

Policy II.A.1: Policy Against Title IX Sexual Harassment and/or Sexual Misconduct

I. INTRODUCTION

Erie County Community College is committed to maintaining an educational and working environment free of unlawful discrimination and harassment. Under this policy, forms of discrimination or harassment based on sex will not be tolerated. This policy prohibits Sexual Harassment, as defined by federal Title IX regulations, by or against any student, faculty, administrator, staff, employee, vendor, contractor, volunteer, or visitor to the College. Sexual Harassment includes Sexual Assault, Dating Violence, Domestic Violence or Stalking. As set forth in this policy, the College will take all appropriate steps to prevent and respond to incidents of sexual harassment in a prompt and equitable manner.

Reports of Sexual Harassment that do not rise to the level of unwelcome verbal or physical conduct based on sex or of a sexual nature that does not rise to the level of sexual harassment under this policy may be covered by the College's Anti-Discrimination and Harassment Complaint Policy.

This policy will:

- Define Title IX Sexual Harassment.
- Explain how to make a report of Sexual Harassment.
- Identify interim measures and support services available for Complainants or Respondents under this policy.
- Provide information on the Sexual Harassment complaint process, including how reports made under this policy are equitably investigated and the hearing process.

II. POLICY

B. Scope of Policy

This policy applies to all students, faculty, administrators, staff, employees, vendors, contractors, volunteers, and visitors to the College, regardless of sexual orientation, gender, gender identity, gender expression, or any other characteristic, and regardless of the sex or sexes of the parties involved, including when the parties involved are all of the same sex. Under this policy, the College has jurisdiction over reports of sexual harassment that takes place on all College property and at any location, event or circumstance over which the College has substantial control over both the alleged Respondent and the context in which the conduct occurs, to include any building owned or controlled by a student organization that is officially recognized by the College.

At the time of the filing of a formal complaint, the Complainant must be participating in or attempting to participate in the College's educational programming or activity. Students, employees, and third parties may file reports of sexual harassment, under this policy.

C. Title IX Coordinator

The College's Title IX Coordinator is responsible for overseeing the administration of this policy and the College's response to reports made pursuant to this policy. The contact information for the Title IX Coordinator is:

E-mail: TitleIX@ec3pa.org

Phone: 814-413-7000

Coordinator: Guy Goodman, Vice President of Academic and Student Affairs

D. Conduct Prohibited by this Policy

The following conduct is prohibited by this policy:

1. Sexual Harassment, defined as follows:

- a. **Sexual Assault:** Sexual assault includes any forcible or non-forcible sexual act directed against another person without the consent of said person, including instances where the person is incapable of giving consent. Sexual assault includes the offenses of rape, fondling, incest, statutory rape, forcible sodomy (oral or anal sexual intercourse), and sexual assault with an object. These terms and other forms of sexual assault are further defined by the Code of Federal Regulations and the Pennsylvania Crimes Code, as set forth in Appendix A of this policy. The conduct defined in Appendix A is also prohibited by this policy.
- b. **Sexual Harassment:** Sexual harassment is unwelcome** verbal or physical conduct based on sex or gender or unwelcome verbal or physical conduct of a sexual nature (including sexual advances or requests for sexual favors) when:
 - I. Submission to or rejection of such conduct is made implicitly or explicitly a term or condition of an individual's employment, study, or participation in College-

- sponsored activities;
- II. Submission to or rejection of such conduct is used as the basis for decisions affecting a person's study, employment, or participation in College- sponsored activities; or
 - III. The conduct is determined by a reasonable person to be **so severe, pervasive and objectively offensive** it effectively denies a person's equal access to the College's education program or activity, work or academic performance or ability to participate in or receive the benefits, services, or opportunities in academic or work programs, or it creates an intimidating, hostile, offensive, or demeaning academic or working environment;

****Conduct is "unwelcome" if it was not requested or invited by the Complainant, and the Complainant considered the conduct to be undesirable or offensive. Participation in the conduct or the failure to complain does not always mean that the conduct was welcome. The fact that a person may have welcomed some conduct does not necessarily mean that a person welcomed other conduct. The fact that a person requested or invited conduct on one occasion does not mean that the conduct is welcome on a subsequent occasion.**

Examples of behavior which may be considered sexual harassment include, but are not limited to:

- Direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, grades or any other aide, benefit or service of the College;
 - Language or behavior of a sexual nature;
 - Sexually explicit statements, questions, jokes or teasing;
 - Unnecessarily touching, panting, hugging or brushing against a person's body or unwelcome advances;
 - Remarks of a sexual nature regarding a person's clothing, body, sexual activity, previous sexual experience, or sexual orientation;
 - Repeated requests for dates or social interaction made through verbal requests, social media, texts, notes telephone calls, facsimiles, e- mails, or other electronic communication;
 - Visual displays of inappropriate sexual images;
 - Removal or exclusion from participation based upon gender or sexual orientation; and
 - Attempted or actual incidents of Sexual Assault, Sexual Violence, or any of the other conduct prohibited by this policy.
- c. **Sexual Violence:** Sexual violence is physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including Sexual Assault.
- 2. Relationship Violence is a broad term that includes the following behavior :**
- a. **Dating Violence:** Dating violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence.
Note: Dating Violence is not defined under Pennsylvania law.
 - b. **Domestic Violence:** Domestic Violence is a felony or misdemeanor crime of violence committed by:
 - A current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the Commonwealth of Pennsylvania; or

- By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the Commonwealth of Pennsylvania.

Note: Domestic Violence is not defined under Pennsylvania law.

3. **Stalking:**

Engaging in a course of conduct 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.

"Course of conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.

"Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Stalking as defined by the Pennsylvania Crimes Code is also prohibited conduct under this policy. See Appendix A.

4. **Retaliation:**

Any adverse treatment that is reasonably likely to deter someone from filing a report or participating in an investigation or disciplinary process under this policy.

Retaliation can be verbal, written, graphic, electronic, or physical, and can include but is not limited to intimidation, threats, coercion or unfavorable employment or educational actions directed toward an individual to deter them from filing a report or participating in the investigation or disciplinary process. Retaliation also includes acts taken with the intent of seeking retribution against an individual who filed a report or who otherwise participated in the investigation or disciplinary process.

E. **Important Information Regarding Prohibited Conduct**

1. **Consent**

As used in this policy, the term "Consent" means words or actions that show a knowing and voluntary agreement to engage in mutually agreed sexual activity. Consent must be ongoing throughout sexual activity and can be revoked at any time. Silence or absence of resistance will not necessarily

imply consent. Assent (an affirmative statement or action) shall not constitute consent if it is given by a person who is unable to make a reasonable judgment concerning the nature or harmfulness of the activity because of their intoxication, unconsciousness, youth, mental deficiency or incapacity (also known as "Incapacitation"), or if the assent is the product of threat, force, or coercion. Consent to prior sexual activities does not constitute

consent to future acts. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.

2. **Prohibited Conduct Through Different Communication Mediums**

Violations of this policy may occur through various communication mediums, including but not limited to, face-to-face contact, telephone, written notes, Wiki contributions, instant messages, text messaging, file sharing, voice chat, video chat, social networking, or blogging that occurs on College property or at any location, event or circumstance over which the College has substantial control over both the alleged Respondent and the context in which the conduct occurs.**

**Misconduct that occurs through the use of the above mediums and does not fall within the jurisdiction of this policy may still be investigated under the College's Anti-Discrimination and Harassment Complaint Policy and Non-Title IX Policy Against Sexual Misconduct, Relationship Violence, and Stalking.

3. **Attempting, Assisting, or Encouraging Prohibited Conduct**

An attempt to commit any of the prohibited conduct identified in this policy or assisting or willfully or knowingly encouraging such prohibited conduct, may also be considered a violation of this policy.

4. Retaliation

The College prohibits retaliation against any individual who makes or intends to make a report of sexual misconduct or Title IX sexual harassment under this policy or participates or intends to participate in the investigatory or disciplinary process under this policy. Retaliation in violation of this policy will be subject to disciplinary action.

5. Consensual Sexual or Romantic Relationships

Consensual relationships occurring between supervisors and subordinates, or faculty and students can lead to circumstances which may be interpreted as sexual harassment. Consensual relationships may also be viewed as causing a hostile or offensive work or academic environment when other staff or students believe that the person(s) involved in the relationship(s) is/are receiving favorable treatment in employment or educational decisions and actions.

The College strongly discourages any sexual or romantic relationship between a faculty member and a student where the faculty member has authority or influence over, or responsibility for, that student. Similarly, the College discourages any sexual or romantic relationship between a supervisor and a staff employee, where the supervisor has authority or influence over, or responsibility for, that employee.

Consensual relationships among faculty and students or supervisors and staff where such authority, influence or responsibility exists are strongly discouraged. Any consensual relationships which create severe, pervasive and objectively offensive work or academic environments for other students or staff are prohibited.

F. Confidentiality

The College is committed to protecting the privacy of all parties involved in a report made under this policy, to the extent permitted by applicable law and subject to the College's reporting obligations as described below. The College will treat all reports with sensitivity, and reports, investigations and findings of hearing proceedings will only be shared in compliance with this policy. Any interim or supportive measures will be kept as confidential as possible and shared only on a need-to-know basis.

Information pertaining to reports made under this policy will be kept in a secure manner.

III. REPORTING VIOLATIONS OF THIS POLICY

Students, employees and third parties may file reports of violations of this policy with the Title IX Coordinator in person, by mail, telephone, or by email. They may also report violations of this policy to any other College employee. The contact information for the Title IX Coordinator is:

E-mail: TitleIX@ec3pa.org

Phone: 814-413-7000

Coordinator: Guy Goodman, Vice President of Academic and Student Affairs

A. Reporting to Other College Employees

The College understands that not every individual will be comfortable making a report to the Title IX Coordinator identified above, and some individuals will prefer to report allegations of potential violations of this policy to an employee of the College that he, she or they trust. For example, a student may choose to make a report to their instructor or counselor, or an employee may choose to make a report to their supervisor.

All College employees share in the responsibility of ensuring compliance with this policy and are mandated to report any and all allegations of sexual harassment and sexual misconduct to the Title IX Coordinator. Employees must report to the Title IX Coordinator all relevant details about the alleged violation that the individual has shared. The Title IX Coordinator will then address the report in accordance with this policy.

B. Contents of a Report

An individual will be asked to provide as much detail as possible in making a report, including the name and contact information of the Complainant, the Respondent, and any witnesses (if known); the date, time, and location of the incident; a description of the prohibited conduct; supporting documentation or other evidence (pictures, texts, emails, etc.), if any; and any other information which would assist the College in

appropriately investigating and responding to the report.

C. Anonymous Reporting

In order to maximize the College's ability to effectively investigate and respond to reports under this policy, the College encourages individuals to provide identifying information when filing a report under this policy. However, the College will accept anonymous reports. The College will make all reasonable efforts to investigate and respond to reports filed anonymously, however, the College may be limited in its ability to fully investigate and resolve the report depending upon the level of information available in the report.

D. Who May Report

Note that in addition to the filing of a report by a Complainant, anyone can file a report of an alleged violation of this policy, including a witness or a third party. While there is no required time frame for submitting reports under this policy, the College strongly encourages reporters to submit a report as soon as possible to maximize the College's opportunity to effectively investigate and respond to the report. Individuals who make a report pursuant to this policy will receive a copy of this policy or be provided with the link to this policy on the College's website.

