

# Lebanon Valley College

## Title IX Sexual Harassment Policy

August 14, 2020

**IF YOU BELIEVE YOU OR ANYONE ELSE IS IMMEDIATE DANGER,  
CALL 911 or LVC Public Safety 717-867-6111**

Annville Police Department	717-867-2711
<b>Confidential College Resources</b>	<b>Phone</b>
Health Center	717-867-6232
Counseling Services	717-867-6232
Student Services (Chaplain)	717-867-6135
Campus Conduct Hotline	866-943-5787
<b>Off Campus Resources</b>	
Sexual Assault Resource Center	717-272-5308
Domestic Violence Hotline	717-273-7190
Pennsylvania Coalition Against Rape	717-238-7273
<b>Local Hospital Services</b>	
Hershey Medical Center, Hershey	717-531-8521
WellSpan Good Samaritan Hospital (Lebanon)	717-270-7500

### **I. Notice of Non-Discrimination**

Lebanon Valley College is committed to providing an educational and work environment in which all members of the campus community can participate without being subjected to discrimination on the basis of sex, sexual orientation, or gender identity. Where Lebanon Valley College learns that any such discrimination occurs, the College is committed to remedying the discrimination and its effects.

### **II. Statement of Policy Against Title IX Sexual Harassment**

In compliance with Title IX, a federal law, Lebanon Valley College does not discriminate on the basis of sex in the education programs or activities that it operates. Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq.*) and its implementing regulations (34 C.F.R. Part 106) prohibit discrimination on the basis of sex in education programs and activities.

No person in the United States 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 receiving Federal financial assistance.

Title IX requires that colleges and universities maintain an environment free from sex discrimination for all faculty, staff, and students. Under Title IX, discrimination on the basis of sex includes Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking. Sexual harassment is also prohibited by Title VII of the Civil Rights Act of 1964 and by the state law.

Inquiries about the application of Title IX and its regulations may be referred to:

### **Title IX Coordinator**

Ann C. Hayes, senior director of human resources  
Office of Human Resources - Humanities 108  
Email: [hayes@lvc.edu](mailto:hayes@lvc.edu) Phone: 717-867-6416

Title IX web page: <https://www.lvc.edu/offices-directories/human-resources/title-ix/>

### **Title IX Deputies**

Tyler Cox, associate director of intercultural affairs and inclusion  
Office of Student Engagement – Mund College Center  
Email: [tcx@lvc.edu](mailto:tcx@lvc.edu) Phone: 717-867-6239

Stacey Hollinger, associate director of athletics, senior women’s administrator  
Office of Athletics – Arnold Sports Center  
Email: [sholling@lvc.edu](mailto:sholling@lvc.edu) Phone: 717-6891

Dr. Marc Harris, dean of the faculty  
Humanities 201A  
Email: [harris@lvc.edu](mailto:harris@lvc.edu) Phone: 717-867-6146

**OR**

Assistant Secretary for Civil Rights  
U.S. Department of Education, Office for Civil Rights  
[ocr@ed.gov](mailto:ocr@ed.gov)  
1-800-421-3481

### **III. Scope of this Policy**

This Policy on Title IX Sexual Harassment Discrimination (Policy) applies to all Employees (faculty, staff, all other non-student employees), and all students. This Policy addresses only Title IX Sexual Harassment, as defined in this Policy. Allegations of discrimination based upon other protected traits and allegations of sex discrimination that do not fit within this Policy’s definition of Title IX Sexual Harassment will be address under other Lebanon Valley College policies, including other applicable discrimination policies and procedures, such as the Student Handbook and Code of Conduct, Faculty Policy Manual, and Employee Handbook.

Title IX Sexual Harassment is defined as conduct:

1. On the basis of sex,
2. That occurs within Lebanon Valley College's Education Program or Activity,
3. Within the United States, and
4. Involves
  - (a) a Lebanon Valley College Employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
  - (b) unwelcome conduct that is determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to Lebanon Valley College's Education Program or Activity;
  - (c) Sexual Assault;
  - (d) Dating Violence;
  - (e) Domestic Violence; or
  - (f) Stalking.

All allegations of Title IX Sexual Harassment will be addressed according to this Policy.

Lebanon Valley College may act against third Parties who engage in conduct prohibited by this Policy in connection with a Lebanon Valley College Education Program or Activity. In such circumstances, the College will determine whether to apply this Policy or another policy or procedure.

This Policy applies when any Employee of the College is alleged to have engaged in Title IX Sexual Harassment as defined by this Policy. To the extent this Policy is inconsistent with any provisions of any faculty or Employee handbook, policy, or procedure, because this Policy on Title IX Sexual Harassment is mandated by federal law, this Policy shall prevail. Federal law requires Lebanon Valley College to use the same Standard of Evidence in all matters alleging Title IX Sexual Harassment, which, therefore, fall within this Policy. The College has no discretion to do otherwise.

All Employees who have experienced Title IX Sexual Harassment, who have provided a Report alleging Title IX Sexual Harassment, or have been alleged to have engaged in Title IX Sexual Harassment can seek confidential assistance through the College's Employee Assistance Program (EAP): WellSpan Employee Assistance Program (800-673-2514) [www.WellSpan.org/EAP](http://www.WellSpan.org/EAP)

#### **IV. Defined Terms**

This Policy uses many defined terms, indicated by the capitalization of the first letter(s) in the term. All defined terms are included in a Glossary at the end of the Policy. The definitions in the Glossary are important to a complete understanding of this Policy.

#### **V. Responsibilities of the Title IX Coordinator and Deputy Title IX Coordinator**

The Title IX Coordinator coordinates Lebanon Valley College's efforts to comply with Title IX, including overseeing this Policy and the publication and dissemination of information required by Title IX. The Title IX Coordinator's responsibilities include: (1) receiving and responding to Reports of conduct that may constitute a violation of this Policy; (2) coordinating the effective implementation of Supportive Measures; (3) designating Investigators, Facilitators, and Decision-

makers to act pursuant to the Grievance Process; (4) ensuring that the technology needed to conduct and record hearings is available; (5) implementing effectively any Remedies or discipline imposed by a Decision-maker upon a finding of a violation of this Policy; and, (6) complying with the record-keeping requirements of this Policy.

The Deputy Title IX Coordinators support the Title IX Coordinator in fulfilling their role and responsibilities and may serve as the Title IX Coordinator's designee to carry out any response, action, initiative, project, or other responsibility outlined in this Policy. **An individual requiring emergency support should call 911 or the Office of Public Safety at 717-867-6111.** An individual requiring support should reach out to campus or community resources provided on the first page of this Policy.

## **VI. Reports of Potential Violations of this Policy**

Lebanon Valley College strongly encourages anyone who has information about a potential violation of this Policy to provide a Report to the Title Coordinator or another Campus Official. Any person may provide a Report of a potential violation to the Title IX Coordinator in person, by mail, by telephone or by electronic mail. Reports by mail, telephone or electronic mail made be made at any time, including outside of regular office hours.

A Report does not constitute a Formal Complaint. The procedure for filing a Formal Complaint is described in this Policy.

Any Campus Official who receives information or who otherwise has information about a potential violation of this Policy is required to provide the information received, in full, to the Title IX Coordinator.

## **VII. Response to Potential Violations of this Policy**

When the Title IX Coordinator or a Campus Official receives a Report, the College will respond by: (A) equitably offering Supportive Measures to the Complainant and Respondent, whether or not a Formal Complaint is filed; and (B) imposing disciplinary sanctions or other actions that are not Supportive Measures upon the Respondent only when the Respondent is found responsible for a violation of this Policy through a completed Grievance Process. Notwithstanding the foregoing, the College may impose an emergency removal or administrative leave as provided in this Policy.

## **VIII. Initial Assessment**

### **A. Purpose**

When the Title IX Coordinator receives a Report of alleged Title IX Sexual Harassment or a Formal Complaint alleging Title IX Sexual Harassment, the Title IX Coordinator will seek to gather information to undertake an initial assessment of any risk of harm to individuals or to the campus community and the description of the alleged misconduct in order to evaluate the appropriate response.

### **B. Addressing Risk of Harm**

The Title IX Coordinator will take any action necessary to address any risk of harm identified by the Title IX Coordinator, including implementation of Supportive Measures, initiation of actions designed to protect the larger campus community, or Emergency Removal of a Respondent. A

decision to remove a Respondent from campus pending the Grievance Process will follow the Emergency Removal of a Respondent Process described in this Policy. At the Title IX Coordinator's discretion, one or more Campus Officials may be included in the initial assessment or in evaluating information gathered in the initial assessment.

