

	<b>POLICY</b>		<b>Motion No.</b>	<b>EXEC 1012-2024</b>
	<b>EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION POLICY FOR INCIDENTS OCCURRING ON OR AFTER AUGUST 1, 2024</b>		<b>Effective Date</b>	<b>8/20/2024</b>
			<b>Responsible Department</b>	<b>Student Services/Safety &amp; Security/Human Resources</b>
			<b>Reviewed by an attorney</b>	<b>N/A</b>

**Pennsylvania Highlands Community College EQUAL OPPORTUNITY, HARASSMENT, AND  
NONDISCRIMINATION POLICY for incidents occurring on or after August 1, 2024  
(Hereinafter, “the Policy”)**

**Purpose**

Pennsylvania Highlands Community College is committed to providing an educational and employment environment that is free from discrimination based on protected characteristics, harassment, and retaliation for engaging in protected activity.

Pennsylvania Highlands Community College values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, Pennsylvania Highlands Community College has developed policies and procedures that provide for prompt, fair, and impartial resolution of allegations of protected characteristic discrimination, harassment, or allegations of retaliation.

**Notice of Nondiscrimination**

Pennsylvania Highlands Community College seeks to comply with all federal, state, and local laws, regulations, and ordinances prohibiting discrimination in public post-secondary education institutions.

Pennsylvania Highlands Community College does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of actual or perceived:

- Age (40 years and over in the employment context)
- Color
- Disability (physical or mental)
- Ethnicity
- Gender expression
- Gender identity
- Genetic information (including family medical history)

- Marital status
- National origin (including ancestry)
- Pregnancy or related conditions
- Race
- Religion
- Sex
- Sexual orientation
- Veteran or military status (including disabled veteran, recently separated veteran, active-duty, wartime, or campaign badge veteran, and Armed Forces Service Medal veteran)
- or any other protected characteristic under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process within the institution, with the Equal Employment Opportunity Commission, and/or other human/civil rights agency.

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the Pennsylvania Highlands Community College community whose acts deny, deprive, unreasonably interfere with or limit the education or employment, social access, benefits, and/or opportunities of any member of the Pennsylvania Highlands Community College community, guest, or visitor on the basis of that person's actual or perceived protected characteristic(s), is in violation of this Policy.

Pennsylvania Highlands Community College will promptly and effectively address any such discrimination of which it has Knowledge/Notice using the resolution process in the Equal Opportunity, Harassment, and Nondiscrimination Procedures.

### **Nondiscrimination Team Contacts**

Pennsylvania Highlands Community College has appointed the following positions and/or employees, to coordinate Pennsylvania Highlands Community College's compliance with federal, state, and local civil rights laws and ordinances:

#### ***For discrimination and harassment allegations [not based on sex or disability]:***

Associate Vice President of Administration  
 Suite B136A  
 101 Community College Way  
 Johnstown, PA 15904  
 814-262-3833  
 Civilrights@pennhighlands.edu

#### ***For sex discrimination and sex-based harassment allegations:***

##### ***Title IX Coordinator***

Trish Corle

Vice President of Student Services  
Suite A107J  
101 Community College Way  
Johnstown, PA 15904  
814-262-3841  
Civilrights@pennhighlands.edu

***For disability-based allegations:***

Trish Corle  
Vice President of Student Services  
Suite A107J  
101 Community College Way  
Johnstown, PA 15904  
814-262-3841  
Civilrights@pennhighlands.edu

Collectively, these individuals are responsible for providing comprehensive nondiscrimination education and training; coordinating the Pennsylvania Highlands Community College's timely, thorough, and fair response, investigation, and resolution of all alleged prohibited conduct under this Policy; and monitoring the effectiveness of this Policy and related procedures to ensure an education and employment environment free from discrimination, harassment, and retaliation.