E. Criminal Report

A Complainant who alleges to have been the victim of Sexual Assault, Relationship Violence, or Stalking also has the right to pursue criminal action against the Respondent, including seeking a protective order. Whether or not the Complainant chooses to seek criminal action is within the discretion of the Complainant. If requested by the Complainant, the College will provide reasonable assistance or other support in notifying law enforcement of the report. The College will cooperate with a criminal investigation to the extent permitted by law. The College reserves the right to notify law enforcement of reports made pursuant to this policy if the College determines that such notification is necessary to protect the health and safety of the College community or the public.

An individual may choose to pursue criminal action at any time. The College encourages individuals contemplating pursuing criminal action to consult with law enforcement as soon as possible after the alleged incident in order to ensure that any physical and other forms of evidence are preserved in as timely a fashion as possible.

Reports made pursuant to this policy are completely separate from a criminal investigation. Even if a criminal investigation is ongoing, the College will still conduct its own investigation in accordance with this policy. While the criminal investigation is pending, law enforcement may require the College to delay or otherwise temporarily limit its own investigation, which may delay the College's resolution of the report. The College will comply with any such request by law enforcement to the extent permitted by law, and continue with its investigation as soon as reasonably practicable.

F. False Report

A report made under this policy which is later found to be knowingly or intentionally false or made maliciously without regard for truth may be subject to disciplinary action. Reports made in good faith, even if the allegations are not substantiated, will not be subject to discipline.

G. College's Reporting Obligations

Reports made pursuant to this policy which involve Dating Violence, Domestic Violence, Sexual Assault, and Stalking will be included in the College's annual report of crime statistics in the College's Annual Security Report, which is made available to the public, and to the U.S. Department of Education, as required by law. Reports of crime statistics do not include any personally identifiable information.

Finally, the College reserves the right to notify law enforcement of reports made pursuant to this policy if the College determines that such notification is necessary to protect the health and safety of the College community or the public.

H. When the Report Involves a Victim Under 18 Years Old

In the event that a report made under this policy involves reasonably suspected or actual child abuse or neglect, all College employees who are mandated reporters must report child abuse or neglect that they know about, see, or have reasonable cause to suspect first to the Pennsylvania Department of Public Welfare Child Line at (800) 932-0313, and then to College Security. If the employee is unable or prefers not to contact College Security, the employee may contact the Vice President for Business, Finance and Administration.

IV. INVESTIGATION AND HEARING PROCEDURES

The College will ensure that it takes steps to investigate and remedy reports of violations of this policy in a prompt and equitable manner. These steps include prompt contact with the Complainant by the Title IX Coordinator to explain the process for filing a formal complaint. If a formal complaint is filed, it will be promptly handled in accordance with the following procedures. In all cases, the Title IX Coordinator will maintain oversight over the investigation and disciplinary process. The parties will be promptly notified

in writing of which office is responsible for conducting the investigation and disciplinary process, as designated by the Title IX

Coordinator, and will be provided with more detailed information regarding the applicable investigation and disciplinary procedures. If a complainant chooses not to file a formal complaint, the Title IX Coordinator will still advise the complainant of any available supportive measures.

