

WESTMORELAND COUNTY COMMUNITY COLLEGE

Interim Additional Protocols for Title IX Policy and Complaint Procedure

Effective for Complaints on or after August 14, 2020

On May 4, 2020, the Department of Education Office for Civil Rights issued new Title IX regulations (DOE Regulations) which direct how educational institutions must address incidents of sexual assault and harassment involving both students and employees. These most recent regulations have significantly changed schools' obligations with regard to investigating and adjudicating incidents of sexual assault and harassment involving their students and employees. Consequently, changes are now required to the College's current Title IX Policy and Complaint Procedure (Current Policy).

Since May 4, 2020, several lawsuits were filed in various federal courts attempting to enjoin the implementation of the DOE Regulations. The outcome of many of these legal actions is still pending. Accordingly, the following changes to the Current Policy are being adopted on an interim basis. If the new Title IX regulations are upheld as issued, then these interim protocols will be added as revisions to the Current Policy without further action required by the Board of Trustees. If the new regulations are struck down, then this interim policy will become null and void and the Current Policy will remain in place. If partial implementation is ordered, then the Board of Trustees will be presented with a new Title IX Policy and Complaint Procedure which complies with the courts' order(s).

The College adopts the following Interim Additional Protocols for the Current Policy. Any conflict in terms of the Current Policy and these interim protocols are to be resolved in favor of these interim protocols and in accordance with the DOE Regulations.

1. Nondiscrimination Policy: The College does not discriminate in its educational programs, activities or employment practices based on race, color, national origin, sex, sexual orientation, gender identity or expression, disability, age, religion, ancestry, veteran status, union membership or any other legally protected classification.

2. Definition of Sexual Harassment: The Current Policy definition of Sexual Harassment will be expressly revised to also include the Current Policy's definitions of Sexual Assault, Dating Violence, Domestic Violence and Stalking. These definitions use the Clery Act and Violence Against Women Reauthorization Act definitions.

3. Title IX Coordinator: The College employees designated as the Title IX Coordinators are Lauren Farrell for employees and Dr. Sydney Beeler for students. Persons who are not students or employees of the College having question for or wishing to make a report to the Title IX Coordinator may contact either Ms. Farrell or Dr. Beeler or address an email to titleixcoordinator@westmoreland.edu. The Title IX Coordinators may be reached by mail at 145 Student Achievement Center, Youngwood, PA 15697. Their email addresses are farrell@westmoreland.edu and beelers@westmoreland.edu. The Title IX Coordinators may be contacted by telephone as follows: Lauren Farrell 724-925 4079 and Dr. Sydney Beeler 724-925-4050. The Title IX Coordinators are responsible for coordinating the College's efforts to comply with the Current Policy and this interim policy. The College will post the Title IX Coordinators' contact information on the College website independent of this interim policy and the Current Policy in a manner intended to inform students,

employees and applicants for admission and employment of the manner in which the Title IX Coordinators may be reached.

4. Mandatory Response Obligations: The College will respond promptly to actual knowledge of allegations of Sexual Harassment in a manner which is not clearly unreasonable in light of the known circumstances. The College will have actual knowledge if a report is made to the Title IX Coordinator or in any other manner specified in the Current Policy. The Title IX Coordinator will promptly contact the Complainant confidentially to discuss the availability of supportive measures detailed in the Current Policy, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint and explain to the Complainant the process of filing a formal complaint. The College will follow the Grievance Process outlined below before imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent. A Complainant's wishes with respect to whether the College conducts an investigation will be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances. If allegations in a formal complaint do not meet the definition of Sexual Harassment or did not occur in a College educational program or activity or against a person in the United States, then the College shall dismiss such allegations for the purposes of Title IX but may still address the allegations in any manner the College deems appropriate under its other applicable policies.

5. Training /Title IX Coordinator, Investigator and Hearing Officer: The College shall provide training for the Title IX Personnel (Title IX Coordinator, Investigator and Hearing Officer). Separate individuals shall serve as Title IX Coordinator, Investigator and Hearing Officer in determining the outcome of each individual formal complaint. However, serving as Title IX Coordinator on one case will not prevent the same individual from serving as the Investigator on another distinctly different formal complaint so long as the individual has received training as both an Investigator and Title IX Coordinator. Title IX Personnel shall be free of conflicts of interest or bias for or against Complainants or Respondents. Training of Title IX Personnel shall include but not be limited to: the definition of Sexual Harassment; the scope of the College's education programs and activities; how to conduct an investigation and grievance process including hearings, appeals and informal resolution processes, as applicable; how to operate any technology to be used in a live hearing; training on issues of relevance, including how to apply the rape shield protections provided for Complainants; and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias. The College shall post all of the Title IX Personnel training materials on its website.

6. Grievance Process:

Step 1: Formal Complaint/Notice. A formal complaint may be filed with the Title IX Coordinator in person, by mail or by electronic mail by using the contact information contained in this policy or by any other method specified in the Current Policy. Upon receipt of a formal complaint, both parties will be sent a written notice of complaint by the Title IX Coordinator. Such written notice shall contain the relevant allegations of the complaint. Both parties have the opportunity to select an advisor of the parties' choice who may be, but need not be, an attorney. All formal complaints will be investigated.

