

## **Equal Opportunity, Harassment, and Nondiscrimination Policy**

### **1. Rationale for Policy**

Lackawanna College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the College has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. The College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

### **2. Applicable Scope**

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using Lackawanna College's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the College community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the College community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. For the purpose of this policy, the College defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the College. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

### **3. Glossary**

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the recipient investigate the allegation.

- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when the College is in normal operation.
- *Directly Related Evidence* is evidence connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.
- *Education program or activity* means locations, events, or circumstances where Lackawanna College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Lackawanna College.
- *Final Determination*: A conclusion by the preponderance of the evidence that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Grievance Process* means “Process A,” a method of formal resolution designated by the recipient to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- *Grievance Process Pool* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Panel* refers to those who have decision-making and sanctioning authority within Lackawanna College’s Formal Grievance process.
- *Investigator* means the person or persons charged by Lackawanna College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of the Recipient who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator and/or their supervisor.
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of the Recipient explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the Recipient.

- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Process A* means the Formal Grievance Process for Title IX and other Sexual Misconduct offenses.
- *Process B* means the Formal Grievance Process for other Civil Rights offenses.
- *Recipient* means a postsecondary education program that is a recipient of federal funding.
- *Relevant Evidence* is evidence that tends to prove or disprove an issue in the complaint.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the Recipient's educational program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Pathway* means a consequence imposed by Lackawanna College on a Respondent who is found to have violated this policy.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. [See Section 17.b.](#), for greater detail.
- *Title IX Coordinator* is at least one official designated by Lackawanna College to ensure compliance with Title IX and the Recipient's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- *Title IX Team* refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

#### **4. Title IX Coordinator**

The Title IX Coordinator oversees implementation of Lackawanna College's Policy on Equal Opportunity, Harassment, and Nondiscrimination. The Title IX Coordinator has the primary responsibility for coordinating the College's efforts related to the intake; investigation; resolution as described more fully in "Process A" and "Process B"; and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this Policy. Where "Title IX Coordinator" is referenced in this Policy, a Deputy Title IX Coordinator (or other appropriate designee) also has the ability to fulfill the roles and responsibilities as detailed.

#### **5. Independence and Conflict-of-Interest**

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these

procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Provost. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator. An individual's prior professional pursuits are not alone a reason for bias. It must be determined that the individual cannot perform their responsibilities fairly and impartially, and they will be recused only on the basis of a demonstrated bias and/or conflict of interest.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Provost. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

## **6. Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Brian Costanzo  
Title IX Coordinator and Vice President for College Advancement  
Advancement Department  
Location/Address: Healey Hall - Main Floor  
(570) 961-7841  
Email: CostanzoB@lackawanna.edu

Tony Ferrese  
Associate Dean of Students and Deputy Title IX Coordinator  
Student Conduct and Community Standards Office  
Location/Address: Angeli Hall 105B - 501 Vine Street Scranton, PA 18509  
(570) 955-1522  
Email: FerreseT@lackawanna.edu

Abbey Judge Ed.D  
Level Up Program Director and Deputy Title IX Coordinator  
Location/Address: Healey Hall, Office 223  
(570) 955-1516  
Email: JudgeA@lackawanna.edu

The College has determined that the following administrators are Officials with Authority to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Coordinators listed above, these Officials with Authority listed below may also accept notice or complaints on behalf of the University. All of the following Officials with Authority will promptly report any complaints to the Title IX Coordinator:

- Title IX Coordinator/Deputy Title IX Coordinators
- President of the College
- Senior Level Administrators
  - Vice Presidents
  - Academic Deans
  - Center Directors

- Department and/or Division Chairs
- Student Engagement and Student Success Deans
- Director of Athletics and Associate Director of Athletics
- Director of Student Life and Housing and Resident Directors
- Human Resources Business Partners
- Public Safety Department

Lackawanna College has also classified most employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

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

Philadelphia Office: Office for Civil Rights  
 US Department of Education  
 The Wannamaker Building; 100 Penn Square East, Suite 515  
 Philadelphia, PA 19107-3323  
 Telephone: (205)656-8541  
 Email: [OCRPhiladelphia@ed.gov](mailto:OCRPhiladelphia@ed.gov)

