

## Palm Beach State College Procedure

<b>TITLE</b>	Discrimination and Harassment Grievance Process	<b>NUMBER</b>
<b>LEGAL AUTHORITY</b>	Title VI, VIII, Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Civil Rights Act of 1991; Section 504, 1973 Rehabilitation Act; Americans with Disabilities Act (ADA) of 1990; Americans with Disabilities Act Amendments Act (ADAAA) 2008; Genetic Information Non-Discrimination Act (GINA); Sections 1000.05 & 1001.64, Florida Statutes; Florida Administrative Code Rule 6A-19.008; the Whistleblower Protection Enhancement Act of 2012; The Whistleblower’s Act, Sections 112.3187-31895, Florida Statutes.	<b>PAGE</b> 1 of 1
<b>BASED ON POLICY</b>	6Hx18-5.86 Harassment, Sexual Harassment, Discrimination, Retaliation Policy and Complaint Procedure	
<b>EFFECTIVE DATE</b>		

### I. PURPOSE

To provide a grievance procedure for students, employees, or applicants for admission or employment alleging discrimination or harassment based upon race, color, creed, ethnicity, national origin, gender, sexual orientation, age, religion, marital status, veteran status, disability, genetic information, or pregnancy status.

The College’s Office of Human Resources and the Assistant Director of Human Resources & Equity Officer/ADA and 504 Coordinator (“Equity Officer”) serves as the College’s primary resource on all matters relating to discrimination, harassment and retaliation.

### II. DEFINITIONS

#### 1. Discrimination

Treatment of any member of the College community different from the way others are treated based on race, color, creed, ethnicity, national origin, gender, sexual orientation, age, religion, marital status, veteran status, disability genetic information, or pregnancy status without lawful justification.

#### 2. Disability discrimination

A qualified individual with a disability being either excluded from participation in or denied the benefits of the College's services, programs, or activities, or otherwise being discriminated against by the College and that the exclusion, denial of benefit, or discrimination was by reason of his or her disability.

### 3. Harassment

Unwelcome conduct or request for favors verbal or physical conduct or any action based on an individual's race, color, creed, ethnicity, national origin, gender, sexual orientation, age, religion, marital status, veteran status, disability, genetic information, or pregnancy status that adversely impacts either a condition of work or learning (quid pro quo) or creates a hostile environment.

Harassment may include, but is not limited to, repeated remarks of a demeaning nature, implied or explicit threats, slurs, innuendoes or gestures, demeaning jokes, stories, pictures, objects or activities directed at an individual based on any of the above categories or groups.

- Quid Pro Quo Harassment consists of unwelcome conduct when:
  - Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, employment decisions, or academic advancement; or
  - Submission to, or rejection of, such conduct by an individual is used as the basis for decisions affecting such individual in matters of employment, employment decisions, or academic advancement.
- Hostile Environment Harassment consists of unwelcome conduct when:
  - Such conduct has the effect of unreasonably interfering with an individual's work or academic performance; or
  - Such conduct has the effect of creating an intimidating, hostile or offensive work or learning environment.

### 4. Sexual Harassment

Unwelcome conduct of a sexual nature. It includes sexual advances, requests for sexual favors, or other verbal, non-verbal, or physical conduct of a sexual nature. This includes, but not limited to:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or a student's status in a course, program, or activity;
- Submission to, or rejection of such conduct by an employee is used as a basis for employment decisions affecting the individual. In the case of a student, it is used as a basis for academic or other decisions affecting a student;
- Such conduct has the purpose or effect of unreasonably interfering with the individual's employment (or the student's educational experience) by creating an intimidating, hostile, or offensive environment.

- Unwelcome physical contact, including unnecessary touching, patting, hugging or brushing against a person's body;
- Unwanted flirtations or advances of a sexual nature;
- Inappropriate or unwelcome sexual remarks about a person's clothing, body or sexual relations;
- The display in the workplace or classroom of sexually suggestive objects, pictures, posters or cartoons which are without defensible educational purpose;
- Inappropriate or unwelcome conversation of a sexual nature or similar jokes and stories; and
- Sexual assault

5. Retaliation

Unlawful adverse or negative action taken against the person who makes or supports a complaint of harassment or discrimination.

