

LIVE HEARING PROCEDURES

These Hearing Procedures (“Procedures”) shall govern the hearing process for formal resolution of Formal Complaints of Discrimination, Sexual Harassment, and Misconduct, as set forth in Northampton Community College’s (NCC’s) Discrimination, Harassment, and Misconduct Policy (“Policy”). The parties to each Formal Complaint subject to the NCC’s Policy will have a live hearing at the conclusion of the college’s investigation if the parties do not elect to proceed with Informal Resolution, and the Formal Complaint is not dismissed.

I. Pre-Hearing Steps

A. Selection of the Hearing Panel: The hearing will be presided over by a 3-person Hearing Panel selected by NCC, with one member identified as the Panel Chair, who may be an attorney.

1. The members of the Hearing panel will be impartial and free from actual bias or conflict of interest. The Title IX Coordinator will provide the parties with the names of the Hearing Panel members and who will serve as the Chair no later than thirty-seven (37) business days in advance of the hearing. Objections to any member of the panel must be raised in writing, detailing the rationale for the objection to that person and must be submitted to the Title IX Coordinator as part of their response to the Notice of Hearing as soon as possible but no later than twenty-seven (27) business days prior to the hearing. The Title IX Coordinator will also confirm to the Hearing Panel Chair that the Complainant and Respondent received the Final Investigation Report and all evidence at least thirty-seven (37) business days prior to the hearing.

The Title IX Coordinator will also provide the Hearing Panel members with the Final Investigation Report and all evidence gathered at least twenty-three (23) business days prior to the hearing. The Hearing Panel members will notify the Title IX Coordinator of any potential bias or conflict of interest they may have regarding the Complainant, Respondent, any witness, or any advisor identified in the report at least twenty (20) business days prior to the hearing (three days after receiving the investigation report).

2. The Hearing Panel members, especially the Chair, will be trained on Title IX and the college’s policies and procedures; the handling of sexual misconduct cases; how to conduct a hearing; issues of relevance, including when questions and evidence about the Complainant’s sexual predisposition or

prior sexual behavior are not relevant; how to serve impartially by, among other things, avoiding prejudgment of the facts at issue; conflicts of interest, and bias; and other relevant issues. The Hearing Panel members will also have a basic understanding of technology to be used at the hearing.

- B. Notice of Hearing: The Complainant and Respondent will be notified in writing at least thirty-seven (37) business days prior to the hearing of: the date, time, and location of the hearing; the names of the hearing panel members; the charges to be reviewed by the Hearing Panel; the essential allegations concerning the violation; the provisions of the Policy(ies) alleged to have been violated; and the requirement that the parties have an advisor for purposes of advising the party and cross-examining the other party and witnesses during the hearing.

The Notice will request that the Complainant and Respondent send the following information to the Title IX Coordinator at least twenty-seven (27) business days prior to the hearing: the names of any advisor they plan to bring to the hearing, named or not named in the Investigation Report (and whether that advisor is an attorney), or if they want the college to assign an advisor of its choosing, which will be provided without fee or charge; the names of any relevant witnesses, named or not named in the Investigation Report, that they would like to attend the hearing for the purposes of direct and cross-examination; questions or topics they would like to ask or discuss at the hearing; whether the party will attend the hearing in-person or would like to attend using technology, so that the party does not have to be in the same location as the other party; any objections to any member of the hearing panel and the reasons for such objections; and any new, relevant evidence not in the Investigation Report that they would like to introduce for consideration at the hearing. That evidence must also be sent to the Title IX Coordinator at least twenty-seven (27) days prior to the hearing. Regarding new witnesses and evidence, the Panel Chair will determine in advance of the hearing whether the new witnesses' participation at the hearing and whether any new evidence submitted is relevant and appropriate under the circumstances.

- C. Witnesses: The Hearing Panel members will identify any witnesses they wish to hear from at the hearing based on a review of the Final Investigation Report and the evidence contained therein and will notify the Title IX Coordinator of such witnesses at least thirty (30) business days prior to the hearing. The Panel may not necessarily need to hear from all witnesses in the Investigation Report and may identify additional, relevant witnesses not interviewed during the investigation that they believe have information important and relevant to their decision-making. The Title IX Coordinator will contact the witnesses deemed relevant by the Panel Chair and notify them that their presence is requested at the hearing by the Hearing Panel

and/or party to the matter. The Title IX Coordinator will provide the relevant witnesses with the date, time, and location of the hearing. NCC and the Hearing Panel cannot compel the attendance of any witness.

- D. Identification of Hearing Advisors: Parties may have one advisor for all matters leading up to a hearing and a different advisor for the hearing, but no more than one advisor per party may attend the hearing. Irrespective of whether a party plans to change advisors for the hearing or retain the same advisor (if they had one prior to the hearing), all parties must inform the Title IX Coordinator at least twenty-seven (27) business days before the hearing (in their response to the Notice of Hearing – See Section I.B. Notice of Hearing above) who the party’s advisor at the hearing will be and whether that person is an attorney. If a party does not have an advisor for the hearing, the Title IX Coordinator will assign an advisor for the hearing, at no cost to the party, to ask direct and cross-examination questions on behalf of the party.

An advisors’ communications and/or conversation with their advisee are considered to be confidential in nature. Confidentiality does not extend to conversations with witnesses, hearing participants, etc.

- E. Identification of Hearing Facilitator: The Title IX Coordinator will identify a Hearing Facilitator for the hearing whose job will include but not be limited to coordinating with the Panel Chair and Panel regarding all matters, copying and distributing materials at the hearing, arranging for any needed technology, arranging for a recording or transcript of the hearing to be made, and bringing witnesses into the meeting room and escorting them out after they are questioned. The Title IX Coordinator will usually fulfill this role, unless he or she is unavailable.
- F. Pre-Hearing Procedures: The Panel Chair and/or the Title IX Coordinator may establish additional pre-hearing procedures not described in this document relating to issues such as scheduling, hearing procedures, structure, advance determination of the relevance of certain topics, and other procedural matters. The Title IX Coordinator will communicate with the parties prior to the hearing with respect to these items. This communication can be made at a pre-hearing; in-person meeting to which the parties and their advisors are invited; in writing and sent via email; and/or via a video meeting (such as Zoom or Google Meet). The Panel Chair will consult with the Title IX Coordinator to determine the best communication method given the timelines and schedule prior to the hearing.

1. The Panel Chair will review the list of witnesses, questions or topics and any new evidence requested by the parties to be considered at the hearing and submitted in their response to the Notice of Hearing. The Chair will determine if any witness, question, topic, or evidence proposed by the parties is not relevant and notify the Title IX Coordinator. The Panel Chair may consult with the Title IX Coordinator in making these determinations prior to the hearing. The parties will be notified of the Chair's ruling(s) at least eight (8) business days prior to the hearing at a pre-hearing, in-person meeting, in writing, or via a video meeting, as determined by the Chair. This advance review opportunity does not preclude advisors from asking a question for the first time at the hearing or from asking for a reconsideration of relevancy based on any new information or testimony offered at the hearing. New questions asked at the hearing will be ruled on by the Chair at the hearing regarding its relevancy and whether an answer will be allowed to be provided.
- G. Request to Postpone Hearing: Permission to postpone a hearing may be granted by the Title IX Coordinator provided that the request to do so is based on a compelling emergency, and where possible, such request is provided to the Title IX Coordinator at least 72 hours prior to the time of the hearing. Requests to postpone a hearing received less than 72 hours prior to the hearing must have a legitimate, emergency reason for the short notice to be considered.

II. Hearing

- A. Timing: A hearing will be scheduled for a date no more than forty-five (45) business days after the Final Investigative Report is provided to the parties. This timeframe may be extended at any time for good cause. If granted, the reason for the extension will be shared with the parties in writing.
- B. Hearing Guidelines:
 1. Decorum. The Panel Chair has wide discretion over matters of decorum at the hearing, including the authority to excuse from the hearing process participants, including the parties, advisors, and witnesses, who are unwilling to observe rules of decorum. If a party's advisor does not abide by the college's rules of decorum (including, but not limited to, those listed below), the advisor may be subject to removal, the hearing will be adjourned and rescheduled, and the college will appoint a new advisor for the party. At

its discretion, the college may discipline or sanction a party for the failure of his or her advisor to observe the rules of decorum, if the party brought their own advisor to the hearing. Parties will not be held responsible for the behavior of institution appointed advisors.

- a. The parties and their advisors will remain seated at all times during the hearing, including during cross examination.
 - b. The following behaviors will not be tolerated during the hearing: yelling, verbal abuse, disruptive behavior, interrupting or talking over one another, name calling, refusing to follow the directions of the chair, or using profane or vulgar language (except where such language is relevant and necessary to the matter before the Hearing Panel).
 - c. Any participant in the hearing who is not currently involved in questioning should refrain from disrupting the hearing, making gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during any testimony.
 - d. When directly questioning or cross-examining a party or witness, advisors shall not repeat, characterize, express an opinion about, editorialize, or otherwise state any response to the answer given by the party or witness, except to ask a follow up question to elicit relevant evidence.
2. Advisors. Advisors may not speak or otherwise participate in the hearing except for purposes of making an opening statement and/or conducting direct or cross-examination when directed to do so by the Panel Chair. Other than opening statements and/or direct or cross-examination, the advisor may not address the Panel Chair and must comport themselves in a manner that is not disruptive to the hearing.
 3. Presence and Participation at Hearing.
 - a. A Complainant or Respondent is not required to participate in person at the hearing for the hearing to proceed. A Complainant or Respondent may request alternative testimony options that would not require physical proximity to the other party, including testifying via a remote electronic method. This request must be made to the Title IX Coordinator no fewer than twenty-seven (27) business days prior to the hearing.

- b. If, despite being notified of the date, time, and location of the hearing, the Respondent or Complainant is not in attendance, the hearing will proceed. In doing so, the Panel will consider the available testimony and evidence.
 - c. If a party does not appear for the hearing, their advisor may still appear for the purpose of presenting an opening statement, asking direct and cross-examination questions of the other party and witnesses. If the non-participating party's advisor also does not appear for the hearing, the hearing will proceed without the participation of the party or his or her advisor.
- 4. **Hearing Format.** Participants are to remember that the hearing is not to be a repeat of the investigation itself. Its overall purpose is to allow for the further clarification of information in the Final Investigation Report and/or of the evidence through the process of questioning and cross-examination. It is also a time when new relevant witnesses and/or new relevant evidence can be introduced by the parties as deemed relevant by the Panel Chair prior to the hearing. Thus, advisors should attempt to focus their questions and cross-examination on elements and facts in the Final Investigation Report and on new witnesses and new evidence the Chair ruled pre-hearing are relevant. The Chair has wide discretion to interrupt and end any questioning or statements by the parties or their advisors that repeat areas of the investigation or that add to the record any new information/evidence that was not previously provided to the Chair and Hearing Panel.

The Panel Chair has wide discretion to designate the hearing format. Any changes to the following hearing format will be communicated to all hearing participants at least eight (8) business days in advance of the hearing:

The hearing will begin with introductory remarks or instructions by the Panel Chair. The advisors will each be given the opportunity to make an opening statement to the Panel, if they choose to do so. Opening statements are to be brief subject to the Panel Chair's discretion. The Panel Chair will then ask relevant, initial questions of the parties followed by questions from the other two panel members. During this portion of the hearing, an advisor may confer privately and in a non-disruptive manner with their advisee, but they are not allowed to address the Panel Chair or anyone else present at the hearing during this questioning. After the Panel Chair and Panel members have asked their initial questions of the parties, the Panel

Chair will permit each party's advisor, beginning with the Complainant's advisor, to ask the party they are representing relevant questions. After direct questioning, the advisors will be given the opportunity to ask relevant questions of the other party, beginning with the Complainant's advisor questioning the Respondent. The Hearing Panel members may also ask follow-up questions of the parties, as necessary.

Guided by the Panel Chair the questioning of witnesses will generally follow a similar process, beginning with the Complainant's witnesses. Such direct and cross-examination of the parties and witnesses by advisors will be conducted directly, orally, and in real time by the party's advisor and never by the party personally. Advisors should take care not to ask questions that have already been asked and answered.

At the conclusion of all questioning, the Panel Chair will adjourn the hearing.

5. Questioning at the Hearing. The parties' advisors, and not the parties themselves, will be permitted to ask their party, the other party and any witnesses relevant questions and follow-up questions. The questioning will be conducted directly, orally, and in real time by the advisor.
6. Relevance. Only relevant, direct questions, cross-examination questions and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a direct question, cross-examination question, or other question, the Panel Chair will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Advisors are not permitted to object to the Panel Chair's decisions regarding relevance during a hearing. In general, the Hearing Panel will not consider statements of personal opinion or statements as to any party's general reputation for any character trait as relevant.
7. Prior Sexual History or Disposition. Questions about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions are intended to elicit evidence that someone other than the Respondent committed the conduct alleged by the Complainant or concern specific instances of prior sexual behavior with the Respondent and may be relevant to establish consent. The Panel Chair will determine the relevance of questions regarding prior sexual history or disposition. Advisors are not permitted to object to the Panel Chair's decisions regarding relevance during the hearing.