College employees may also make external inquiries to:

Equal Employment Opportunity Commission,  
 Philadelphia District Office  
 801 Market Street, Suite 1000  
 Philadelphia, PA 19107-3126  
 United States  
 Telephone: 1-800-669-4000 / (267) 589-9700  
 Facsimile: (215) 440-2606  
 Email: [PDOContact@eeoc.gov](mailto:PDOContact@eeoc.gov)  
 Web: <https://www.eeoc.gov>

Pennsylvania Human Relations Commission  
 Harrisburg Regional Office  
 333 Market Street, 8th Floor  
 Harrisburg, PA 17101-2210  
 United States  
 Telephone: (717) 787-9780  
 Web: <https://www.phrc.pa.gov/About-Us/Pages/RegionalOffices.aspx>

## **7. Filing a Formal Complaint/Notice**

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

1. File a complaint with, or give verbal notice to the Title IX Coordinator/Deputy Coordinators or any Official with Authority, as listed above. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.
2. Report online, using the reporting form posted [here](#).
  - a. Anonymous reports are accepted but can give rise to a need to investigate. The College tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the College to discuss and/or provide supportive measures.
3. Report to the Lackawanna College Public Safety Department:
  - . Satellite Office: Angeli Hall Room G07, 501 Vine St. Scranton, PA 18509
  - a. Main Office: 540 Wyoming Ave, Scranton, PA 18509
  - b. Telephone: 570-961-7899 or 570-241-2022.
4. Employees can also file a complaint with, or give verbal notice to, the Human Resources Office, Angeli Hall, Suite 316.

A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that Lackawanna College investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by Lackawanna College) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that Lackawanna College investigate the allegations.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

## **8. Preservation of Evidence**

The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders, and particularly time-sensitive. The College will inform the Complainant of the importance of preserving evidence by taking the following actions:

1. Seek forensic medical assistance at the hospital, ideally within 120 hours of the incident (sooner is better)
2. Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
3. Try not to urinate.

4. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
5. If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence);
6. Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

### **9. Supportive Measures**

Lackawanna College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to Lackawanna College's education program or activity, including measures designed to protect the safety of all parties or Lackawanna College's educational environment, and/or deter harassment, discrimination, and/or retaliation.

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

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

These actions may include, but are not limited to:

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

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

### **10. Emergency Removal**

The Recipient can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the CARE Team using its standard objective violence risk assessment procedures.

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

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within three business days after notice is given, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

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

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

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

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

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

### **11. Promptness**

All allegations are acted upon promptly by Lackawanna College once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the College will avoid all undue delays within its control.

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

## **12. Privacy**

Every effort is made by Lackawanna College to preserve the privacy of any notice or complaint filed with the College. The College will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

Lackawanna College reserves the right to determine which of the College's officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint. Information will be shared as necessary with Investigators, Hearing Panel members, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

Lackawanna College may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below.

## **13. Jurisdiction of Lackawanna College**

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

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

Regardless of where the conduct occurred, the College will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational

program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial Lackawanna College interest includes:

- A. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- B. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- C. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- D. Any situation that is detrimental to the educational interests or mission of the College

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

Further, even when the Respondent is not a member of the College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

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

All vendors serving the Lackawanna College through third-party contracts are subject to the policies and procedures of their employers and are expected by the College to act in accordance with these Policies and Procedures.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

#### **14. Time Limits on Reporting**

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

Acting on notice/complaints significantly impacted by the passage of time is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the College will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

#### **15. Online Harassment and Misconduct**

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

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

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the College community.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

## **16. Policy on Nondiscrimination**

Lackawanna College is committed to providing a welcoming environment for all members of our community and to ensuring that all educational and employment decisions are based on individuals' abilities and qualifications. Lackawanna College does not discriminate in its educational programs, employment, admissions or any activities on the basis of race, color, religion or creed, national or ethnic origin, age, disability, pregnancy, sex/gender, gender identity and/or expression, sexual orientation, marital or family status, military or veteran status, genetic information, or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

Consistent with this principle, Lackawanna College will comply with state and federal laws such as the Pennsylvania Human Relations Act or other applicable state law, Title IX, Title VI and Title VII of the Civil Rights Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967, the Ethnic Intimidation Act of 1982 (P.L. 537-154) and other laws that prohibit discrimination.