**External Contact Information**

Concerns about Pennsylvania Highlands Community College's application of this Policy and compliance with certain federal civil rights laws may also be addressed to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

For Complaints involving employee-on-employee conduct:

William S. Moorhead Federal Building  
1000 Liberty Avenue, Suite 1112  
Pittsburgh, PA 15222

Phone 1-800-669-4000  
Fax 412-395-5749  
TTY 1-800-669-6820  
ASL Video 844-234-5122

### **Mandated Reporting and Confidential Employees**

All Pennsylvania Highlands Community College faculty and employees (including student-employees), other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal Pennsylvania Highlands Community College action.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or Policy violations, and these employees will immediately pass Notice to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe Pennsylvania Highlands Community College's reporting options for a Complainant or third party (including parents/guardians when appropriate):

#### **Confidential Employees**

To enable Complainants to access support and resources without filing a Complaint, Pennsylvania Highlands Community College has designated specific employees as Confidential Resources. Those designated by Pennsylvania Highlands Community College as Confidential Resources are not required to report actual or suspected discrimination, harassment, or retaliation in a way that identifies the Parties. They will, however, provide the Complainant with the Title IX Coordinator's contact information and offer options and resources without any obligation to inform an outside agency or Pennsylvania Highlands Community College official unless a Complainant has requested the information be shared.

These individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with the following Confidential Employee:

#### **Designated Confidential Employees**

- Bridget Hall, Counselor  
Pennsylvania Highlands Community College Counselor  
Suite B125A  
101 Community College Way  
Johnstown, PA 15904  
814-262-6467  
Bhall@pennhighlands.edu

Failure of a Mandated Reporter, as described above in this section, to report an incident of discrimination, harassment, or retaliation of which they become aware is a violation of Pennsylvania Highlands Community College Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under this Policy.

A Mandated Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

In addition, Complainants may speak with individuals unaffiliated with Pennsylvania Highlands Community College without concern that Policy will require them to disclose information to the institution without permission:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

### **Disability-based Grievances and Complaints**

Grievances related to disability status and/or provision of accommodations are addressed using the procedures found on our [Disability Services webpage](#).

### **Scope**

This Policy is only applicable to alleged incidents that occur on or after August 1, 2024. For alleged incidents of sexual harassment occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Title IX Coordinator and on our [Title IX webpage](#).

This Policy applies to all faculty, employees, students, and other individuals participating in or attempting to participate in Pennsylvania Highlands Community College's program or activities, including education and employment.

This Policy prohibits all forms of discrimination on the basis of the protected characteristic(s) listed in the Equal Opportunity, Affirmative Action and Nondiscrimination. The Equal Opportunity, Harassment, and Nondiscrimination Procedures may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with this Policy.

### **Jurisdiction**

This Policy applies to Pennsylvania Highlands Community College's education programs and activities (defined as including locations, events, or circumstances in which Pennsylvania Highlands Community College exercises substantial control over both the Respondent and the context in which the conduct occurred), circumstances where Pennsylvania Highlands Community College has disciplinary authority, and to misconduct occurring within any building owned or controlled by Pennsylvania Highlands Community College.

This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to Pennsylvania Highlands Community College's education program or activities or impact a substantial interest of Pennsylvania Highlands Community College.

For disciplinary action to be issued under this Policy, the Respondent must be a Pennsylvania Highlands Community College faculty member, student, or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the Pennsylvania Highlands Community College community, the Title IX Coordinator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). Pennsylvania Highlands Community College can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving the Pennsylvania Highlands Community College through third-party contracts are subject to the policies and procedures of their employers and to these Policies and procedures to which their employer has agreed to be bound by their contracts.

### **Supportive Measures**

Pennsylvania Highlands Community College will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged discrimination, harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered,

without fee or charge to the Parties, to restore or preserve access to Pennsylvania Highlands Community College's education program or activity, including measures designed to protect the safety of all Parties and/or Pennsylvania Highlands Community College's educational environment and/or to deter discrimination, harassment, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving Notice/Knowledge or a Complaint. At the time that supportive measures are offered, if a Complaint has not been filed, Pennsylvania Highlands Community College will inform the Complainant, in writing, that they may file a Complaint with Pennsylvania Highlands Community College either at that time or in the future. The Title IX Coordinator will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

Pennsylvania Highlands Community College will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair Pennsylvania Highlands Community College's ability to provide those supportive measures. Pennsylvania Highlands Community College will act to ensure as minimal an academic/occupational impact on the Parties as possible. Pennsylvania Highlands Community College will implement measures in a way that does not unreasonably burden any party.

These supportive measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Implementing contact limitations (no contact orders) between the Parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

The Parties are provided with a timely opportunity to seek modification or reversal of Pennsylvania Highlands Community College's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the definition of supportive measures in § 106.2 of the federal Title IX Regulations. Pennsylvania Highlands Community College will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances change materially. Pennsylvania Highlands Community College typically renders decisions on supportive measures within seven (7) business days of receiving a request and provides a written determination to the impacted party(ies) and the Title IX Coordinator.