- C. Hearing Record: The hearing is closed to the public. The Complainant and the Respondent are each allowed to have one advisor of their choice present throughout the hearing process. Witnesses will be kept out of the hearing until it is their time to be questioned, whether the hearing is conducted in person or through technology. NCC shall keep a transcript, audio recording, or audio-visual recording of the hearing. Any other recording is prohibited. No camera, TV, or other equipment, including cellphones, will be permitted in the hearing room, except as arranged by NCC. If the hearing is conducted virtually, these same restrictions apply, and no participant shall record the virtual hearing in any way. The parties may inspect and review the transcript, audio, or audio-visual recording after it is completed.

III. Post-Hearing Process

- A. Determination Regarding Responsibility: After the hearing, the Hearing Panel will make a finding by the preponderance of the evidence as to whether the Respondent(s) violated the Policy(ies) and will create the Written Notice of Outcome as outlined below. In reaching a determination, the Hearing Panel may rely on relevant evidence that is otherwise permitted for consideration under this Policy and Procedures. The Hearing Panel has the discretion to determine the appropriate weight to assign to all relevant evidence.
- B. Written Notice of Outcome: No more than 10 business days after the hearing, the Hearing Panel will prepare a Written Notice of Outcome. If the Panel determines the Respondent(s) responsible for violations of policy, the Written Notice of Outcome, with a placeholder for section 7, will be sent in electronic format to the appropriate Disciplinary Authority, who will determine what sanction(s) and/or remedies will be imposed if the Respondent is found responsible for the behavior (see section III.C. below) The Disciplinary Authority will complete section 7 of the Written Notice of Outcome, sign and date the document and return it in electronic form to the Panel Chair, who will sign the document and obtain the signatures of the other two panel members. When the Written Notice of Outcome is complete, including signatures and section 7, the Panel Chair will send the document to the Title IX Coordinator. The Title IX Coordinator will receive the Written Notice of Outcome with signatures no more than twenty (20) business days after the hearing concludes.

The Written Notice of Outcome will include the following:

1. identification of the hearing panel members, the parties, advisors, and witnesses at the hearing; the date, time, and location of the hearing; and the

allegations potentially constituting Discrimination, Sexual Harassment, and/or Misconduct per the Policy;

2. 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;
3. identification of the Policy(ies) alleged to have been violated;
4. identification of new witnesses and/or evidence added and considered at the hearing but that were not part of the investigation report;
5. findings of fact relevant to the allegation(s);
6. a statement of the Hearing Panel's determination as to each allegation (whether the Respondent(s) did or did not violate the Policy(ies) and if the allegation was found to be more likely true than not. ; which section(s) of the Policy(ies) were violated, if violations are found; and the rationale for each determination.
7. To be completed by the Disciplinary Authority (see section III. C. below)
Description of any sanction(s) imposed on the Respondent(s) if a determination is made that the Respondent(s) is responsible for violating the Policy(ies) and whether remedies designed to restore or preserve equal access to the college's education programs or activities will be provided to the Complainant and/or college community;
8. information about the appeal process; and
9. signatures of all Panel Members and the Disciplinary Authority.

C. Disciplinary Authority: If the Hearing Panel determines that the Respondent(s) is responsible for violating the Policy(ies), the Hearing Panel will refer the matter to the appropriate Disciplinary Authority, who will determine the appropriate remedies and/or sanction(s) to be imposed.

1. For NCC student Respondents, the Disciplinary Authority is the Associate Dean of Student Life (Bethlehem Campus) or the Associate Dean of Student Services (Pocono Campus) or their respective designees.

2. For NCC staff Respondents, the Disciplinary Authority is the Chief Human Resource Officer or designee, who may consult with the Respondent's direct supervisor.
 3. For a Respondent who is both a student and employee, the Disciplinary Authority is the Associate Dean of Student Life (Bethlehem Campus) or the Associate Dean of Student Services (Pocono Campus) or designee, if the Respondent's primary status is an enrolled student. The Disciplinary Authority is the Chief Human Resource Officer or designee when the Respondent's primary status is an employee who is enrolled as a student as a benefit of their own employment. Where there is a question about the predominant role of the Respondent, the Title IX Coordinator may direct that the appropriate Associate Dean for Students and the Chief Human Resource Officer, or their designees, to work collaboratively as the Disciplinary Authority. Such a Respondent may be subject to any of the sanctions applicable to students and employees.
 4. For faculty Respondents, the Disciplinary Authority is the Provost and Vice President for Academic and Student Affairs or designee, who may consult with the faculty member's Dean or Department Chair.
- D. Sanction(s) and/or Remedies: The Disciplinary Authority may issue/impose a combination of sanction(s) and/or remedies.

In determining the appropriate sanction(s) and/or remedies, the Disciplinary Authority may consider several factors, including but not limited to

1. the nature of the conduct at issue;
2. the impact of the conduct on the Complainant;
3. the impact on, or implications of the conduct, for NCC's college community;
4. prior misconduct by the Respondent(s), including the Respondent's relevant prior discipline history, both at NCC or elsewhere, and any criminal convictions, if such information is available and known;
5. any expression of remorse or acceptance of responsibility by a Respondent;
6. maintenance of a safe and respectful environment conducive to learning;
7. protection of the college community;

8. the necessity of any specific action in order to eliminate the Sexual Harassment and/or Discrimination that occurred, prevent its recurrence, and remedy its effects on the Complainant or other college community members; and
9. any mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.

The Disciplinary Authority may also consider restorative outcomes that, taking into account the safety of the college community as a whole, allow a Respondent(s) to develop insight about their responsibility for the behavior, learn about the impact of the behavior on the Complainant and the community, and identify how to prevent or change the behavior.

Remedial measures and sanctions will not be imposed until the appeal process is completed and deemed final.

- E. Notification of Outcome: The Title IX Coordinator will provide the Complainant and Respondent simultaneously the Written Notice of Outcome issued by the Hearing Panel regardless of their participation in the Formal Resolution process. The Title IX Coordinator will issue the Written Notice of Outcome to the parties no later than twenty-three (23) business days after the Title IX Coordinator receives the final document from the Panel Chair.
- F. Appeal Procedures: The Complainant(s) and Respondent(s) have five (5) business days in which to file an appeal of the determinations of responsibility made in the Written Notice of Outcome. Either party may appeal the determinations on one or more of the following bases only:
 1. procedural irregularity that affected the outcome of the matter;
 2. new evidence that was not reasonably available at the time the determination(s) were made (does not apply to evidence that was available but not made known to the Title IX Coordinator by the Complainant or Respondent during the pre-hearing phase as described in these procedures);
 3. a member of the Hearing Panel had a conflict of interest or bias for or against the Complainant or Respondent generally or the individual Complainant or Respondent that affected the outcome of the matter;

4. the sanction(s) imposed, if any, are too severe or too lenient given the nature of the violation(s), prior misconduct or lack thereof on the part of the Respondent(s), the facts of the case, and the mitigating, aggravating, or compelling circumstances surrounding the case; and/or
5. a witness and/or evidence was ruled by the Panel Chair as relevant or not relevant, when the Panel Chair should have ruled the opposite and either included or excluded the witness and/or evidence inappropriately.

Appeals must be in writing and sent to the Title IX Coordinator within five (5) business days of the receipt of the Written Notice of Outcome. If neither party appeals the Written Notice of Outcome within five (5) business days of the receipt of the written notice, the Written Notice of Outcome shall be deemed final. If either party files an appeal within five (5) business days, the appeal must include the determination(s) being appealed and the basis, from those listed above, on which the appeal is made. A rationale for each element of the appeal must also be provided, including an explanation as to why the appealing party believes the appeal officer should review the determinations of the Hearing Panel and/or the sanctions imposed by the Disciplinary Authority to whom the outcome was referred. The appeal officer, who will be chosen by NCC, will issue a decision on the appeal within fifteen (15) business days. The decision of the appeal officer is final.

Upon the filing of an appeal by one of the parties, the Title IX Coordinator will notify immediately the non-appealing party in writing of the appeal and allow the party to submit a written statement in support of the outcome or a statement also challenging it. Such statements must be submitted to the Title IX Coordinator within five (5) business days of notification of the appeal by the other party. The Title IX Coordinator will provide any such statements to the appeal officer for consideration.

Remedial measures and sanctions will not be imposed until the appeal process is completed and deemed final.