As a recipient of federal financial assistance for education activities, Lackawanna College complies with Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of the categories stated above, including in admissions and employment. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX and this Policy.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the College community whose acts deny, deprive, or limit the educational or employment access, benefits and/or opportunities of any member of the College community, guest or visitor on the basis of that person's actual or perceived

membership in the protected classes listed above is in violation of the College's policy on nondiscrimination.

When brought to the attention of the College, any such discrimination will be promptly and fairly addressed and remedied by the College according to the appropriate grievance process described below.

### **17. Policy on Disability Discrimination and Accommodation**

Lackawanna College is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the College, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The College's Title IX Coordinator is responsible for overseeing efforts to comply with these disability laws, including responding to grievances and in coordination with other College administrators, conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations will be addressed using the procedures below.

#### **a. Students with Disabilities**

Lackawanna is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of the College.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Director of Disability Services.

The Director of Disability Services reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s) in accordance with College's applicable policies.

#### **b. Employees with Disabilities**

Pursuant to the ADA, Lackawanna will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance

of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to the College

An employee with a disability is responsible for submitting a request for an accommodation to the Human Resources Department and providing necessary documentation. The Human Resources Department will work in coordination with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

## **18. Policy on Discriminatory Harassment**

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

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under College policy. All policies encompass actual and/or attempted offenses.

### **a. Discriminatory Harassment**

Discriminatory harassment constitutes a form of discrimination that is prohibited by Lackawanna policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law. The College does not tolerate discriminatory harassment of any employee, student, visitor, or guest. Lackawanna will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment."

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive **and** objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, Lackawanna may also impose pathways on the Respondent through application of the appropriate grievance process described more fully in Process "A" or Process "B."

The College reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Such conduct may be addressed through respectful conversation, remedial actions, education, and/or other informal resolution mechanisms.

### **b. Title IX Offenses**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), Pennsylvania Human Relations Commission (PHRC), and the Commonwealth of Pennsylvania regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

The College has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex/gender or that is sexual that satisfies one or more of the following:

**Quid Pro Quo:** An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;

**Sexual Harassment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or

**Sexual Assault,** defined as: an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

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

- **Rape (Except Statutory Rape):** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- **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 victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

- **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent

**Dating Violence**, defined as: 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 based on a consideration of the following factors:

- (i) The length of the relationship.
- (ii) The type of relationship.
- (iii) The frequency of interaction between the persons involved in the relationship.

**Domestic Violence**, defined as: The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, 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 Pennsylvania.

\*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

**Stalking**, defined as: The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

For the purposes of this definition:

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

College reserves the right to impose any level of pathway, ranging from a reprimand up to and including disciplinary suspension or College dismissal, for any offense under this policy.

### c. Other Sexual Misconduct Offenses

In addition to the above offenses that fall within the scope of Title IX, the University also prohibits other sexual misconduct in the form of Hostile Environment Sexual Harassment and Sexual Exploitation.

**Hostile Environment Sexual Harassment:** As defined in the “Discriminatory Harassment” paragraph above.

**Sexual Exploitation:** taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute Sexual Harassment under this Policy. Examples of Sexual Exploitation include, but are not limited to

1. Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person’s consent;
2. Indecent exposure or inducing others to expose themselves when consent is not present;
3. Recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person’s consent;
4. Prostituting another individual;
5. Knowingly exposing another individual to a sexually transmitted disease or virus without that individual’s knowledge; and
6. Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

#### **d. Force, Coercion, Consent, and Incapacitation**

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”). Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Consent is:** a knowing and voluntary agreement, with clear permission by word or action to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

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

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

## **e. Other Civil Rights Offenses**

In addition to the conduct described above, which fall either within the coverage of Title IX or “Other Sexual Misconduct” offenses, the University additionally prohibits the following offenses as forms of discrimination when the act is based upon the Complainant’s actual or perceived membership in another protected class.