Step 2 Investigation. The Title IX Coordinator shall select a trained Investigator to conduct an investigation of the formal complaint. The College may consolidate formal complaints where the

allegations arise out of the same facts. The College will send the parties advance written notice of any investigative interviews, meetings, or hearings at which the party is expected to be present. The Investigator may gather information in multiple ways. The Investigator may collect relevant documents and other information and may also interview parties and/or witnesses. In addition, a Complainant or Respondent may: submit documentary information to the Investigator; submit a list of witnesses to be interviewed by the Investigator; and/or request that the Investigator attempt to collect documents and other information that are not accessible to the requesting party. Any privileged or otherwise legally protected information such as a party's medical, psychological and similar treatment records will not be disclosed without the protected party's written consent. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. After the Investigator has concluded the collection of evidence, the Investigator will send the parties and their advisors all evidence directly related to the allegations, in electronic format or hard copy, with at least ten (10) calendar days for the parties to inspect, review, and respond to the evidence. This is the opportunity for the parties to identify New Evidence or Rebuttal Evidence. New Evidence is evidence that was not available earlier in the process, could not have been available based on reasonable and diligent inquiry, and is relevant to the matter. Rebuttal Evidence is evidence presented to contradict other evidence in the file, which could not have been reasonably anticipated by a party to be relevant information at the time of the investigation. New Evidence and Rebuttal Evidence may be included or excluded from the file, but in no event is this section intended to permit a party who has declined to give a statement about the incident during the Investigation to give such a statement for the first time after the Investigator has concluded the collection of all other evidence. This section is intended to be invoked in rare instances to allow for the inclusion of information that was not available during the investigation or that could not have been reasonably anticipated to be relevant to rebut an issue that came to light.

Step 3. Investigative Report. After the Investigator has received and considered the parties' responses to the evidence, the Investigator will complete an Investigative Report that fairly summarizes the relevant evidence. The Title IX Coordinator will make the Investigative Report available to the parties and their advisors in electronic format or hard copy, with at least ten (10) calendar days for the parties to respond in writing to the Investigative Report. After the Title IX Coordinator has reviewed the parties' responses to the Investigative Report, the Title IX Coordinator will make the determination whether to dismiss the Formal Complaint in accordance with the mandatory or discretionary dismissal criteria established by the DOE Regulations or to proceed to a hearing. The parties will be given a written notice of dismissal (mandatory or discretionary) specifying the reasons for dismissal.

Step 4. Hearing. Hearings may be conducted with any or all parties, witnesses, and other participants appearing at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other, or with all parties physically present in the same geographic location. The presumption will be that the hearing will take place virtually, unless either party requests otherwise or the College otherwise determines that an in-person hearing is appropriate. If the hearing takes place with all parties physically present, the College will provide for the option for the hearing to occur with the parties located in separate rooms with technology enabling the Hearing Officer and parties to

simultaneously see and hear the party or the witness answering questions. Hearings will be recorded through audio or audiovisual means or transcribed, and the College will make the recording or transcript available to the parties for inspection and review upon request. If a party does not have an advisor present at the hearing, the College will provide one without fee or charge. Such an advisor of the College's choice may or may not be an attorney. The Hearing Officer will preside over the hearing and will issue a Written Determination Regarding Responsibility. The Hearing Officer will be identified to the parties before the hearing at least three days prior to the hearing. The Hearing Officer may or may not be a College employee but in any case will have undergone the College's Title IX training program. At the hearing, the Hearing Officer will permit each party's advisor to ask the other party and any Witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the hearing must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. The parties may, however, jointly agree in advance to waive oral cross-examination and instead submit written cross-examination to the Hearing Officer to conduct the examination. Even if the parties so agree, the parties are still required to have an advisor. The College has discretion to otherwise restrict the extent to which the advisor may participate in the proceedings. The Hearing Officer will permit parties and witnesses to take breaks, as needed, during cross-examination. The Hearing Officer will also ensure the advisors are conducting any live cross-examination in a professional and courteous manner. The Hearing Officer will not permit the advisor to badger or harass witnesses or parties. Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Hearing Officer will prohibit any questions and evidence about the Complainant's sexual predisposition or prior sexual behavior as not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. The Investigator will be available at the hearing to answer any questions from the Hearing Officer about the Investigation. After conclusion of the hearing, the Hearing Officer shall simultaneously issue to each party a Written Determination Regarding Responsibility, applying the preponderance of the evidence standard, which shall include: a) identification of the allegations potentially constituting Title IX Sexual Harassment; b) a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held; c) findings of fact and conclusions about whether the alleged Title IX Sexual Harassment occurred, applying the definitions set forth in this policy and the Current Policy to the facts; d) the rationale for the result as to each allegation; e) any disciplinary sanctions imposed on the Respondent consistent with those in the Current Policy; f) whether any remedies or additional supportive measures will be provided to the Complainant; and g) information about how to file an appeal.

7. Appeals: Appeals from a Written Determination of Responsibility may be made in the manner provided by the Current Policy with the addition of the following grounds for appeal: procedural irregularity that affected the outcome of the matter; newly discovered evidence that could affect the outcome of the matter; and/or Title IX Personnel had a conflict of interest or bias that affected the outcome of the matter.

8. Informal Resolution: The College at its discretion may choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. The College will not offer the informal resolution process unless a formal complaint is filed. No offer of informal resolution will be made to resolve allegations that an employee sexually harassed a student. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. Any person who facilitates an informal resolution will be well trained to do so prior to selection as a facilitator by the College. The College will not require as a condition of enrollment, continued enrollment, employment or continued employment the waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment.