complaint. If the Title IX Coordinator does not initiate a complaint, the Complainant may elect to initiate one later.
  - 2. If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available and will determine if the Respondent is also willing to engage in informal resolution.
  - 3. If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - a. If it does, the Title IX Coordinator will initiate the formal investigation and grievance process.
    - b. If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply and will refer the matter accordingly. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX, and does not limit PCCC’s authority to address a complaint with an appropriate process and remedies.

**4. DISMISSAL (MANDATORY AND DISCRETIONARY)**

- A. PCCC must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:
  - 1. The conduct alleged in the formal complaint would not constitute sexual harassment as defined above (See Information Section I Paragraph 1 – Glossary and Section I Paragraph 11.b. – Sexual Harassment ), even if proved; and/or
  - 2. The conduct did not occur in an educational program or activity controlled by PCCC (including buildings or property controlled by recognized student organizations), and/or PCCC does not have control of the Respondent; and/or
  - 3. The conduct did not occur against a person in the United States; and/or
  - 4. At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the PCCC.

- B.** PCCC may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:
1. The Respondent is no longer enrolled in or employed by the PCCC; or
  2. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein or discontinue participation in the process.
  3. Specific circumstances prevent PCCC from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, PCCC will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by any party under the procedures for appeal below. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

**5. COUNTER-COMPLAINT**

PCCC permits the filing of a counter-complaint. Counter-complaints will be processed using the grievance procedures set forth within. Investigation of such complaints may take place after resolution of the underlying initial allegation; in which case a delay may occur. Counter-complaints will go through the initial assessment process described in Section II Paragraph 3.

**6. RIGHT TO AN ADVISOR**

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is reasonably available. “Available” means the party cannot insist on an advisor who simply doesn’t have inclination, time, or availability. Also, the advisor cannot have institutionally conflicting roles such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

**A. WHO CAN SERVE AS AN ADVISOR?**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with throughout the resolution process. The parties may choose Advisors from inside or outside of the PCCC community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from PCCC, the Advisor will be trained by PCCC and be familiar with PCCC’s resolution process. PCCC cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the College is not obligated to provide an attorney. PCCC will not be responsible for providing “effective assistance of counsel” as Title IX regulations do not require that advisors be lawyers

providing legal counsel nor do these regulations impose an expectation of skill, qualifications, or competence.

If the parties choose an Advisor from outside the pool of those identified by PCCC, the Advisor may not have been trained by PCCC and may not be familiar with PCCC policies and the Title IX Sexual Harassment Formal Grievance Procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

**B. ADVISOR’S ROLE IN MEETINGS AND INTERVIEWS**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

**C. ADVISORS IN HEARINGS**

Under Title IX regulations, a form of cross examining is required during the hearing, but must be conducted by the parties’ advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, PCCC will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party’s Advisor will not conduct questioning, the College will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

**D. ADVISOR’S ROLE IN MEETINGS AND INTERVIEWS**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

PCCC cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, PCCC is not obligated to provide an attorney.

**E. ADVISOR VIOLATIONS OF PCCC POLICY**

All Advisors are subject to the same PCCC policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address PCCC officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during cross-examination at a hearing.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### **F. SHARING INFORMATION WITH THE ADVISOR**

Parties may share documentation and evidence directly with their Advisor, though it is important to be mindful of the privacy of this process. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by PCCC. PCCC may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by PCCC's privacy expectations.

#### **G. EXPECTATIONS OF AN ADVISOR**

PCCC generally expects an Advisor to adjust their schedule to allow them to attend PCCC meetings when planned but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

PCCC may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### **H. EXPECTATIONS OF THE PARTIES WITH RESPECT TO ADVISORS**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) days before the hearing.

As a public entity, PCCC fully respects and accords the Weingarten rights of employees. For parties who are entitled to union representation, PCCC will allow the unionized employee to have their union representative serve as their advisor (if requested by the party).

### **7. INFORMAL RESOLUTION PROCESSES**

After a Formal Complaint has been filed, either party may request an Informal Resolution.