**Protected Class Harassment:** As defined in the “Discriminatory Harassment” paragraph above.

**Discrimination:** actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities.

**Intimidation:** implied threats or acts that cause an unreasonable fear of harm in another.

**Threats/Physical Harm:** threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person.

**Bullying:** repeated and/or severe aggressive behavior that is likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally.

**Hazing:** any action or situation created on or off-campus which recklessly or intentionally harms, damages, or endangers the mental or physical health or safety of any person within the Lackawanna community for the purposes of, including, but not limited to, initiation or admission into or affiliation with any organization operating within the College (as further detailed in the College’s Hazing Policy outlined in the Student Code of Conduct).

All reported bias incidents will be evaluated under this Policy to determine whether they constitute one of the offenses listed above.

Violation of any other College policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

College reserves the right to impose any level of pathway, ranging from a reprimand up to and including disciplinary suspension or College dismissal, for any offense under this policy.

### **19. Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The College will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Lackawanna College and any member of the College's community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Filing a complaint within Process B could be considered retaliatory if those charges could be applicable under Process A, when the Process B charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within Process A that is not provided by Process B. Therefore, the College vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.

The exercise of rights protected under the First Amendment does not constitute retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **20. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

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

## **21. Mandated Reporting**

Most employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them. The following sections describe the reporting options at College for a Complainant or third-party (including parents/guardians when appropriate):

### **a. Confidential Resources**

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

### ***On Campus Supports***

- Marsha Pigga, Executive Director of Student Wellness
  - (570) 955-1466 & (570) 677-7589
  - piggam@lackawanna.edu
  - Angeli Hall, Office 102
- Tierny Cresswell, Student Wellness Program Coordinator
  - (570) 955-1478 & (570) 904-9824
  - ulmert@lackawanna.edu
  - Angeli Hall, Office 105A
  
- Scranton Primary Health Care Center (SPHCC)
  - (570) 344-9684 or (570) 969-9662
  - 406 N. Washington Avenue, 1st Floor, Scranton, PA 18503 or 959 Wyoming Avenue, Scranton, PA 18519
  
- Athletic Trainers
  
- ***Off Campus Free and Confidential Supports (available 24 hours a day)***
  - Women's Resource Center (Scranton/PNG) (570)346-4671
  - Victim's Resource Center (Hazleton) 1(866)206-9050
  - Victims' Intervention Program (LRC) (570)253-4401
  - Abuse and Rape Crisis Center (Towanda) (570)265-5333
  - Transitions (Sunbury) 1(800) 850-7948
  - National Sexual Assault Hotline/www.rain.org 1(800)656-HOPE
  - National Domestic Violence Hotline 1(800) 799-SAFE 1(800) 850-7948

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Student Wellness Program and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

### **22. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator, in consultation with the Deputy Title IX Coordinator(s) (and other appropriate College administrators) has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process upon completion of an appropriate individualized risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence.

Lackawanna College may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

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

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

When the College proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

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

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

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

### **23. False Allegations and Evidence**

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

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

## **24. Amnesty for Complainants and Witnesses**

The College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants, Respondents or witnesses are hesitant to report to College officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. It is in the best interests of the College community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, the College maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

**Students:** The College therefore maintains a policy of amnesty for students who offer help to others in need and will not pursue action under the Student Handbook for minor policy violations. Lackawanna may request the reporting individual attend an approved alcohol or drug education program without assessing any charges for such program. This amnesty provision also applies to student groups making a report of misconduct. Amnesty does not preclude or prevent action by police or other legal authorities pursuant to relevant state or federal criminal statutes.

**Employees:** Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. The College may therefore, at its discretion, offer employee Complainants and witnesses amnesty from minor policy violations related to the incident.

## **25. Resolution Process and Procedures**

Upon receipt of a complaint, the Title IX Coordinator/Deputy Title IX Coordinators will assist the Complainant in identifying the appropriate Grievance Procedures to resolve the complaint in a prompt and equitable manner.

For allegations qualifying as “Title IX” or “Other Sexual Misconduct” Offenses, Process “A” applies.

For allegations qualifying as “Other Civil Rights” Offenses, Process “B” applies.

This Policy and Procedures are effective on August 14, 2020.

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