### **C. First Step in the Assessment**

The first step of the assessment is a discussion between the Title IX Coordinator and the Complainant. The purposes of the discussion are to:

- assess the nature and circumstances of the allegations;
- address the immediate physical safety and emotional well-being of the Complainant;
- notify the Complainant of the right to contact law enforcement (or not) and seek medical treatment;
- provide the Complainant with information about on- and off-campus resources;
- discuss the range and implementation of Supportive Measures;
- enter the Report into the College's daily crime log;
- assess the Reported conduct for the need for a timely warning under the Clery Act; and,
- explain the College's policy prohibiting retaliation.

### **D. Determination After Initial Assessment**

After the initial assessment of the information gathered, the Title IX Coordinator will take one of the following steps regarding the Grievance Process:

#### **1. Initiate Grievance Process**

If the Title IX Coordinator determines that the alleged misconduct falls within this Policy and a Formal Complaint has already been submitted, the Title IX Coordinator will proceed to initiate the Grievance Process, unless the Formal Complaint proceeds to Informal Resolution.

If a Formal Complaint has not yet been submitted, the Title IX Coordinator will advise the Complainant that a Formal Complaint is required to initiate an investigation. The Title IX Coordinator will provide the Complainant a Formal Complaint form (or link to a website where the form is available) for the Complainant's completion and signature. Once a signed Formal Complaint is submitted, the Title IX Coordinator will proceed to initiate the Grievance Process, unless the Formal Complaint proceeds to Informal Resolution.

If the Complainant determines not to file a Formal Complaint, and the Title IX Coordinator determines, in their discretion, that the allegations must be investigated, the Title IX Coordinator may initiate the Grievance Process by completing and signing a Formal Complaint.

#### **2. Refer for Action Pursuant to Different Policy**

With or without a Formal Complaint, when the initial assessment concludes with a determination that the alleged misconduct does not fall within the scope of this Policy but involves conduct that,

if found to have occurred, violates another College policy, the matter will be referred for further action under the applicable policy. The determination regarding next steps will be communicated to the Parties in writing.

If a Formal Complaint has been filed, the Title IX Coordinator shall follow the procedures for Dismissal of a Formal Complaint set forth in Grievance Process.

### **IX. Supportive Measures**

Promptly after receipt of a Report, the Title IX Coordinator will contact the Complainant and Respondent (if identified or identifiable based upon the Report) to discuss the availability of Supportive Measures. Supportive Measures are available with or without the filing of a Formal Complaint. In determining the Supportive Measures to be provided, the Title IX Coordinator will make an individualized determination, considering Complainant's wishes and other relevant factors, of the non-disciplinary, non-punitive measures that will be provided to the Complainant and Respondent to restore or preserve equal access to Lebanon Valley College's Education programs or Activities, to protect the safety of the Parties, and/or to deter Title IX Sexual Harassment.

All Supportive Measures will be provided without fee or charge and without unreasonably burdening the other Party. Supportive Measures will be maintained as confidential by the College to the extent that confidentiality will not impair the ability to provide the Supportive Measures.

Examples of Supportive Measures that may be implemented by Lebanon Valley College include:

- Academic extensions or adjustments
- Campus escort services
- Changes in housing
- Counseling
- Increased security or monitoring of certain areas of the campus
- Changes in work schedules or locations
- Modifications of class or activity schedules
- Mutual restrictions on contact between the Parties

### **X. Emergency Removal of a Respondent**

Lebanon Valley College may implement emergency removal of a Respondent, whether or not a Formal Complaint has been submitted, if there is an immediate threat to the physical health or safety of any student or other individual that arises from allegations of conduct that could constitute a violation of this Policy.

Prior to implementing an emergency removal, the College will first gather information to undertake an individualized safety and risk analysis. The analysis will be conducted by an individual who is free from bias or conflict of interest, who has relevant knowledge and experience, and who will not be involved in any later Grievance Process related to the student who is being evaluated for potential removal.

#### **A. Factors to be Considered**

The analysis of whether an immediate threat to the physical health and safety risk exists will focus on the specific Respondent and consider the specific circumstances arising from the allegations of Title IX Sexual Harassment that potentially pose an immediate threat to a person's physical health or safety. If a person expresses a subjective fear, that the College will consider it and will also apply an objective reasonable person standard. The College will consider the Respondent's propensity, opportunity, and ability to carry out a stated or potential threat. The analysis will evaluate whether Supportive Measures or other less restrictive means can negate or sufficiently minimize the threat. As part of its analysis, the College may rely on objective evidence and current medical knowledge and may consult with a licensed evaluator to analyze the information gathered. The College shall also consider Respondent's rights, if any, under applicable federal and/or state disability laws.

The relationship between a threat and the physical health or physical safety of any student or other individual will also be carefully evaluated. In some but not all cases, threatening speech or virtual interactions without an associated action may rise to the level of a threat to physical health or physical safety. If the threat posed is potential emotional impact only, the College will instead focus on identifying appropriate Supportive Measures.

The College will also closely examine whether the threat arises from allegations of conduct that could constitute Title IX Sexual Harassment under this Policy. As an example, an immediate threat to physical safety is likely present when a Respondent threatens physical violence against the Complainant in response to the Complainant's allegations of verbal harassment by the Respondent. Threats of self-harm will be addressed under other applicable policies. If the individualized safety and risk analysis results in a determination that a Respondent's actions pose an immediate and identified threat, but do not arise from allegations of Title IX Sexual Harassment, the College will respond pursuant to other applicable policies and/or procedures.

The College's assessment of the appropriateness of emergency removal will account for its multiple potential impacts, including: whether providing Supportive Measures will be sufficient to ensure equal educational access; the adverse impacts of separating a Respondent from educational opportunities and benefits; the protection of the health and safety of the Lebanon Valley College community; and, the anticipated timeline of an investigation and hearing. Because these evaluations are necessarily fact specific, in some cases the College may determine that restricting a Respondent's participation in specific programs or activities will adequately address the situation.

### **B. Emergency Removal is Not Discipline nor a Determination of Responsibility**

At all stages of the process, the College will ensure that the emergency removal will not impose a premature sanction on the Respondent or circumvent the Grievance Process. An emergency removal does not equate to a determination that a Respondent has engaged in a violation of this Policy and will not result in a presumption of responsibility in any subsequent Grievance Process.

### **C. Notice of Emergency Removal and Appeal**

In the event the College determines that emergency removal of a Respondent is appropriate, the Respondent will be notified immediately in writing. The written notice will include details about the specifically identified emergency threat of physical safety or harm underlying the decision, as

well as information about the Respondent's immediate opportunity to challenge the removal decision by filing an Appeal.

## **XI. Placement of Employee on Administrative Leave**

In the event a Formal Complaint alleges conduct that could constitute Title IX Sexual Harassment Discrimination and identifies an Employee as Respondent, The College may decide to place the Respondent on administrative leave, in emergency and non-emergency situations. The purpose of such an administrative leave is to allow a temporary separation of the Employee while the Grievance Process is ongoing. The College will determine the terms and conditions of the leave on a case-by-case basis. The decision process for placing an Employee-Respondent on leave will respect their rights under Title VII, Americans with Disabilities Act, and all other applicable employment laws.

## **XII. Grievance Process for Formal Complaints**

### **A. Overview**

All entitlements established in this section apply equally to the Parties. The Grievance Process applies when a Formal Complaint is signed and submitted, whether by a Complainant or by the Title IX Coordinator on behalf of the College. This process is grounded in a presumption that a Respondent is not responsible unless and until a Determination of Responsibility at the conclusion of this process. The standard of review for determinations regarding responsibility is Preponderance of Evidence. The preponderance of evidence standard of proof is met when the evidence shows that it is more likely than not that an allegation is true.

### **B. Filing of Formal Complaint**

The Grievance Process begins with the filing of a Formal Complaint which alleges that a Respondent has engaged in Title IX Sexual Harassment, is signed by the Complainant or the Title IX Coordinator, and requests that the College investigate the allegation of Title IX Sexual Harassment. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail.

### **C. Dismissal or Withdrawal of Formal Complaint**

If, at any time during the Grievance Process, the Title IX Coordinator determines that the alleged misconduct does not fall within this Policy because the conduct did not occur within Lebanon Valley College's Education Program or Activity, or the conduct did not occur within the United States, the Title IX Coordinator will dismiss the Formal Complaint by issuing a Notice of Dismissal.