PCCC will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

Informal Resolution is a mechanism by which the parties reach a mutually agreed upon resolution of an allegation. In addition, the Title IX Coordinator must determine if an Informal Resolution mechanism is appropriate in the case. All agreements reached through the Informal Resolution process must be in writing and signed by all parties.

The Title IX Coordinator maintains records of any Informal Resolution that is reached, and failure to abide by the Informal Resolution agreement will result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution are not appealable.

Informal Resolution proceedings are private. All persons present at any time during the informal resolution process are expected to maintain the privacy of the proceedings in accordance with PCCC policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution. PCCC encourages parties to discuss any sharing of information with their Advisors before doing so.

#### **8. FORMAL GRIEVANCE PROCESS: NOTICE OF INVESTIGATION AND ALLEGATIONS**

Upon receipt of a formal complaint, The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the parties who are known. The NOIA shall include:

- A.** Notice of the recipient’s grievance process, including the informal resolution process.
- B.** Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined above in Information Section I Paragraph 11.B - Sexual Harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
  - 1.** the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and
  - 2.** the date and location of the alleged incident, if known.
- C.** The written notice will:
  - 1.** include 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;

2. inform the parties that they may have an Advisor of their choice, who may be, but is not required to be, an attorney;
3. inform the parties that they may inspect and review evidence; and
4. include those provisions in the College's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the College decides to investigate allegations about the Complainant or Respondent that are not included in the notice, the College will provide notice of the additional allegations to the parties whose identities are known.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

The NOIA may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official PCCC records, or emailed to the parties' PCCC-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **9. RESOLUTION TIMELINE**

PCCC will make a good faith effort to complete the resolution process within a ninety 90 day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

## **10. APPOINTMENT OF INVESTIGATORS**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints an Investigator to conduct the investigation, usually within two (2) days of determining that an investigation should proceed.

## **11. ENSURING IMPARTIALITY**

Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Decision-maker(s)] may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the grievance process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied.



The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

PCCC operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by Preponderance of the Evidence.

## **12. INVESTIGATION TIMELINE**

Investigations are completed expeditiously the length of which will depend on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

PCCC will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

## **13. DELAYS IN THE INVESTIGATION PROCESS AND INTERACTIONS WITH LAW ENFORCEMENT**

PCCC may undertake a short delay in its investigation if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of a party, a party's advisor and/or witnesses, and/or accommodations for disabilities or health conditions.

PCCC will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. PCCC will promptly resume its investigation and resolution process as soon as feasible. During such a delay, PCCC will implement supportive measures as deemed appropriate.

PCCC action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

## **14. ROLE AND PARTICIPATION OF WITNESSES IN THE INVESTIGATION**

Witnesses (as distinguished from the parties) who are students or employees of PCCC are expected to cooperate with and participate in PCCC's investigation and resolution process. Failure of employee witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., summer break, pandemic) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. PCCC will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

## **15. RECORDING OF INTERVIEWS**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made

aware of audio and/or video recording.

**16. RESTRICTIONS ON EVIDENCE GATHERING**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent; 4) the parties’ mental health history or treatment.

**17. REFERRAL FOR HEARING**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) calendar days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker(s).

**18. HEARING DECISION-MAKER COMPOSITION**

PCCC will designate a single Decision-maker or a three-member panel, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation or grievance process. The Title IX Coordinator may elect to have an alternate sit in throughout the hearing process in the event that a substitute is needed for any reason.

**19. EVIDENTIARY CONSIDERATIONS IN THE HEARING**

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of

responsibility is reached.

Any witness scheduled to participate in the hearing must have first been interviewed by the investigator(s), unless all parties assent to the witness' participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence that is whether it is more likely than not that the Respondent violated the Policy as alleged.