### III. PROCEDURE

Any Palm Beach State College employee, student, applicant for admission or employment or other participant in the College's programs or activities who believes they have been unlawfully harassed or discriminated against on the basis of sex, race, color, marital status, age, religion, national origin, ethnicity, disability, veteran's status, sexual orientation, pregnancy or genetic information is urged to communicate that information to an appropriate College official, as more fully described below. **ALL COLLEGE EMPLOYEES ARE EXPECTED TO REPORT ANY HARASSMENT OR DISCRIMINATION THAT THEY OBSERVE, HAVE HEARD ABOUT, OR BELIEVE MAY BE OCCURRING.**

1. All complaints, other than Title IX complaints, must be in writing and on the College's Complaint Form, which may be obtained from Human Recourses, Policy 6Hx18-5.86, Student Complaint Procedure Number 3.51, or from the College's website ( ). Employee complaints must be filed in a timely manner within 30 days after the occurrence of the most recent allegedly discriminatory act. At the discretion of the Equity Officer, the date may be extended due to extenuating circumstances. In addition to or instead of filing with Human Recourses, the complainant may file a formal charge of discrimination with a state or federal agency authorized by law to receive such claims.

2. The complaint should include the complainant's name and signature; describe the act or acts complained of; identify the person or persons purportedly responsible (the "Accused/Respondent"); indicate the date(s) or approximate date(s) on which the act or acts occurred; and the names and contact information of potential witnesses. The complaint should also include the effect the alleged acts have had on the complainant; complainant's desired resolution; and any other information the complainant believes is relevant.

3. Initial Contact and Filing of Complaint

- If the matter involves a student, whether as a complainant or a respondent, the Office of the Dean of Students of each campus or a designee of his or her professional staff ("collectively referred to in this procedure as the ("Dean's Office")) shall be the initial point of contact unless the matter involves a disability-related issue whereby the Student Development Director should be the first point of contact. This office must provide assistance and support, respond to inquiries and provide general information regarding discrimination issues. Students should resort to the Student Handbook/Code of Conduct for student on student issues or complaints. Students may also direct their concerns to Kathleen Karran McCoy, Dean of Student Development & Ombudsman at (561) 868-3371 or [karran-k@palmbeachstate.edu](mailto:karran-k@palmbeachstate.edu).

Problems not resolved at the initial point of contact, shall move forward to the next level of filing a complaint. The Dean's Office shall describe the discrimination complaint process to the complainant; review information relative to the complaint; and schedule any meetings or hearings requested or required by this procedure. If a complainant cannot state a sufficient basis in fact or law to support a discrimination or harassment claim, the Dean's Office shall attempt to assist the complainant with selecting a more appropriate internal means of resolving the specific complaint.

If a student believes that he or she has been subjected to discrimination during the process for admission to the College, the student may file a written complaint to the District College Registrar.

- If the matter involves the complaint of an employee or an applicant for employment, the Human Resources/Equity Officer shall be the initial point of contact. The Human Resources/Equity Officer will provide assistance and support, respond to inquiries and provide general information regarding discrimination issues. The Human Resources/Equity Officer shall also describe the discrimination complaint process to the complainant; review information relative to the complaint; and schedule any meetings or hearings requested or required by this procedure. If a complainant cannot state a sufficient basis in fact or law to support a discrimination or harassment claim, the Human Resources/Equity Officer shall attempt to assist the complainant with selecting a more appropriate internal means of resolving the specific complaint.

- Alternate Points of Contact

Employees, students or applicants may initially advise any College official (Dean, Faculty member, Chairperson, etc.) in whom they have confidence, of a complaint of discrimination or harassment. The College official who is advised of a complaint or potential complaint of discrimination or harassment must refer students to the Office of the Dean of Students, or must refer employees and applicants to the Human Resources/Equity Officer.

#### 4. Informal Resolution of Complaint

Complainants are encouraged, where appropriate, to attempt, initially, to resolve complaints by informal resolution. The informal resolution process is an attempt to resolve complaints quickly and to the satisfaction of all parties, while protecting confidentiality to the extent authorized by law. Human Resources/Equity Officer will be available to provide assistance to the employment unit or academic department in order to resolve the complaint. If the complaint cannot be resolved through the informal resolution process, a formal complaint may be filed as outlined in this procedure.

The informal resolution process shall be handled by the following offices:

- In cases where the complainant is a student, or the complaint involves a student as respondent, the Office of the Dean of Students;
- In cases where the complainant is a student and the complaint involves disability-related issues, Student Development Director;
- In cases where the complainant is an applicant for admission, or the complaint involves a student as respondent, the Office of Campus Registrar;
- In cases where the complainant is an employee, Human Resources/Equity Officer; and
- In cases where the complainant is an applicant for employment, Human Resources/Equity Officer.

No later than 15 work days after the filing of the complaint, the appropriate office, as referenced above, will meet separately with the complainant and respondent to determine the factual allegations on which the complaint is based and to discuss the complaint procedures.

If it is determined that the complaint is suitable for informal resolution, that option will be discussed and offered to the complainant and the respondent, who will be given five work days to decide whether to proceed with informal resolution. If the complaint is deemed by the appropriate office to be unsuitable for informal resolution, or if either party declines to participate in or to make a decision regarding informal resolution, Human Resources/Equity Officer will conduct an investigation.