If, at any time during the Grievance Process, the respondent is no longer enrolled or employed by the College or the Title IX Coordinator determines that specific circumstances prevent the College from gathering evidence sufficient to reach a determination of the allegations of the Formal Complaint, the College may dismiss the Formal Complaint by issuing a Notice of Dismissal.

The Notice of Dismissal, which will be issued to the Complainant within five (5) Business Days of the Title IX Coordinator's determination, will include the reasons for the dismissal. A dismissal

of a Formal Complaint from the Grievance Process shall not prevent the College from addressing the allegations in the Formal Complaint under another applicable College Policy. Any Party has the right to submit an Appeal from dismissal of a Formal Complaint.

If, at any time during the Grievance Process, the Complainant notifies the Title IX Coordinator in writing that they wish to withdraw the Formal Complaint or any allegations in the Formal Complaint, the Title IX Coordinator may dismiss the Formal Complaint. Alternatively, the Title IX Coordinator may decide that proceeding with the Grievance Process is necessary. In making that determination, the Title IX Coordinator must weigh the Complainant's wishes and the College's obligations to eliminate Title IX Sexual Harassment, prevent its recurrence, and remedy its effects.

#### **D. Length of Process**

Lebanon Valley College seeks to resolve all Reports of Title IX Sexual Harassment promptly, thoroughly, fairly, and equitably. The timeframes which the College strives to meet are set forth in this Policy. The College will inform the Parties regularly of the status of the Grievance Process, including the status of investigation and other steps in the process. Circumstances may arise that require the extension of anticipated time frames. Such circumstances may include the complexity of the allegations, the number of Witnesses involved, the availability of the Parties, Witnesses, or others involved, the effect of a concurrent criminal investigation, breaks or other closures of campus, concurrent law enforcement activity, the need for language assistance or accommodation of disabilities, or unforeseen circumstances. In the event timelines are modified, the College will provide written notification to the Parties.

#### **E. Privacy of Process**

Lebanon Valley College will keep confidential the identity of any individual who has made a Report or Formal Complaint, and the identity of any Complainant, Respondent, and Witness except as permitted by FERPA, required by law, or as necessary for the Institution to take action under this Policy.

#### **F. Participation in Grievance Process is Voluntary**

Parties and Witnesses are not required to participate in the Grievance Process, but without their live testimony at the hearing, the Hearing Board cannot rely upon their Statements. The College may not threaten, coerce, or intimidate a Party or Witness into participating, nor may the College retaliate against a Party or Witness for declining to participate in any part of the Grievance Process.

#### **G. Right to an Advisor**

Each Party has the right to choose an Advisor to assist and advise them (at the Party's own expense if the Advisor is paid). Each Party has the right to be accompanied by their Advisor throughout the Grievance Process, including during all related meetings and hearings. Parties are encouraged to identify an Advisor as soon as practical, as Advisors play an important role in supporting Parties. Each Party must notify the Title IX Coordinator promptly of the name, title, and contact information for their Advisor and any change in their Advisor. If a Party does not select an Advisor and the matter proceeds to a Live Hearing, an Advisor will be appointed by the College, at no fee to the Party, to ask Cross-examination Questions on that Party's behalf.

## **H. Request to Remove an Investigator, Hearing Board Member, or Title IX Coordinator**

Parties have the right to request that the Title IX Coordinator remove an Investigator or member of the Hearing Board based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial.

### **1. Challenge to an Investigator**

A challenge to an Investigator must be raised in writing within five (5) Business Days of receipt of the Notice of Investigation. The Title IX Coordinator will determine whether to remove the Investigator. If the Investigator is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If an Investigator is removed and replaced, the Title IX Coordinator will send written notification to the Parties of the name of the new Investigator.

### **2. Request to Remove a Hearing Board Member**

Following receipt of the Notice of Live Hearing, Parties have the right to request that the Title IX Coordinator remove a member of the Hearing Board based on reasonable and articulated grounds of bias, conflict of interest, or an inability to be fair and impartial. This request must be raised in writing within two (2) Business Days of receipt of the Notice of Live Hearing. The Title IX Coordinator will determine whether to remove the Hearing Board member. If the Hearing Board member is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If a Hearing Board member is removed and replaced, the Title IX Coordinator will send written notification to the Parties of the name of the new Hearing Board member.

### **3. Request to Remove the Title IX Coordinator**

A Party may request that someone other than the Title IX Coordinator oversee the Grievance Process based on reasonable and articulated grounds of bias, conflict of interest, or an inability to be fair and impartial. Any such request must be submitted in writing to the person to whom the Title IX Coordinator reports, which is the President of the College, as soon as a Party becomes aware of any such grounds for removal. The President of the College will determine whether to designate another person perform the Title IX Coordinator's duties for the specific matter, and if necessary, will identify the person to undertake those duties.

## **I. Procedures Following a Formal Complaint**

### **1. Initiate an Investigation**

The Title IX Coordinator will initiate an investigation unless the Formal Complaint is proceeding through the Informal Resolution Process. The Title IX Coordinator will issue a Notice of Investigation to known Parties sufficiently in advance of any request to meet with the Investigator. This Notice of Investigation will include:

- a. Notice of these grievance procedures, including the Informal Resolution process, and a copy of this Policy.
- b. The conduct alleged to violate this Policy, and the date and location of the alleged incident, if known.

- c. Known Parties involved in the alleged incident
- d. A statement that the Respondent is presumed not responsible for the alleged misconduct and that a Determination of Responsibility will be made at the conclusion of the process.
- e. Notice of the Parties' right to an Advisor of choice, who will be permitted to accompany them to investigation meetings, interviews, and any hearing and to review materials provided to their advisee throughout the process.
- f. Notice of and citation to the College's prohibition on knowingly making false Statements or submitting false information during a College process.

If during an investigation, new or additional allegations arise that require investigation, The College will send the Parties an updated Notice of Investigation revising the scope of the investigation.

## **2. Option of Informal Resolution**

If the Parties voluntarily agree to proceed with the Informal Resolution Process, the Title IX Coordinator may refrain from initiating the Grievance Process or may pause an ongoing Grievance Process.

## **3. Concurrent Law Enforcement Activity**

When the College receives a Report of Title IX Sexual Harassment to which it has determined it must respond through its Grievance Process, the College's process continues regardless of whether a Complainant has made or decides to make a report to law enforcement. The filing of a report with law enforcement, or an ongoing law enforcement investigation or proceeding does not relieve the College of its obligation to address the Complaint through its Grievance Process. At the College's discretion, the College may temporarily pause its investigation at the request of law enforcement. In that circumstance, the Title IX Coordinator will send written notice to the Parties explaining the reason for pausing the investigation.

## **J. Consolidation of Certain Formal Complaints**

If there are multiple Complainants and one Respondent, the College may consolidate Formal Complaints where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances. All Parties will be notified in writing of a decision to consolidate Formal Complaints.

## **K. Investigation**

The College's investigation process is designed to allow for the thorough, impartial, and reliable gathering of information and to result in a comprehensive investigation report summarizing relevant, admissible evidence. The College's strives to complete its investigation within thirty (30) Business Days, understanding that numerous issues arise during investigations that may justify a good cause extension of the timeline.

## **1. Assignment of Investigator**

The Title IX Coordinator will supervise the investigation, starting with determining who will serve as Investigator. The Investigator may be a Lebanon Valley College Employee or Employees, an external Investigator or Investigators, or a team of Investigators that pairs an external Investigator with a Lebanon Valley College Employee. All Investigators will conduct the investigation with a presumption that the Respondent is not responsible and will act without bias or conflict of interest.

## **2. Process Overview**

The Investigator will conduct the investigation in a manner appropriate considering the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any Witnesses. The Investigator will provide advance written notice to Parties of the date, time, location, participants, and purpose of any requested meeting(s). Investigation interviews will be conducted in a thorough, impartial, and fair manner; all involved individuals will be treated with appropriate sensitivity and respect.

Interviews will be supplemented by the gathering of any physical, documentary, and other evidence, as appropriate and available. The burden of gathering relevant, admissible information sufficient for the College to reach a determination of whether a violation of this Policy has occurred rests on the College. The Parties will have an equal opportunity to submit evidence and suggest Witnesses (including fact and expert Witnesses).

The Investigator will decide which individuals to interview based on the information the Investigator gathers as part of the investigation and, with respect to Witnesses offered by a Party, the Investigator may ask the Witnesses to describe the information the Party expects the Witness to provide. The Title IX Coordinator may direct that additional interviews be conducted.