### **Online Harassment and Misconduct**

Pennsylvania Highlands Community College policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on Pennsylvania Highlands Community College's education program and activities, or when they involve the use of Pennsylvania Highlands Community College networks, technology, or equipment.

Although Pennsylvania Highlands Community College may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to Pennsylvania Highlands Community College, it will engage in a variety of means to address and mitigate the effects.

Nothing in this Policy is intended to infringe upon or limit a person's rights to free speech. Any online posting or other electronic communication by students, including technology-facilitated bullying, stalking, harassment, etc., occurring completely outside of Pennsylvania Highlands Community College's control (e.g., not on Pennsylvania Highlands Community College networks, websites, or between Pennsylvania Highlands Community College email accounts) will only be subject to this Policy when such online conduct can be shown to cause (or will likely cause) a substantial in-program disruption or infringement on/harm to the rights of others. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided.

### **Inclusion Related to Gender Identity/Expression**

Pennsylvania Highlands Community College strives to ensure that all individuals are safe, included, and respected in their working and learning environments, regardless of their gender



identity or expression, including intersex, nonbinary, transgender, agender, two-spirit, and gender-diverse students and employees.

Discrimination and harassment on the basis of gender identity or expression are not tolerated by Pennsylvania Highlands Community College. If a member of the Pennsylvania Highlands Community College community believes they have been subjected to discrimination under this Policy, they should follow the appropriate reporting process described herein.

### **Prohibited Conduct**

Students, employees, Title IX Coordinators, and faculty are entitled to an employment and educational environment that is free of discrimination, harassment, and retaliation. This 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 sections below describe the specific forms of legally prohibited discrimination, harassment, and retaliation that are also prohibited under Pennsylvania Highlands Community College Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of Pennsylvania Highlands Community College Policy, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses.

### **Discrimination**

Discrimination is different treatment with respect to an individual's employment or participation in an education program or activity based, in whole or in part, upon the individual's actual or perceived protected characteristic. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, or religion.

Discrimination can take two primary forms:

#### **1) Disparate Treatment Discrimination:**

- a. Any intentional differential treatment of a person or persons that is based on an individual's actual or perceived protected characteristic and that:
  - Excludes an individual from participation in;
  - Denies the individual benefits of; or
  - Otherwise adversely affects a term or condition of an individual's participation in a Pennsylvania Highlands Community College program or activity.

**2) Disparate Impact Discrimination:**

- a. Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
- Excludes an individual from participation in;
  - Denies the individual benefits of; or
  - Otherwise adversely affects a term or condition of an individual's participation in a Pennsylvania Highlands Community College program or activity.

**Discriminatory Harassment**

- unwelcome conduct on the basis of actual or perceived protected characteristic(s), that based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from Pennsylvania Highlands Community College's education program or activity

**Sex-based Harassment (Applicable under Title IX, Title VII)**

**Sex-based Harassment** is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

**1) Quid pro quo:**

- an employee agent, or other person authorized by Pennsylvania Highlands Community College,
- to provide an aid, benefit, or service under Pennsylvania Highlands Community College's education program or activity,
- explicitly or impliedly 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
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from Pennsylvania Highlands Community College's education program or activity

**3) Sexual Assault:**

Any sexual act, including Rape, Sodomy, Sexual Assault with an Object, or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent, also unlawful sexual intercourse.

a. **Rape:**

- Penetration,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent
  - because of their age or
  - because of their temporary or permanent mental or physical incapacity

b. **Fondling:**

- The touching of the private body parts (breasts, buttocks, groin) of the Complainant by the Respondent
- or causing the Complainant to touch the Respondent's private body parts
- intentionally for a sexual purpose
- without the consent of the Complainant, including instances where the Complainant is incapable of giving consent
  - because of their age or
  - because of their temporary or permanent mental incapacity or physical incapacity.

c. **Incest:**

- Nonforcible sexual intercourse between persons who are related to each other.
- within the degrees wherein marriage is prohibited by Pennsylvania law.

d. **Statutory Rape:**

- Nonforcible sexual intercourse with a person
- who is under the statutory age of consent of the state of Pennsylvania

4) **Dating Violence:**

- Violence<sup>1</sup> committed by a Respondent,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant; **and**
- where the existence of such a relationship shall be determined based on a consideration of the following factors:

- length of the relationship
- type of relationship
  - frequency of the interaction between the Parties involved in the relationship.

near or crimes committed by a person who:

- is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of Pennsylvania or a person similarly situated to a spouse of the Complainant.
- is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner.
- shares a child in common with the Complainant; **or**
- commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of Pennsylvania.

#### **6) Stalking:**

- engaging in a course of conduct on the basis of sex, that is,
- directed at a specific person that would cause a reasonable person to:
  - fear for the person's safety, or
  - the safety of others; or
  - suffer substantial emotional distress.

Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.

### **Sexual Misconduct**

#### **1) Sexual Exploitation:**

- an individual taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined above.
- for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed).
- Invasion of sexual privacy (e.g., doxxing).

- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression.
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography.
- Prostituting another person.
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection.
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity.
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing).
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.
- Knowingly soliciting a minor for sexual activity.
- Engaging in sex trafficking.
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings.
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes).
- Creating or disseminating images or videos of child sexual abuse material.
- The actions of alumni, active, new, and/or prospective members of a Student Group or Student Organization may be considered hazing. Hazing is not confined to the Student Group or Student Organization with which the individual subjected to the hazing is associated.

## **Other Prohibited Conduct**

### **1) Retaliation:**

- Adverse action, including intimidation, threats, coercion, or discrimination, against any person,
- by Pennsylvania Highlands Community College, a student, employee, or a person authorized by Pennsylvania Highlands Community College to provide aid, benefit, or service under the Pennsylvania Highlands Community College's education program or activity,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under the Equal Opportunity, Harassment, and Nondiscrimination Procedures, including an Informal Resolution process, or in any other appropriate steps taken by Pennsylvania Highlands Community College to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

*The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for Pennsylvania Highlands Community College to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Equal Opportunity, Harassment, and Nondiscrimination Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.*

**2) Unauthorized Disclosure:**

- Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by Pennsylvania Highlands Community College; or
- publicly disclosing a party's personally identifiable information without authorization or consent.

**3) Failure to Comply/Process Interference**

- Intentional failure to comply with the reasonable directives of Title IX Coordinator in the performance of their official duties, including with the terms of a no contact order.
- Intentional failure to comply with emergency removal or interim suspension terms.
- Intentional failure to comply with sanctions.
- Intentional failure to adhere to the terms of an agreement achieved through informal resolution.
- Intentional failure to comply with mandated reporting duties as defined in this Policy.

- Intentional interference with the Title IX resolution process, including but not limited to:
  - Destruction of or concealing of evidence.
  - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence.
  - Intimidating or bribing a witness or party.

## **Sanction Ranges**

### 1. Student Sanctions include:

- Warning
- Required Counseling
- Probation
- Suspension
- Expulsion
- Organizational Sanctions
- Other Actions

### 2. Employee Sanctions include:

- Warning – Verbal or Written
- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Demotion
- Suspension with pay
- Suspension without pay
- Termination

## **Consent, Force, and Incapacitation**

As used in this Policy, the following definitions and understandings apply:

### **1) Consent**

In Pennsylvania, consent is defined as a "voluntary, informed, and unambiguous agreement to engage in a specific sexual activity during a specific time frame." This means that for a sexual act to be consensual, all parties involved must freely and willingly agree to participate, fully understanding the nature of the act and any potential risks involved. It is important to note that consent can be

withdrawn at any time, and if a person communicates their desire to stop the sexual activity, continuing without consent may result in a policy violation.

## **2) Force**

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person’s consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

## **3) Incapacitation**

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

Incapacitation is determined through consideration of all relevant indicators of a person’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.



## **Consensual Relationships**

There are inherent risks in any romantic or sexual relationship between persons in unequal positions, such as faculty member-student or supervisor-employee. In reality, these relationships may be less consensual than perceived by the person whose position confers power or authority. Similarly, each of the Parties may view the relationship differently, particularly in retrospect. Circumstances may change, and once welcomed conduct may become unwelcome at some point in the relationship.

Even when the Parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. Pennsylvania Highlands Community College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the College's goals and policies. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must promptly inform their supervisor and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an applicable relationship existed prior to adoption of this Policy or prior to employment, the duty to notify the appropriate supervisor still pertains.

While no relationships are specifically prohibited by this Policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.