A. Investigation Procedures:

1. Title IX Coordinator will promptly contact and explain the College's supportive measures to the Complainant.
2. Title IX Coordinator will explain the process for filing a formal complaint.
3. A review of the allegations by the Title IX Coordinator to determine whether they constitute prohibited conduct under this policy.
4. Should the review reveal the following, the report of sexual harassment will not be investigated pursuant to this policy**:
 - a. The allegations, if proven, do not constitute a violation of the conduct prohibited by the policy.
 - b. The conduct did not occur on College property or at a location over which the College had substantial control of both the Respondent and the context in which the conduct occurred.
 - c. The Complainant is not participating or attempting to participate in the College's educational programming or activities.
 - d. The conduct occurred outside of the United States.**Allegations not investigated under this policy may still be investigated if they violate other College policies.
5. Should the review reveal the following, the report of sexual harassment *may not* be investigated pursuant to this policy:
 - a. The Complainant withdraws the complaint in writing.
 - b. The Respondent is no longer enrolled or employed at the College.
 - c. Specific circumstances exist that prevent the College from investigating the complaint.
6. The College will take appropriate supportive measures as necessary.
7. Informal resolution procedures may be available to resolve reports of potential violations of this policy; however,:
 - a. It is only available when a formal complaint is filed;
 - b. The College cannot require the parties to participate in informal resolution;
 - c. Both parties must agree in writing to participate;
 - d. Either party may withdraw from the informal resolution process at any time prior to resolution; and
 - e. ***Informal resolution will never be appropriate for reports of violations of this policy when the Respondent is an employee of the College and the complainant is a student.***
8. Written notice of the process and/or informal resolution will be provided to the parties that a complaint pursuant to this policy has been filed. The notice will be sent simultaneously to both the Complainant and Respondent. The notice will include an explanation of the investigation process and information regarding the parties' right to an Advisor of their choice.** Complainants and Respondents may elect to obtain an Advisor or have one provided to them by the College. The parties may or may not elect to have an attorney serve as the Advisor.
*****A list of Advisors provided by the College will be available from, the Title IX Coordinator. Such list will be updated periodically by the College.***
9. Interviews with the Complainant, the Respondent and any witnesses.
10. Review of student and/or personnel files.

11. The collection and examination of other relevant documents. The burden of proof and responsibility for gathering evidence for investigations rests with the College and not the parties. Medical records for a party cannot be collected, accessed, considered, disclosed or otherwise used, unless the College obtains the voluntary, written consent of the party.
12. The College will conduct a prompt, thorough, equitable and impartial investigation and issue a comprehensive investigation report which fairly summarizes relevant evidence. Both parties will have an equal opportunity to review the gathered evidence at least 10-days before the investigation report is finalized, and an equal opportunity to submit written responses to the evidence. Both parties will also have an equal opportunity to review the finalized investigation report at least 10-days prior to the hearing and submit additional written responses to the investigation report.

B. Hearing Procedures:

1. The College will conduct a live hearing (either in-person or via video-conference) at which both parties will have an Advisor of their choice present the relevant evidence and conduct cross-examination of the parties and witnesses.
2. The College will seek to resolve all reports of violations of this policy within 90 calendar days, whenever practicable. The parties will be advised in writing when resolution is expected to take longer.
3. Both parties will receive simultaneous written notice of the outcome of the hearing and any disciplinary sanctions in the form of a written decision from the Hearing Officer conducting the hearing.
4. The written decision will include the following information:
 - a. The standard of evidence (preponderance of the evidence) used to review and analyze the evidence presented;
 - b. The facts that potentially constitute sexual harassment;
 - c. The procedural history of the process, to include all dates for notices to the parties, interviews and site visits, and methods for gathering evidence;
 - d. The findings of facts supporting the determination;
 - e. A separate written analysis of each allegation and the determination;
 - f. Disciplinary sanctions, if appropriate;
 - g. Whether the remedies to restore/preserve the Complainant's equal access to educational programming and/or activities will be provided to the Complainant by the College; and
 - h. Notice that both parties have the right to appeal the decision.
5. For hearings involving a Student as the Respondent the Hearing Officers shall be appointed in accordance with the Student Code of Conduct.
6. For hearings involving a Faculty or Staff member as the Respondent the Hearing Officer shall be appointed by the College's President.

C. Appeals:

1. Both parties have an equal right to a prompt appeal of the determination of the hearing or from a dismissal of a formal complaint of sexual harassment under this policy or any of the allegations therein.
2. Grounds for appeal include the following:
 - a. A procedural irregularity that affected the outcome of the investigation/ hearing.
 - b. The discovery of new evidence that was not reasonably available at the time of determination by the Hearing Officer or dismissal by the Title IX Coordinator.
 - c. A conflict of interest or bias with the Title IX Coordinator, Investigator or Hearing Officer, either generally or specifically that affected the outcome of the investigation or hearing.
3. Appeals involving a Student Respondent must be filed in accordance with the Student Code of Conduct in writing with the Dean of Student Affairs and Enrollment within five (5) school weekdays of the notice of the outcome of the investigation.
4. Appeals involving an Employee Respondent must be filed with the College President in writing within five (5) working days of the notice of the outcome of the investigation.
5. Both parties will have a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome.
6. The appeal officer will issue a written decision describing the result of the appeal and the rationale for the result.