The Investigator will not ask questions or gather information or documents protected by a legally recognized privilege, including treatment records of a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a professional capacity, without written consent to use such documents in the Grievance Process from the person protected by the privilege. The Investigator will not seek information about a Complainant's sexual predisposition and will only allow submission of or pursue information about a Complainant's prior sexual behavior if such questions and evidence: (1) are offered to prove that someone other than the Respondent committed the alleged misconduct; or, (2) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to establish Consent.

The investigation will be conducted in a manner that is respectful of individual privacy concerns. To be clear, however, confidentiality cannot be promised during an investigation because, for example, the Investigator may need to speak with Witnesses and others to gather evidence. The Parties are not restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence. However, where the investigation reveals intentional efforts by a Party to fabricate or alter information they submit or to influence the information a Witness provides to the Investigator, conduct charges may result.

### **3. Parties' Review of and Response to Information Gathered as Part of Investigation**

At the conclusion of the investigation, the Investigator will assemble all inculpatory and exculpatory information gathered during the investigation that is directly related to the allegations of the Formal Complaint, including information upon which the College does not intend to rely in reaching a determination regarding responsibility. The Investigator will redact information that is unrelated to the allegations of the Formal Complaint or otherwise not admissible in the Grievance Process (i.e., because it is subject to an unwaived legally recognized privilege or constitutes prior sexual history not offered to establish Consent or that Respondent did not engage in the alleged misconduct). The Investigator will create a list describing information it has redacted or removed as irrelevant, inadmissible, or not directly related to the allegations of the Formal Complaint, which it may allow the Parties to inspect.

The assembled information will then be shared with the Parties and their Advisors in hard copy or an electronic format. Depending on the nature of the information shared, the College may require Parties and their Advisors to agree to restrictions or sign a non-disclosure agreement prohibiting dissemination of any of the information provided for inspection and review or use of such evidence for any purpose unrelated to this Grievance Process. The Parties will have at least ten (10) Business Days to review the assembled information and submit a written response to it.

The Investigator will review the Parties' responses to evaluate whether further investigation may be required to ensure the investigation is thorough and complete. In consultation with the Title IX Coordinator, the Investigator will determine any further action indicated by the Parties' responses and develop a plan to complete the investigation.

### **4. Investigation Report**

After considering the Parties' responses and conducting any additional investigation indicated by those responses, the Investigator will prepare a report summarizing all the relevant, admissible information obtained during the investigation, including Inculpatory Evidence and Exculpatory Evidence. The Investigator will incorporate the Parties' responses to the report, as well as an explanation of any additional steps taken after receipt of Party responses and include any related materials. These written submissions and all information gathered during the investigation will collectively be considered the investigation report.

To the extent that the investigation report includes an assessment of Party and Witness Credibility, Credibility determinations may not be based upon a person's status as a Complainant, Respondent or Witness.

### **5. Parties' Review of and Response to Investigation Report**

When the investigation report is complete, the College will provide a copy of it to the Parties and their Advisors in electronic format or hard copy for their review and written response. The Parties shall have five (5) Business Days to respond to the investigation report.

The investigation report and all evidence will be available at any hearing to give each party equal opportunity to refer to the evidence. Any hearing on the allegations investigated will not be held

sooner than ten (10) Business Days after the investigation report is provided to the Parties and their Advisors.

#### **L. Determination After Investigation**

At the conclusion of the investigation, the Title IX Coordinator will review the investigation report to determine whether the conduct, if proved, falls within this Policy. When the alleged conduct, if proved, falls within this Policy, the Title IX Coordinator will prepare a Notice of Charge based on information contained in the investigation report.

If the conduct, even if proved, does not fall within this Policy because it would not constitute Title IX Sexual Harassment, because it did not occur within Lebanon Valley College's Education Program or Activity, or because it did not occur within the United States, the College must dismiss the Formal Complaint. The College may dismiss a Formal Complaint if the Title IX Coordinator determines: that there is not sufficient cause to believe the alleged conduct may have occurred; the Respondent is no longer enrolled or employed by the College; or specific circumstances prevent the College from gathering sufficient evidence to reach a Determination of Responsibility or No Responsibility.

In either instance, the Title IX Coordinator will issue a Notice of Dismissal, including the reasons for the dismissal, to the Parties simultaneously within five (5) Business Days of the Title IX Coordinator's determination. If the alleged conduct would potentially violate a different College Policy, the Notice of Dismissal will direct the Parties to that policy. The Parties have a right to submit an Appeal from a dismissal of a Formal Complaint.

#### **M. Notice of Charge**

If the Formal Complaint is not dismissed, the Title IX Coordinator will issue a Notice of Charge simultaneously to the Parties. The Notice of Charge shall not issue before the Parties have had five (5) Business Days to review and respond to the investigation report and will be sent to the Parties within ten (10) Business Days of the conclusion of the investigation. The hearing shall not be scheduled sooner than ten (10) Business Days after the Notice of Charge is issued. The Notice of Charge will include the following information:

- a brief factual summary of the conduct alleged to have violated the Policy, including date, time and location;
- the specific Policy provision(s) at issue; and
- possible sanctions associated with a finding of responsibility for the alleged Policy violation(s).

The Notice of Charge will attach a copy of this Policy or include the website where this Policy is available.

### **XIII. Live Hearings**

Following the issuance of the Notice of Charge, if Informal Resolution is not being conducted, the Grievance Process proceeds to a Live Hearing.

## **A. Notice of Live Hearing**

The Notice of Live Hearing will be sent to the Parties simultaneously within ten (10) Business Days of the delivery of the Notice of Charge and at least five (5) Business Days before the scheduled hearing date. The Notice of Live Hearing may be, but need not be, sent with the Notice of Charge. The Notice of Live Hearing will include the following information:

- the date, time, and location of the Live Hearing;
- whether the Live Hearing will be recorded via an audio recording, an audiovisual recording, or a transcript;
- the composition of the Hearing Board designated by the Title IX Coordinator; and,
- a statement that there is a presumption of No Responsibility on the part of the Respondent until a determination regarding responsibility is made at the conclusion of the Grievance Process.

In addition, the Notice of Charge will attach a copy of this Policy or include a reference to the website where this Policy is published.

## **B. Title IX Coordinator as Hearing Board Chair**

Hearings are convened by the Title IX Coordinator. The Title IX Coordinator oversees all hearings. In rare circumstances when the Title IX Coordinator is unavailable or ineligible to do so, the Title IX Coordinator will designate the person to convene and oversee the Hearing Board process. The Title IX Coordinator will be the non-voting chair of the Hearing Board during Live Hearings, serving as a process and policy advisor to the Hearing Board. In this role, the Title IX Coordinator may be referred to as the Hearing Officer.

The Title IX Coordinator is never a Decision-maker, whether in connection with a Live Hearing or an Appeal but may be an Investigator.

## **C. Hearing Board**

Prior to the Live Hearing, the Hearing Board will have read all the information in the investigation report. The Parties will have the same information as the Hearing Board.

### **1. Gathering Information**

The Hearing Board will focus its questions on those areas where it needs clarification or more information. The Hearing Board will not necessarily need the Parties or Witnesses to repeat everything they shared during the investigation, but as the Decision-maker(s), the Hearing Board is obligated to come to its own Findings of Fact.

The Hearing Board has the right and responsibility to ask questions and elicit information from Parties and Witnesses on the Hearing Board's own initiative to aid the Hearing Board in obtaining relevant information, both inculpatory and exculpatory.

Only members of the Hearing Board may ask questions of any person testifying, except in connection with Cross-examination Questions asked by Advisors. The Hearing Board is responsible for ensuring that it has sought and probed all information necessary to make an

informed decision. At times, the Hearing Board will need to ask difficult or sensitive questions to understand the allegations and related information and to gain a full understanding of the context. If at any time a Party does not understand a question or why the Hearing Board is asking a question, the Party should let the Hearing Board know. The Hearing Board will explain and modify its question at its discretion.

The Parties have equal rights to present information in front of the Hearing Board, which ensures that the Hearing Board has the benefit of each Party's perspectives about the evidence. This right includes calling Witnesses. Parties have no right to self-representation and may not ask questions directly of the other Party or Witnesses.

## **2. Evaluating Information**

The Hearing Board must objectively evaluate all admissible, relevant evidence for weight or Credibility, including both Inculpatory Evidence and Exculpatory Evidence. The Hearing Board must focus on evidence pertinent to proving whether facts material to the allegations under investigation are likely to be true. Credibility determinations may not be based upon a person's status as a Complainant, Respondent or Witness. Determinations of Credibility must be based on objective evaluation of relevant evidence, not on inferences based on Party or Witness status. Credibility determinations are based on a number of factors, including demeanor (but never only demeanor); opportunity and capacity to observe the event; contradiction or consistency with other evidence; availability of corroboration (where it should logically exist, noting that corroborating evidence is not required); level of detail in Statement or testimony; motive to be untruthful; and inherent plausibility or implausibility.<sup>1</sup> The evaluation of Credibility also takes into account the normal fallibility of human memory.

A Party's answers to Cross-examination Questions will be evaluated by the Hearing Board in context, considering that a Party may experience stress while answering Cross-examination Questions. Parties will not be unfairly judged if they are unable to recount every specific detail in sequence, whether such inability is due to trauma, the effects of drugs or alcohol or simple fallibility of human memory.

### **D. Role and Obligations of Advisors During Hearings**

1. The Advisor is present to provide support to the Party and not to serve as a proxy voice for the Party.
2. Advisors may not speak during the hearing process, except where permitted to present Cross-examination Questions. Therefore, in all instances other than Cross-examination Questions, Advisors may not speak to the Hearing Board, make statements or arguments, or answer questions.

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<sup>1</sup> U.S. Equal Employment Opportunity Commission: Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999). <https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors>.

3. Advisors conducting Cross-examination must be capable of understanding the purpose or scope of Cross-examination. Equal competency between the Parties' Advisors is not required.
4. When conducting Cross-examination, Advisors need not be advocates for Parties, but simply may be individuals who ask questions.
5. Advisors can confer quietly with their advisee as needed, but if there is a need for an extended discussion, the Party should ask for a break in the Live Hearing.
6. Advisors cannot direct the Party how to answer a question.
7. Advisors should conduct themselves quietly and professionally, must not disrupt the proceedings and must comply with any rules of decorum imposed by the College. An Advisor who does not do so may be removed from the Live Hearing. In that instance, the Party may select another Advisor, or the College will appoint a substitute Advisor.

#### **E. Location of the Live Hearing**

Live Hearings may be conducted with all Parties physically present in the same geographic location or, at the College's discretion, any or all Parties, Witnesses, and other participants may appear at the Live Hearing virtually, with the Parties being able to see and hear each other and Witnesses live.

At the request of either Party, the College will provide for the entire Live Hearing (including Cross-examination) to occur with the Parties located in separate rooms with technology enabling the Parties to see and hear each other. Unlike Parties, Witnesses do not have the right to demand to testify in a separate room, but the College, in its discretion, may permit any participant to appear remotely.

#### **F. Recording of Live Hearing**

The College will create an audio or audiovisual recording or transcript of the entire Live Hearing. The recording or transcript will be available to the Parties for inspection and review.

#### **G. Scope of the Live Hearing**

The Live Hearing will relate solely to charges set forth in the Notice of Charges issued to the Parties. If the Parties or any Witnesses share information that goes beyond these charges, the Hearing Board will redirect the speaker to the charges at hand.

Parties may be accountable for additional violations discovered through the Grievance Process even if they do not appear in the Notice of Charge/Notice of Live Hearing. In this instance, a separate Grievance Process under this Policy, or under other applicable policies, may be commenced.

#### **H. Attendance at the Hearing**

The Live Hearing is closed, meaning it is not open to the public. Witnesses may be present only for their individual meeting with the Hearing Board. Advisors and Parties may be present throughout the proceeding. If a Party, after having been given notice, does not appear at the Live Hearing, the Live Hearing will be conducted in their absence, and the Party's Advisor may appear

and conduct Cross-examination. In the event neither a Party nor their Advisor appear at the hearing, The College will provide an Advisor to appear on behalf of the non-appearing Party.

### **I. Expectation of Honesty**

Parties and other individuals who offer information at a Live Hearing are expected to respond honestly and to the best of their knowledge. The Hearing Board may recall any Party or Witness for further questions and to seek additional information as it deems necessary. A Party or Witness who intentionally provides false or misleading information may be subject to discipline under this Policy or other applicable policies.

### **J. Cross-examination Questions and Effect of Failure to Submit to Cross-examination**

#### **1. Advisors Conduct Cross-examination**

Advisors are allowed, on behalf of the Party they are advising, to cross-examine the other Party and Witnesses by asking relevant questions and follow-up questions, including questions challenging Credibility.

#### **2. Relevance Determination Before Answering**

Before a Party or Witness answers a Cross-examination Question, the Hearing Board will determine if the question is relevant. If a question is deemed irrelevant, the Hearing Board will explain why. The requirement of Relevance applies throughout the hearing, including during Cross-examination, and will be determined by the Hearing Board. Parties should understand that the process of Cross-examination may be difficult and may feel uncomfortable because its purpose is to promote the perspective of the other Party. Cross-examination Questions may not be submitted in writing in advance of the Live Hearing or during the Live Hearing for purposes of seeking an evaluation of Relevance.

#### **3. Effect of Not Submitting to Cross-examination**

If a Party or Witness does not submit to Cross-examination by Advisors at the Live Hearing, the Hearing Board must not rely on any Statement of that Party or Witness in reaching a determination regarding responsibility. This rule does not apply if a Party or Witness refuses to answer questions posed by the Hearing Board.

- a. "Submit to Cross-examination" means answering those Cross-examination Questions that are relevant, as determined by the Hearing Board in real time during the Live Hearing. If a Party or Witness disagrees with the Hearing Board's Relevance determination, they may either (a) abide by the Hearing Board's determination and answer the question or (b) refuse to answer the question. In the event the Party or Witness refuses to answer the question, unless the Hearing Board reconsiders the Relevance determination, the Hearing Board cannot rely on any Statement of that Party or Witness.
- b. "Statement" has its ordinary meaning but does not include evidence (such as videos) that do not constitute a person's intent to make factual assertions, or to the extent that such evidence does not contain a person's Statements. Thus, Documents and records that contain Statements may not be relied on in making a final

determination after the completion of the hearing if the Party or Witness who made the Statements has not submitted to Cross-examination. Probing the Credibility and reliability of Statements contained in such documents requires the Parties to have the opportunity to cross-examine the individual(s) making the Statements.

c. Examples

- This rule applies to law enforcement report, SANE reports, medical reports, and any other documents and records that contain the Statements of a Party or Witness who has not submitted to Cross-examination.
- If one Party to a text message or email exchange submits to Cross-examination and the other does not, only the messages of the individual who submits to Cross-examination may be considered.
- Where a Party refuses to answer Cross-examination Questions, but video evidence exists showing the underlying incident, the Hearing Board may still consider the available evidence and make a determination.
- If the matter does not depend upon a Party's or Witness's Statements, but on other evidence (e.g., video evidence that does not consist of "Statements" or to the extent the video contains non-Statement evidence), the Hearing Board can still consider this other evidence and reach a determination, but without drawing any inference based upon lack of Party or Witness testimony.

**K. Breaks**

The Hearing Board may need to take breaks during testimony to ensure that it can confer regarding the information that has been offered and can determine whether further questions are necessary. At any time, a Party may request a break to talk with their Advisor or for another reason. In almost all instances, a break will be allowed.

**L. Rape Shield Protections**

All questions and evidence about Complainant's sexual predisposition or prior sexual behavior are irrelevant unless offered to prove that someone other than the Respondent committed the alleged misconduct or offered to prove Consent.

**M. Order of the Live Hearing**

1. The Chair will call the Live Hearing to order and will explain the hearing process, which will include a reading of the charge(s) at issue and will provide an opportunity for all Parties to ask procedural questions prior to opening statements.
2. The Parties shall be informed that the hearing is being recorded. The recording is the sole official verbatim record of the Live Hearing and is the property of the College.
3. The Complainant may present an opening statement related to the charges.
4. The Respondent may present an opening statement related to the charges.
5. The Hearing Board will ask the Complainant questions relevant to the charges.

6. The Respondent's Advisor may ask Complainant relevant questions and follow-up questions, including those challenging Credibility (Cross-examination Questions).
7. The Hearing Board will ask the Respondent questions relevant to the charges.
8. The Complainant's Advisor may ask Respondent relevant questions and follow up questions, including those challenging Credibility (Cross-examination Questions).
9. The Hearing Board may call Witnesses to provide relevant information to the Hearing Board.
10. At the conclusion of each Witness, Complainant and Respondent's Advisors may ask each Witness relevant questions and follow up questions, including those challenging Credibility (Cross-examination Questions).
11. At the conclusion of the testimony of the Parties and the Witnesses, the Parties will be able to make a closing statement, with the Complainant going first and the Respondent going next.
12. The Chair will announce that the Live Hearing is concluded.