## **Standard of Proof**

Pennsylvania Highlands Community College uses the preponderance of the standard of proof when determining whether a Policy violation occurred. This means that Pennsylvania Highlands Community College will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

## **Reports/Complaints of Discrimination, Harassment, and/or Retaliation**

A Report provides notice to Pennsylvania Highlands Community College of an allegation or concern about discrimination, harassment, or retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures. A Complaint provides notice to Pennsylvania Highlands Community College that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Complaint. Reports or Complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) File a Complaint with, or give verbal Notice directly to, the Title IX Coordinator. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Title IX Coordinator.
- 2) Submit online Notice on our [Report a Concern page](#). This option provides an opportunity to leave personal contact information so that the Title IX Coordinator can follow-up to determine additional investigative details. Anonymous Notice is accepted, but the Notice may give rise to a need to try to determine the Parties' identities. Anonymous Notice typically limits Pennsylvania Highlands Community College's ability to investigate, respond, and provide remedies, depending on what information is shared. Measures intended to protect the community or redress or mitigate harm may be enacted. It also may not be possible to provide supportive measures to Complainants who are the subject of anonymous Notice.

*Reporting carries no obligation to initiate a Complaint, and in most situations, Pennsylvania Highlands Community College is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where Pennsylvania Highlands Community College may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, Pennsylvania Highlands Community College will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows Pennsylvania Highlands Community College to discuss and/or provide supportive measures, in most circumstances.*

- 3) Report using the discrimination/harassment hotline 1-800-401-8004.
- 4) [Report using our website.](#)

### **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 the Pennsylvania Highlands Community

College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on Notice/Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the Title IX Coordinator's discretion; they may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

### **False Allegations and Evidence**

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject 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 determination of a Policy violation.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate Pennsylvania Highlands Community College policies.

### **Confidentiality/Privacy**

Pennsylvania Highlands Community College makes every effort to preserve the Parties' privacy. Pennsylvania Highlands Community College will not share the identity of any individual who has made a Complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of discrimination, harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures.

### **Emergency Removal/Interim Actions/Leaves**

Pennsylvania Highlands Community College can act to remove a student Respondent accused of Sex Discrimination or Sex-based Harassment from its education program or activities, partially or entirely, 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. This risk analysis is performed by the Title IX Coordinator and may be done in conjunction with the Behavioral Intervention Team using its standard objective violence risk assessment procedures. Employees are subject to existing procedures for interim actions and leaves.

### **Federal Timely Warning Obligations**

Pennsylvania Highlands Community College must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the Pennsylvania Highlands Community College community.

Pennsylvania Highlands Community College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **Amnesty**

Pennsylvania Highlands Community College community encourages the reporting of misconduct and crimes by Complainants and witnesses.

To encourage reporting and participation in the process, Pennsylvania Highlands Community College maintains a Policy of offering Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by Pennsylvania Highlands Community College, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

#### **Students**

Pennsylvania Highlands Community College maintains an amnesty policy for students who offer help to others in need and who report misconduct and crimes to the proper authority. Students participating in investigations of such behavior may also be given amnesty where appropriate.

#### **Employees**

Sometimes, employees are hesitant to report discrimination, harassment, or retaliation they have experienced for fear of getting in trouble themselves. Pennsylvania Highlands Community College may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

### **Independence and Conflicts of Interest**

The Title IX Coordinator 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. Title IX Investigators, trained advisors, and informal resolution facilitators are vetted and trained to ensure they are not biased for or against any party in a specific Complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the Associate Vice President of Administration. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Resolution Pool member should be raised with the Title IX Coordinator.

### **Revision of this Policy**

This Policy succeeds previous policies addressing discrimination, harassment, sexual misconduct, and/or retaliation, though previous policies and procedures remain in force for incidents occurring before August 1, 2024. The Title IX Coordinator reviews and updates these policies and procedures regularly. Pennsylvania Highlands Community College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

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 laws, regulations, or court holdings.

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

This Policy is effective August 1, 2024.

BASED ON THE ATIXA 2024 ONE POLICY, ONE PROCEDURE (1P1P) MODEL.

©2024 ATIXA. USED WITH PERMISSION.

<b>Effective Date</b>	<b>Motion Number</b>	<b>Document Author</b>	<b>Description of Change</b>
8/20/2024	EXEC 1012-2024	Student Services/Safety & Security/Human Resources	Initial Release