7. Both parties will receive simultaneous written notice regarding the outcome of any appeal.

V. SANCTIONS FOR VIOLATING THIS POLICY AND SAFE HARBOR

A. Sanctions

Violations of this policy may result in disciplinary action, up to and including termination of an employee or expulsion of a student, subject to the relevant policies and procedures governing the disciplinary process applicable to the alleged Respondent.

B. Safe Harbor

Notwithstanding the foregoing, a student witness or student victim of an incident of a violation of this policy who reports such incident in good faith will not be sanctioned by the College for admitting in the report to a violation of the College's Student Code of Conduct related to the use of drugs or alcohol.

VI. SUPPORTIVE MEASURES

Supportive measures are those non-disciplinary, non-punitive services, accommodations, or other assistance that the College puts in place for individuals after receiving notice of alleged violations of this policy, pending the final outcome of any investigation/hearing process, or when no formal complaint is filed. Supportive measures may be imposed for various reasons, including ensuring the safety of the parties or the College community at large; eliminating a hostile work environment; or protecting the integrity of the investigation and/or disciplinary process.

Supportive measures are meant to ensure that both parties involved in a report under this policy continue to have adequate access to educational and/or work opportunities at the College, without unreasonably burdening the other party. A party may request these measures from the office responsible for investigating the report, or the College may offer them on its own initiative when it deems them appropriate. The College will determine which supportive measures are appropriate on a case-by-case basis. Potential supportive measures include a "no contact" directive pending the outcome of the investigation, provision of a security escort, modifications of class schedules or deadlines, emergency removal ** from the College's education program and activities or other supportive measures the College deems reasonable and appropriate. The College may make certain supportive measures permanent measures to be applied even after the investigation and/or disciplinary process is complete, when appropriate under the circumstances.

**Should the College determine that an emergency removal of the Respondent from the College's education program or activities is appropriate (i.e., the Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment), the College will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

Individuals who have been victims of violations of this policy may also seek other supportive measures both on- and off-campus. Upon becoming aware of a report of a potential violation of this policy, the Title IX Coordinator must promptly contact the potential Complainant to discuss the availability of supportive measures, services, consider the Complainant's wishes with respect to supportive measures, services, and inform the Complainant of the availability of supportive measures, services, with or without the filing of a formal complaint.

Supportive measures are available to both the potential Complainant and potential Respondent. Individuals seeking on-campus support services should be aware that employees must report allegations of violations of this policy to the Title IX Coordinator. Therefore, they cannot guarantee confidentiality. The College will create a list of On-Campus services and Off-Campus Services.

VII. EMERGENCY ASSISTANCE FOR VICTIMS OF SEXUAL ASSAULT, RELATIONSHIP VIOLENCE OR STALKING

An individual who is in imminent danger of Sexual Assault, Relationship Violence, or Stalking should contact law enforcement or, if on campus, College Security. An individual can also report emergencies occurring on- or off-campus by dialing 911 to reach the local police department.

In the event of an emergency that requires medical attention, individuals should go to the nearest hospital.

VIII. ENFORCEMENT AND TRAINING

The Title IX Coordinator is responsible for ensuring the enforcement of this policy, and for ensuring training regarding this policy, with the ultimate goal of raising awareness and preventing Sexual Harassment, Relationship Violence, and Stalking within the College

**Policy approved by Erie County Community College Board of Trustees:*

April 7, 2021

August 25, 2021

March 23, 2022

Review Deadline: **March 23, 2027*