#### **N. Hearing Board Deliberations and Written Determination**

When the Live hearing concludes, the Hearing Board will deliberate and make its decision in accordance with the preponderance of the evidence Standard of Evidence. The Hearing Board will issue a Written Determination, which will be sent to the Parties simultaneously within fifteen (15) Business Days of the conclusion of the Live Hearing. The Written Determination will include:

- a. Procedural History
- b. Summary of allegations in Notice of Charge/Notice of Live Hearing
- c. Policy provisions at issue
- d. Findings of Fact related to each allegation potentially constituting Title IX Sexual Harassment, made by the applicable standard of evidence
- e. Rationale (or evidentiary basis) for the Findings of Fact related to each allegation, which should include an evaluation of the weight or Credibility of admissible, relevant evidence
- f. A determination of whether the conduct found to have occurred violates this Policy (Determination of Responsibility) or not (Determination of No Responsibility)
- g. Rationale (or evidentiary basis) for the Determination of Responsibility or No Responsibility
- h. A statement of any disciplinary sanctions imposed on the Respondent and the rationale for the sanctions
- i. A statement of whether Remedies will be provided to the Complainant, using the phrase: "Remedies designed to restore or preserve equal access to Lebanon Valley College's Education Program or Activity will be provided by the College to the

Complainant.” The nature of such Remedies will not appear in the Written Determination. Remedies that do not directly affect the Respondent will not be disclosed to the Respondent.

- j. Information about how to file an Appeal and how to access the transcript or recording before the time to file an Appeal lapses.

The Title IX Coordinator is responsible for the effective implementation of any Sanctions or Remedies.

## **O. Sanctions**

### **1. Possible Sanctions**

The following sanctions and/or conditions may be imposed following a Determination of Responsibility for a violation of this Policy. The described range of sanctions is required by Federal law under Title IX and that the published range is purely for purposes of notice as to the possibility of a range of Remedies and disciplinary sanctions and does not reflect the probability that any particular outcome will occur.

#### **a. Students**

- Expulsion (permanent separation)
- Suspension
- Deferred suspension
- Disciplinary Probation
- Disciplinary probation with deferred removal from the residence halls
- Loss of housing contract
- Residence hall probation
- Conduct warning
- Title IX Sexual Harassment education or other relevant education
- Parent or guardian notification (subject to privacy restrictions)
- Financial restitution
- Fine
- Community restoration and/or community service
- Loss of campus privileges
- Loss of campus employment and/or opportunities for campus employment
- Withholding records or degree
- Revocation of admission and/or degree
- Bar against registration
- Discretionary action
- Substance abuse education and/or evaluation

#### **b. Employees**

- Termination of employment
- Revocation or denial of tenure
- Suspension

- Demotion
- Progressive discipline
- Warning
- Loss of pay or other pay adjustments
- Job transfer
- Change or restrictions in work location and/or job responsibilities
- Title IX Sexual Harassment education
- Restrictions on the Employee's communications
- Limitations on the Employee's movement in or on campus, including programs, and activities

## **2. Factors in Determining Sanctions**

In considering the appropriate sanction within the recommended outcomes, the Hearing Board may consider the following factors:

- Respondent's prior disciplinary history;
- how the College has sanctioned similar incidents in the past;
- the nature of the conduct at issue, including whether there was violence;
- the impact of the conduct on the Complainant;
- the impact of the conduct on the Lebanon Valley College community, its members or College property;
- whether the Respondent accepted responsibility;
- whether the Respondent is reasonably likely to engage in the conduct in the future;
- any other mitigating or aggravating circumstances, including the College's values and policies
- the College's obligation to eliminate Title IX Sexual Harassment, prevent its recurrence, remedy its effects, and to maintain an environment free from Title IX Sexual Harassment.

A Respondent's lack of comprehension that personal conduct constituting Title IX Sexual Harassment violates the bodily or emotional autonomy and dignity of a victim does not excuse the misconduct, though genuine lack of understanding may, in the College's discretion, factor into the sanction decision.

## **3. Remedial Action**

The Hearing Board may consider other remedial actions that may be taken to address and resolve any incident of Title IX Sexual Harassment and to prevent its recurrence, including: strategies to protect the Complainant and any Witnesses from retaliation; provide counseling for the Complainant; other steps to address any impact on the Complainant, any Witnesses, and the broader campus community, and any other necessary steps reasonably calculated to prevent future occurrences of harassment.

## **4. Failure to Comply with Sanctions.**

Failure to comply with the sanctions or conditions imposed by the Hearing Board will result in action under Lebanon Valley College's Student Code of Conduct or Faculty Policy Manual or Employee (Staff) Handbook, as applicable.

## **P. Effective Date of the Written Determination and Possible Notice to Parents**

The Written Determination becomes final only after the period to file an Appeal has expired or after the Appeal decision has been sent to the Parties. The Written Determination will identify to whom any Appeal must be addressed.

The College reserves the right to notify parents of dependent students when student conduct has resulted in serious disciplinary sanctions.

## **XIV. Appeals**

### **A. Filing an Appeal**

The Parties have equal rights to file an Appeal. Appeals will be submitted to the Title IX Coordinator. Appeals must be submitted within five (5) Business Days of the issuance of the Notice of Dismissal or Written Determination that the Party seeks to appeal.

### **B. Grounds for Appeal**

An Appeal is not intended to be a rehearing of the information presented at the Live Hearing. An Appeal may only be based upon one or more of 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;
3. Conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and/or,
4. The sanction imposed is substantially disproportionate to policy violation.

### **C. Actions upon Receipt of Appeal**

1. The Title Coordinator shall designate a Decision-maker (the "Appeal Decision-maker") to consider and decide any Appeal.
2. Within five (5) Business Days of the receipt of the Appeal by the Title IX Coordinator, the Title IX Coordinator will give notice to the Parties of the appeal and of the identity of the Appeal Decision-maker.
3. The Parties will have two (2) Business Days after notice of receipt of the Appeal to request that the Title IX Coordinator remove the Appeal Decision-maker based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial. The Title IX Coordinator will determine whether to remove the Appeal Decision-maker. If the Appeal Decision-maker is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If the Appeal Decision-maker is removed and replaced, the Parties will be sent simultaneous written notification of the name of the new Appeal Decision-maker.

4. When the time to request removal of the Appeal Decision-maker has run, the Appeal Decision-maker will be provided with the entire file provided to the Hearing Board, together with the Written Determination.
5. The Appeal Decision-maker will first determine whether the Appeal will be accepted, based upon whether one or more of the Appeal Grounds set forth above has been properly alleged by the Appellant. Within five (5) Business Days of the receipt of the Appeal, the Appeal Decision-maker will send written notice to the Parties simultaneously that either (a) the Appeal has been rejected due to insufficient grounds, with the Appeal Decision-maker's rationale, or (b) the Appeal has been accepted.
5. The non-appealing Party/ies will be entitled to submit a response to the Appeal, which must be sent to the Title IX Coordinator within five (5) Business Days of receipt that the Appeal was accepted.
6. The Appeal Decision-maker will then analyze all the materials related to the Appeal and will take one of the following actions:
  - a. Uphold the original decision
  - b. Send the matter back to the Hearing Board for further consideration
  - c. Refer the matter to the Title IX Coordinator for further investigation or a new hearing with a new Hearing Board
7. The Appeal Decision-maker will issue its written decision on Appeal within ten (10) Business Days after the receipt of the non-appealing Party/ies response. If no response is submitted by the non-appealing Party/ies, then the written decision shall be issued within ten (10) Business Days after the date the response was due to be submitted.
8. The written Appeal decision, which will include the Appeal Decision-maker's rationale, will be sent to the Parties simultaneously.

#### **D. Appeal Decisions are Final**

A decision denying the entitlement to an Appeal and all decisions made by the Appeal Decision-maker are final.

#### **E. When an Appeal is not Filed**

The Parties will be notified if the time to file an Appeal has expired without any Appeal having been submitted.

### **XV. Grievance Process Timeframes**

Measured from the conclusion of the investigation, the College strives to meet the following timeframes for the Grievance Process. All days are measured in Business Days.

- A. A Notice of Charge or Notice of Dismissal: The Notice of Charge or Notice of Dismissal will be sent to the Parties simultaneously within ten (10) Business Days of the conclusion of the investigation.