## **20. NOTICE OF HEARING**

No less than ten (10) calendar days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A.** The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- B.** Description of any technology that will be used to facilitate the hearing.
- C.** Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) days prior to the hearing.
- D.** A list of all those who will attend the hearing, the name of the Decision-maker(s) along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) days prior to the hearing.
- E.** Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- F.** Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and PCCC will appoint one. Each party must have an Advisor present. There are no exceptions.
- G.** A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.
- H.** An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- I.** An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) days prior to the hearing.

- J. Notification that the parties cannot bring mobile phones/devices into the hearing.
- K. The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 90 day goal for resolution.

## **21. ALTERNATIVE HEARING PARTICIPATION OPTIONS**

If a party or parties cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know at least five (5) days prior to the hearing so that appropriate arrangements can be made.

## **22. HEARING PROCEDURES**

Participants at the hearing will include the Chair, any additional panelists, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and the witnesses will then be excused.

## **23. JOINT HEARINGS**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

## **24. THE ORDER OF THE HEARING – INTRODUCTIONS AND EXPLANATION OF PROCEDURE**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the

challenge.

## **25. INVESTIGATOR PRESENTS THE FINAL INVESTIGATION REPORT**

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

## **26. TESTIMONY AND QUESTIONING**

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider it (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance from the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

## **27. REFUSAL TO SUBMIT TO CROSS EXAMINATION AND INFERENCES**

If deemed reliable and relevant by the decision-maker, and not otherwise subject to exclusion under this Policy, the decision-maker may consider the statements of persons who were not present at the hearing, or persons who were present at the hearing but who nevertheless were not subject to cross-examination. This includes, but is not limited to, opinions and statements in police reports or other official reports, medical records, court records and filings, investigation notes of interviews, emails, written statements, affidavits, text messages, social media postings, and the like.

If a party's Advisor of choice refuses to comply with PCCC's established rules of decorum for the hearing, PCCC may require the party to use a different Advisor. If a PCCC-provided Advisor refuses to comply with the rules of decorum, PCCC may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

## **28. RECORDING HEARINGS**

Hearings (but not deliberations) are recorded by PCCC for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of PCCC will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

## **29. DELIBERATION, DECISION-MAKING, AND STANDARD OF PROOF**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent conduct history provided by appropriate administrator and will determine the appropriate sanction(s).

The Chair will then prepare a written deliberation statement (“Written Determination”) and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions.

This Written Determination under normal circumstances will be submitted to the Title IX Coordinator within five (5) days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

The Written Determination will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official PCCC records, or emailed to the parties' PCCC-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Written Determination will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by PCCC from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Written Determination will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent PCCC is permitted to share such information under state or federal law; any sanctions issued which PCCC is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to PCCC's educational or employment program or activity, to the extent PCCC is permitted to share such information under state or federal law.

The Written Determination will also include information on when the results are considered by PCCC to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **30. SANCTIONS**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- A.** The nature, severity of, and circumstances surrounding the violation(s)
- B.** The Respondent's disciplinary history
- C.** Previous allegations or allegations involving similar conduct
- D.** The need for sanctions/responsive actions to bring an end to the sexual harassment
- E.** The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment
- F.** The need to remedy the effects of the sexual harassment on the Complainant and the community
- G.** The impact on the parties
- H.** Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this procedure are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

## **1. STUDENT SANCTIONS**

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- a. *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any PCCC policy, procedure, or directive will result in more severe sanctions/responsive actions.
- b. *Required Counseling*: A mandate to meet with and engage in either PCCC-sponsored or external counseling to better comprehend the misconduct and its effects.
- c. *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- d. *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at PCCC.
- e. *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend PCCC-sponsored events.
- f. *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including PCCC registration) for a specified period of time.
- g. *Other Actions*: In addition to or in place of the above sanctions, PCCC may assign any other sanctions as deemed appropriate.

## **2. EMPLOYEE SANCTIONS/RESPONSIVE ACTIONS**

Responsive actions for an employee who has engaged in sexual harassment include:

- a. *Warning – Verbal or Written*
- b. *Performance Improvement Plan/Management Process*
- c. *Required Counseling*
- d. *Required Training or Education*
- e. *Reassignment*
- f. *Suspension without pay*



*g. Termination*

*h. Other Actions:* In addition to or in place of the above sanctions/responsive actions, the PCCC may assign any other responsive actions as deemed appropriate.

**31. WITHDRAWAL OR RESIGNATION WHILE CHARGES PENDING**

**A. STUDENTS**

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from PCCC, the resolution process ends, as PCCC no longer has disciplinary jurisdiction over the withdrawn student.

However, PCCC will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to PCCC. Such exclusion applies to all campuses of PCCC. A hold will be placed on their ability to be readmitted. They will also be barred from PCCC property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to PCCC unless and until the grievance process has been completed including, if applicable, all sanctions have been satisfied.

**B. EMPLOYEES:**

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as PCCC no longer has disciplinary jurisdiction over the resigned employee.

However, PCCC will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with PCCC or any campus of PCCC, and the records retained by the Title IX Coordinator will reflect that status.

All PCCC responses to future inquiries regarding employment references for that individual may include that the former employee resigned during a pending disciplinary matter.

**32. APPEALS**

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within 5 days of the delivery of the Written Determination.

PCCC will designate a single appeals decision maker or a three-member appeal panel at the discretion of the Title IX Coordinator. No appeal panelists will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. A single appeals decision-maker will be referred to as the Chair. If a three-member appeal panel is appointed, the Title IX coordinator will appoint one of the three members as Chair. The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request

meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

**A. GROUNDS FOR APPEAL**

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 5 days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

Neither party may submit any new requests for appeal after this time period. The Appeal Decision Maker(s) will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses. The Appeal Decision Maker(s) will render a decision in no more than 5 days, barring exigent circumstances. The decisions made by a multi person panel will be made by majority vote and apply the preponderance of the evidence standard.

A written appellate decision will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The written appellate decision will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the PCCC is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the PCCC is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' PCCC-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

**B. SANCTIONS STATUS DURING THE APPEAL**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

PCCC may still place holds on official transcripts and course registration pending the outcome of an appeal.

### **C. APPEAL CONSIDERATIONS**

1. Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
2. Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
3. An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
4. The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
5. Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
6. When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
7. In rare cases where a procedural error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
8. The decision to remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
9. In cases in which the appeal results in reinstatement to PCCC or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **33. RECORDKEEPING**

PCCC will maintain for a period of seven years records of:

- A. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- B. Any disciplinary sanctions imposed on the Respondent;
- C. Any remedies provided to the Complainant designed to restore or preserve equal access to the PCCC's education program or activity;
- D. Any appeal and the result therefrom;
- E. Any Informal Resolution and the result therefrom;
- F. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. PCCC will make these training materials publicly available on PCCC's website; and
- G. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - 1. The basis for all conclusions that the response was not deliberately indifferent;
  - 2. Any measures designed to restore or preserve equal access to the PCCC's education program or activity; and
  - 3. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

PCCC will also maintain any and all records in accordance with state and federal laws.

#### **34. DISABILITIES ACCOMMODATIONS IN THE RESOLUTION PROCESS**

PCCC is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the PCCC's resolution process.

Anyone needing such accommodations or support should contact the Title IX Coordinator who will determine which accommodations are appropriate and necessary for full participation in the process.

#### **35. REVISION OF THESE PROCEDURES**

These procedures supersede any previous procedures addressing Title IX sexual harassment and will be reviewed and updated periodically by the Title IX Coordinator. PCCC reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background federal laws which frame such policies and codes, generally.

These procedures are effective August 14, 2020.

ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL  
USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS PERMITTED  
THROUGH A LIMITED LICENSE  
TO PASSAIC COUNTY COMMUNITY COLLEGE.  
ALL OTHER RIGHTS RESERVED.  
©2020. ATIXA

## **APPENDIX A**

### **PASSAIC COUNTY COMMUNITY COLLEGE BOARD POLICY**

#### **B108 TITLE IX: *SEX DISCRIMINATION, SEXUAL HARASSMENT, AND SEXUAL MISCONDUCT***

Passaic County Community College affirms its commitment to ensuring an environment for all students and employees that is fair, humane, and respectful. Every person is entitled to learn and work in an environment free from sex discrimination, sexual harassment, and sexual misconduct. It is the policy of Passaic County Community College that sexual discrimination, sexual harassment, and sexual misconduct in any form will not be tolerated. Charges of sex discrimination, sexual harassment, and sexual misconduct will be treated seriously and pursued in accordance with established College procedures. Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits discrimination on the basis of sex against any person in education programs and activities receiving federal funding. Inquiries concerning the application of the above-mentioned Title IX statement to any policy, program, or other activity at Passaic County Community College may be referred to the Title IX Coordinator, who has been especially designated by the College to oversee the continued application of the Title IX and nondiscriminatory policies. Inquiries, concerns, or complaints may also be referred to the Director of the Office for Civil Rights, U.S. Department of Health and Human Services.

Approved: 7/21/2015

**APPENDIX B**  
**OFFICIALS WITH AUTHORITY**

The following employees have been designated as “Officials with Authority” by Passaic County Community College.

<b>TITLE IX COORDINATORS</b>			
Jose Fernandez, Associate Vice President, Human Resources Title IX Coordinator	973-684-6107	jfernandez@pccc.edu	E-305
Dr. Leah Brown-Johnson, Associate Vice President/ Dean of Student Affairs Deputy Title IX Coordinator	973-684-6309	sgoldstein@pccc.edu	A-231
<b>Office of the President</b>			
Dr. Steven M. Rose	973-684-5900	srose@pccc.edu	E-301
<b>Vice Presidents</b>			
Dr. Jacqueline Kineavy, Sr. Vice President Academic and Student Affairs	973-684-6300	jkineavy@pccc.edu	A-230
Steven Hardy, Vice President Finance and Administrative Services	973-684-6036	shardy@pccc.edu	E-404
Bradley Morton, Vice President Information Technology	973-684-6626	bmorton@pccc.edu	E-502
Todd Sorber, Vice President Institutional Advancement	973-684-5656	tsorber@pccc.edu	HC307

**APPENDIX C**  
**TITLE IX: Examples**

**Examples of possible sexual harassment include:**

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually-oriented jokes and pictures around campus via social media to hundreds of other students. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus, eventually asking to drop a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor asks about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.

- Chris has recently transitioned from male to non-binary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being non-binary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty-student relationships are prohibited by the college. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo at the bar. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

### **Examples of Stalking**

- Students A and B were “friends with benefits.” Student A wanted a more serious relationship, which caused student B to break it off. Student A could not let go, and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if they had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.
- A student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the student thanked the student and stated that it was not necessary and would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor’s car, both on-campus and at home. Asked again to stop, the student stated by email, “You can ask me to stop, but I’m not giving up. We are meant to be together, and I’ll do anything to make you have the feelings for me that I have for you.” When the tutor did not respond, the student emailed again, “You cannot escape me. I will track you to the ends of the earth. If I can’t have you, no one will.”

### **Examples of Sexual Assault:**

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come to his apartment. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being “a prude.” He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to “jerk him off” (hand to genital contact). Amanda would have never done it but for Bill's incessant advances. He feels that he successfully seduced her and that she wanted to do it all along but was playing shy and hard to get. Why else would she have come to his apartment alone after the party? If she really didn't want it, she could have left.
- Jiang is a sophomore. Beth is a freshman. Jiang comes to Beth’s home with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes

her by the wrist over to the bed, lays her down, undresses, and begins to have intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.

- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other's clothes, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he came to again. When Kevin runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

### **Examples of Retaliation:**

- Student-athlete A alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes his approval for her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

ATIXA 2020 ONE POLICY, TWO PROCEDURES  
MODEL  
USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS  
PERMITTED THROUGH A LIMITED LICENSE  
TO PASSAIC COUNTY COMMUNITY  
COLLEGE. ALL OTHER RIGHTS  
RESERVED.  
©2020. ATIXA