At any time during the informal resolution process, either party may elect to terminate the process, and the complaint will then be investigated by Human Resources/Equity Officer. Human Resources/Equity Officer reserves the right not to proceed with an investigation if it determines that during the informal resolution process a complainant was offered and refused all of the relief to which he or she would be entitled. Generally, Human Resources/Equity Officer will not involve any person other than the complainant and respondent in the informal resolution process, except as it may be necessary to consult with appropriate College officials regarding College policies and procedures. Informal resolution should be completed no later than 30 days after the complainant and the respondent have agreed to this process.

#### **IV. FORMAL COMPLAINT PROCESS**

If it is determined by the coordinating office that informal resolution is not appropriate, it is not agreed to by both parties, it is unsuccessful, Human Resources/Equity Officer will conduct an investigation. As a condition of employment, employees of the College are required to cooperate with these types of investigations by providing truthful and complete information. It is the College's expectation that the employee will answer all questions and provide any knowledge he or she possesses that may be helpful to the inquiry. Employees, who refuse to answer questions related to their employment, are subject to discipline, up to and including termination of employment. The investigation will include, but is not limited to:

1. Interviews with material persons who may have relevant information;
2. Coordinate the gathering of relevant information;
3. Review relevant files and records such as personnel files, departmental and/or unit files, and others;
4. Comparing the treatment of complainant to that of others similarly situated in the department or unit; and
5. Reviewing applicable laws, rule, regulations, policies, procedures and practices.

The investigation shall be concluded within 60 work days of its inception, unless circumstances arise that require an extension of these time frames for good cause. Such circumstances may include the complexity of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening College break or planned leave (vacation/sick/personal) of involved parties, or other unforeseen circumstances. Justification for the delay will be documented and communicated to the respective parties.

Human Resources/Equity Officer shall issue a written report making findings of fact and any appropriate recommendations as to whether or not a policy violation is substantiated or has not been substantiated.

Copies of the report will be provided to the complainant, the respondent, and the appropriate College Representative including Campus President/District Vice Provost, and/or the Executive Director for the Division of Human Resources. Confidentiality of the investigation shall be maintained to the extent authorized by law. The report shall include: a summary of the findings, a recommendation as to whether disciplinary action should or should not be pursued against the accused individual; a proposed disciplinary penalty or other corrective action against the respondent and others, and the basis for the recommended action, a summary of the complaint; the findings of the investigation; a determination as to whether a violation of College policy was found; and a recommendation of disposition.

If either the complainant or the accused party disagrees with the determination, an appeal may be made to the College President within 15 working days of receipt of the written report. The College President shall review all such appeals and has discretion to further investigate the matter. The President shall issue a decision within 30 days of receiving the request. The determination of the College President shall be the final step of the internal review procedure. Any discipline administered for full-time faculty shall be subject to the grievance and arbitration procedures as outlined in the faculty union contract.

## V. OTHER PROVISIONS

- A. The College prohibits retaliation against employees, students and applicants who file complaints of discrimination, or harassment.
- B. Employees and students may be accountable for discrimination or harassment under applicable local, state and federal law as well as under College policies. The College, at its sole discretion, may elect to proceed or may elect to stay disciplinary action while other agency proceedings, either civil or criminal in nature, are pending.
- C. Employees who wish to file complaints regarding discrimination or harassment external to the College may contact the U.S. Equal Employment Opportunity Commission (EEOC), Miami District Office, at Miami Tower, 100 SE 2nd Street, Suite, 1500, Miami, Florida 33131.
- D. Students who wish to file complaints external to the College may contact the U.S. Department of Education, Office For Civil Rights at [www.ed.gov/ocr/complaintintro.html](http://www.ed.gov/ocr/complaintintro.html).
- E. Palm Beach State College Title IX Coordinator is Penny J. McIsaac. Contact information (561) 868-3277 or [mcisaacp@palmbeachstate.edu](mailto:mcisaacp@palmbeachstate.edu)
- F. Palm Beach State College ADA/Section 504 Coordinator is Juanita Hook. Contact information (561) 868-3111 or [benjami@palmbeachstate.edu](mailto:benjami@palmbeachstate.edu)
- G. Palm Beach State College Dean of Student & Ombudsperson is Kathleen Karran-McCoy. Contact information (561) 868-3371 or [karran-k@palmbeachstate.edu](mailto:karran-k@palmbeachstate.edu)
- H. Palm Beach State College Student Development Director is Nikki Champagnie. Contact information (561) 868-3298 or [champagn@palmbeachstate.edu](mailto:champagn@palmbeachstate.edu)