- B. Notice of Live Hearing: As applicable, a Notice of Live Hearing will be sent the Parties simultaneously within ten (10) Business Days of the delivery of the Notice of Charge.
- C. Challenge to Hearing Board Member: Within two (2) Business Days of receipt of the Notice of Live Hearing, Parties have the right to make a written request that the Title IX Coordinator remove a member of the Hearing Board based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial.
- D. Live Hearing: The Live Hearing will begin no sooner than ten (10) Business Days after the Notice of Charge is issued, no sooner than five (5) Business Days after the Notice of Live Hearing, and no later than twenty (20) Business Days after the Notice of Live Hearing is issued.
- E. Written Determination following a Live Hearing: Following a Live Hearing, the Written Determination will be sent to the Parties simultaneously within fifteen (15) Business Days of the conclusion of the Live Hearing.
- F. Appeals:
  1. Parties must file an Appeal within five (5) Business Days of receipt of the Written Determination.
  2. Within five (5) Business Days of the receipt of the Appeal by the Title IX Coordinator, the Appellant and non-appealing Party/ies will receive written notice that an Appeal has been submitted and the identity of the Appeal Decision-maker.
  3. The Parties will have two (2) Business Days after notice of receipt of the Appeal to request that the Title IX Coordinator remove a member of the Appeal Decision-maker based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial.
  4. Within five (5) Business Days of the receipt of the Appeal, the Appeal Decision-maker will send written notice to the Parties either accepting or rejecting the Appeal.
  5. The Appeal Decision-maker will issue its written decision on Appeal within ten (10) Business Days after the receipt of the non-appealing Party/ies response to the Appeal.

## **XVI. Informal Resolution**

### **A. Option for Voluntary Informal Resolution**

Lebanon Valley College offers a voluntary process for Formal Complaints to be addressed through Informal Resolution. During the Informal Resolution process, a Facilitator will attempt to help the Parties come to an agreement about how to resolve a Formal Complaint. The Informal Resolution process is available to the Parties only after a Formal Complaint is filed and before a Determination of Responsibility or No Responsibility is issued. The Informal Resolution process is never available where a Formal Complaint alleges that a College Employee engaged in Title IX Sexual Harassment toward a student.

All Parties' participation in the Informal Resolution process must be voluntary. To initiate the Informal Resolution process, each Party must sign the "Consent to Informal Resolution Process"

form and submit it to the Title IX Coordinator. When all Parties to a Formal Complaint have submitted the consent forms, the College will pause the Grievance Process, including any ongoing investigation or hearing, for a period of fifteen (15) Business Days (unless a shorter or longer time is set by the Title IX Coordinator), to allow the Parties to proceed with the Informal Resolution Process. The period during which the Grievance Process is paused for the Informal Resolution Process shall not count toward the time periods set forth to conclude the Grievance Process.

#### **B. Notice Prior to Informal Resolution.**

Prior to the beginning the Informal Resolution process, the College will provide notice of the allegations of the Formal Complaint and will direct the Parties' attention to the Informal Resolution provisions of this Policy.

#### **C. Role of the Facilitator**

The Facilitator will decide the process and procedures to be used in the Informal Resolution process but shall not take actions inconsistent with this Policy. The Facilitator will treat the Parties fairly and equitably. Each Party may be accompanied by their Advisor during any portion of the Informal Resolution process. The Facilitator may meet with the Parties separately, may share information obtained during the course of any investigation with the Parties, may make suggestions about the terms of an Informal Resolution, and may take other reasonable steps to assist the Parties in determining if they can reach an Informal Resolution. The Facilitator shall not require the Parties to meet, in-person, unless the Parties agree to do so.

If the Parties reach an agreement to resolve a Formal Complaint informally, the Facilitator shall create a written agreement that lists the terms of the Informal Resolution for the Parties to sign. A Party may withdraw from the Informal Resolution process at any time before they sign a written document agreeing to an Informal Resolution and within 48 hours after the Party signs the written agreement. If a Party timely withdraws from the information resolution process, then the College shall resume the Grievance Process.

Under no circumstances may the Facilitator be called as a Witness in the Grievance Process.

#### **D. Approval of Informal Resolution By Title IX Coordinator**

If no Party withdraws from the written agreement within 48 hours, the agreement shall be presented to the Title IX Coordinator for final approval and implementation. The Title IX Coordinator shall give deference to the Parties' agreement but shall not approve an agreement that the Title IX Coordinator determines to be impractical, unduly burdensome, or inconsistent with the College's obligations under this Policy, Title IX, or another applicable law or policy. If the Title IX Coordinator disapproves the Parties' written agreement, the Facilitator and the Parties may agree to modify and resubmit the agreement. If they do not agree to do so and/or do not submit a modified written agreement, then the College shall resume the Grievance Process.

### **XVII. Prohibition Against Retaliation**

Neither the College nor any other person may retaliate against an individual who has participated or refused to participate in any matter addressed under this Policy. Retaliation includes any action to intimidate, threaten, coerce, or discriminate against an individual (a) for the propose of interfering with any right or privilege secured by Title IX or its implementing regulations; or (b)

because the individual has made a Report or Formal Complaint, testified, assisted, or participated or refused to participate in any manner in any investigation, proceeding, or hearing under this Policy. Retaliation is also prohibited against individuals involved in matters that do not arise under this policy but arise out of the same facts or circumstances as a Report or Formal Complaint of sex discrimination or sexual harassment.

### **XVIII. Recordkeeping**

The College will maintain the records identified in this section of this Policy for a period of seven (7) years. The records maintained shall be kept confidential and not disclosed, except as permitted or required by law. The records may be maintained in paper or digital files.

In connection with each Report and each Formal Complaint, the College will maintain the following records, to the extent they exist:

- documentation of any Report of alleged Title IX Sexual Harassment;
- documentation of any Supportive Measures or if no Supportive Measures are provided, the reasons why and an explanation of how the College's response was not clearly unreasonable;
- the Formal Complaint;
- documentary evidence gathered in the course of an investigation and photographs or descriptions of nondocumentary evidence gathered in the course of an investigation;
- written responses of the parties provided prior the finalization of the investigation report;
- the Investigation Report;
- the audio recording, audiovisual recording, or transcript of any Live Hearing;
- the Written Determination;
- any Appeal and Written Appeal Decision;
- records of the sanctions and/or remedies;
- records of any other steps taken to restore or preserve equal access to Lebanon Valley College's Education Program or Activity,
- any written agreement of an informal resolution; and
- a statement documenting the basis for the College's conclusion that its response to a report or formal complaint was not deliberately indifferent.

Lebanon Valley College shall also maintain all materials used to train its Title IX Coordinators, Investigators, Decision-makers, and Facilitators and a copy of each version of its Title IX Policy on Sex Discrimination.

### **XIX. Modifications to this Policy**

This Policy may be modified from time-to-time, during an academic year or otherwise, in the College's discretion and as may be required by law. Lebanon Valley College Employees and Students will be notified whenever this Policy is modified.

## **GLOSSARY OF DEFINED TERMS**

- **Advisor:** A person selected by a Complainant or Respondent or appointed by the College to support Complainant or Respondent or a person appointed by the College to ask Cross-examination Questions if the Party has not selected another Advisor.
- **Administrative Leave:** Temporary separation from a person's job, with or without pay and benefits intact, as determined by the College and any relevant obligations binding the College.
- **Appeal:** An objective review of the prior process and outcome unless new evidence must be considered.
- **Appeal Decision-maker:** An individual or a group of people that decides an Appeal. An Appeal Decision-maker cannot be the Investigator, the Title IX Coordinator, or members of the Hearing Board.
- **Appellant:** A person who files an Appeal.
- **Business Days:** Any day, excluding Saturday, Sunday, and federal and state holidays.
- **Campus Official:** An Employee of Lebanon Valley College who has authority to institute corrective measures on behalf of the College.
- **Complainant:** An individual who is alleged to have been the target of conduct that could constitute Title IX Sexual Harassment under this Policy, whether or not the individual has filed a Formal Complaint.
- **Consent:** Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, if those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.
  - Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute Consent to any other sexual act.
  - Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
  - Consent may be initially given but withdrawn at any time.
  - Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot Consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to Consent.

- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When Consent is withdrawn or can no longer be given, sexual activity must stop.
- **Credibility:** The worthiness of belief of information shared by a Party or a Witness.
- **Cross-examination Questions:** Relevant questions and follow-up questions, including questions challenging Credibility. Cross-examination Questions are intended to give the Parties equal opportunity to meaningfully challenge the plausibility, reliability, Credibility, and consistency of the information provided by the other Party and Witnesses so that the outcome of each individual case is more likely to be factually accurate.
- **Dating Violence:** Violence committed by a person: (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and, (b) where the existence of such a relationship shall be determined by (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Title IX requires that Lebanon Valley College use this definition, of Dating Violence.
- **Decision-maker:** A person or persons designated to conduct Live Hearings, to decide whether or not a violation of this Policy has or has not occurred, to determine disciplinary sanctions and Remedies when a violation has occurred, and/or to decide Appeals. Decision-makers may or may not be Employees of Lebanon Valley College. Decision-makers are trained on the definition of Title IX Sexual Harassment, the scope of the College's program or activity, the Grievance Process, Relevance, the technology to be used at a hearing, how to conduct hearings and Appeals, and how to serve impartially.
- **Determination of Responsibility or No Responsibility:** A determination by the Hearing Board regarding whether the conduct of Respondent found to have occurred (the Findings of Fact) violates this Policy.
- **Domestic Violence:** 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 spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state, 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 state. Title IX requires that Lebanon Valley College use this definition of Domestic Violence.
- **Education Program or Activity:** Locations, events, or circumstances over which the College exercised substantial control over the Respondent and the context in which the conduct allegedly constituting Title IX Sexual Harassment occurred. Education program or Activity includes any building owned or controlled by the College and/or by a student organization that is officially recognized by Lebanon Valley College.
- **Employee:** Faculty, staff, administrator, and any other individual employed by Lebanon Valley College in any capacity or role, except not including a person who is also enrolled as a full-time student at the College.

- Exculpatory Evidence: Evidence, such as a Statement, tending to excuse, justify, or absolve the alleged fault or responsibility of a Respondent.
- Facilitator: A person or persons designated to facilitate an Informal Resolution of a Formal Complaint. Facilitators may or may not be Employees of Lebanon Valley College. Facilitators are trained on the definition of Title IX Sexual Harassment, the scope of the College's program or activity, how to conduct an Informal Resolution process, and how to serve impartially.
- Formal Complaint: A document signed by a Complainant or a Title IX Coordinator alleging Title IX Sexual Harassment against a Respondent and requesting that the allegation(s) be investigated.
- Findings of Fact: A Hearing Board's decision regarding what occurred.
- Grievance Process: The process for investigating and resolving a Formal Complaint.
- Hearing Board: A single Decision-maker or group of Decision-makers who conduct the Live Hearing. The Hearing Board cannot be the same person(s) as the Title IX Coordinator or the Investigator.
- Inculpatory Evidence: Evidence that shows or suggests that a Respondent engaged in the alleged Title IX Sexual Harassment.
- Informal Resolution: A voluntary process that allows the Parties to engage in discussions in an attempt to come to an agreement, subject to approval by the College to resolve a Formal Complaint that does not involve a full investigation, hearing, and/or determination.
- Investigator: A person or persons, internal or external to the College, designated by the Title IX Coordinator to investigate the allegations of a Formal Complaint. An Investigator may also be the Title IX Coordinator but may not be a member of the Hearing Board or the Appeal Decision-maker. Investigators are trained on the definition of Title IX Sexual Harassment, the scope of the College's program or activity, the Grievance Process, Relevance, how to conduct an investigation, how to create an investigation report, and how to serve impartially.
- Live Hearing: A hearing where all Parties can see and hear each other in real time, whether in the same location or connected via technology.
- Notice of Charge: A notice sent to the Parties detailing the allegations potentially constituting Title IX Sexual Harassment (the charges) and indicating that charges and information gathered during an investigation will proceed to the Grievance Process for evaluation.
- Notice of Dismissal: written notice of the Title IX Coordinator's decision to dismiss a Formal Complaint, including the basis of the decision.
- Notice of Investigation: A written notice to the Parties commencing the Grievance Process.

- Notice of Live Hearing: The letter sent to the Parties providing notice that allegations falling within the scope of this Policy will proceed to a Live Hearing.
- Party or Parties: Individuals who are Complainants and Respondents in a Grievance Process. When referencing the Complainant, the Respondent may be referred to as the “other Party” and when referencing the Respondent, the Complainant may be referred to as the “other Party.”
- Procedural History: A section of the Written Determination describing the procedural steps taken from the receipt of the Formal Complaint through the determination, including notifications to the Parties; the date Respondent received notice of the allegation; the investigation process; and hearings held.
  - Regarding the description of the investigation process, the Procedural History section should include: which Parties and Witnesses were interviewed and when; site visits; methods used to gather evidence; what type of evidence was reviewed; and the process undertaken to inspect and review the evidence and to disseminate the investigation report, including timelines. The Written Determination should include any actual or perceived procedural issues. For example, if a process was delayed for good cause, that delay should be explained in the Written Determination. Likewise, if the Parties requested that the Investigator follow certain “leads” that the Investigator was not reasonably able to pursue based on a lack of time, resources, or the unavailability of Witnesses, that should be addressed in the timeline.
- Procedural Irregularity: A failure to follow the College’s own procedures.
- Rape Shield Protections: Rules that protect Complainants from questions about or submission of evidence regarding the Complainant’s sexual predisposition or prior sexual behavior except in very limited circumstances.
- Relevance: Information that is relevant directly relates to the allegations in dispute, and, therefore, is probative of a material fact concerning the allegations. Information that is not relevant includes information protected by a legally recognized privilege; evidence about a Complainant’s prior sexual predisposition or prior sexual behavior unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or offered to prove Consent, where Consent is at issue (and it concerns specific instances of sexual behavior with Respondent); any Party’s medical, psychological, and similar records unless the Party has given voluntary, written consent; Party or Witness Statements that have not been subjected to Cross-examination at a Live Hearing; and evidence duplicative of other evidence.
- Remedies: Measures taken by the College following a Determination of Responsibility on the part of Respondent designed to restore or preserve equal access to Lebanon Valley College’s Education Program or Activity. Remedies may be disciplinary or punitive and may burden the Respondent.

- **Report:** The submission of information to the Title IX Coordinator or a Campus Official regarding a potential violation of this Policy. A Report is not a Formal Complaint and, therefore, will not be investigated and does not trigger the Grievance Process.
- **Respondent:** Any individual who has been alleged to have engaged in conduct that could violate this Policy.
- **Sexual Assault:** Any conduct that would constitute a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sexual Assault includes the following prohibited conduct:
  1. Rape (Except Statutory Rape) - the carnal knowledge of a person, without the Consent of the person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity. “Carnal knowledge” means contact between the penis and the vulva or the penis and the anus, including penetration of any sort, however slight.
  2. Sodomy - oral or anal sexual intercourse with another person, without the Consent of the person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
  3. Sexual Assault with An Object - to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the Consent of the person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
  4. Fondling - touching of the private body parts of another person for the purpose of sexual gratification without the Consent of the person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
  5. Incest - nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  6. Statutory Rape - nonforcible sexual intercourse with a person who is under the statutory age of consent.

Title IX requires that Lebanon Valley College use this definition of Sexual Assault.

- **Stalking:** engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (a) fear for their safety or the safety of others; or (b) suffer emotional distress. Title IX requires that Lebanon Valley College use this definition of Stalking.
- **Standard of Evidence:** The Standard of Evidence reflects the degree of confidence that a Decision-maker has in the correctness of the factual conclusions reach. The College will apply the Preponderance of Evidence Standard of Evidence to matters within the scope of this Policy.

- Statement: Evidence that constitutes a person’s intent to make factual assertions.
- Supportive Measures: Non-disciplinary and non-punitive services that are offered, without fee or charge, by the College on an individualized basis to a Complainant or Respondent that are designed to restore or preserve equal access to Lebanon Valley College’s Education Program or Activity without unreasonably burdening the other Party.
- Title IX Coordinator: The person or persons designated by Lebanon Valley College as a Title IX Coordinator, including any persons designated as an “acting,” “deputy” or “interim” Title IX Coordinator. If special circumstances require the Title IX Coordinator to designate another person to address their responsibilities, the term also includes the Title IX Coordinator’s designee.
- Title IX Sexual Harassment: Conduct, on the basis of sex, that occurs within Lebanon Valley College’s Education Program or Activity within the United States, and that involves:
  1. an employee of the College conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct;
  2. unwelcome conduct that is determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to Lebanon Valley College’s Education Program or Activity;
  3. Sexual Assault;
  4. Dating Violence;
  5. Domestic Violence; or,
  6. Stalking.
- Witness: A person who has seen, heard or otherwise has knowledge or information relevant to an alleged violation of this Policy, but not including the Investigator. The Investigator and Hearing Board meet with Witnesses at their request and at the suggestion of the Parties.
- Written Determination: A letter delivered simultaneously to the Parties that describes the Hearing Board’s decision regarding responsibility, which must be supported by evidence.