

Palm Beach State College Procedure

TITLE	Title IX Sexual Harassment Grievance Process	NUMBER 5.86P-2
LEGAL AUTHORITY	1001.64 FS; Chapter 760 of the Florida Civil Rights Act; Title IX of the Education Amendments of 1972; Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131; The Americans with Disabilities Act of 2008 (ADAA), Genetic Information Non-Discrimination Act of 2008; Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092; Violence Against Women Reauthorization Act of 201, 34 U.S.C. § 12291	PAGE 1 of 11
BASED ON POLICY	6Hx18-5.86 Harassment, Sexual Harassment, Discrimination, Retaliation Policy and Complaint Procedure	
EFFECTIVE DATE	08/13/2020	

I. PURPOSE

Discrimination based on sex is defined as denial of access or participation in, denial of the benefits of, or be subjected to discrimination under any employment, education program or activity of Palm Beach State College, based on sex, gender or gender identity, pregnancy and/or

parenting. Sexual harassment and discrimination based on sex are expressly prohibited at Palm Beach State College.

Pregnant and parenting students and employees have rights under Title IX as well. If pregnancy and/or childbirth are impacting a student's ability to be successful in class(es), the college will provide assistance. This support could include but is not limited to providing excused absences, making up work, working from home, or providing a different desk. Please contact the Title IX Coordinator for assistance at 561-868-3277, via skype at 561-421-2251, or via email at SpeakUp@palmbeachstate.edu. Employees who are pregnant will be provided leave in accordance with District Board of Trustees Policy, 6Hx-18-5.131, Family Medical Leave Act.

Sexual harassment complaints, as defined below can be submitted in any format convenient for the reporting party. Formal complaints are governed by the procedure outlined below.

II. DEFINITIONS

Sexual Harassment under Title IX is defined as:

- (1) 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;
- (2) 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
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C.12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

III. RESOURCE AND CONTACT INFORMATION

Students or employees that experience sexual harassment may contact any of the following departments to file a report.

- Title IX for Students Penny McIsaac
Title: Title IX Coordinator
Email: SpeakUp@palmbeachstate.edu
Phone:(561) 868-3277
Skype: (561) 421-2251

Title IX for Employees Juanita Hook
Title: Human Resources Director & Equity Officer/Section 504 & Title IX Coordinator
Email: hookj@palmbeachstate.edu
Phone: (561) 868-3111
Skype: (561) 4258-9069

- Campus Dean of Student Services Office:
 Belle Glade Roberto Carballoso carballr@palmbeachstate.edu
 (561) 993-1156
 Boca Raton Audrey Jackson jacksoa@palmbeachstate.edu
 (561) 862-4331
 Lake Worth Debra Jackson jacksond@palmbeachstate.edu
 (561) 868-3335
 Loxahatchee Groves TBA
 (561) 790-9051
 Palm Beach Gardens Tracey Olsen-Oliver olsenolt@palmbeachstate.edu
 (561) 207-5341
- Any Campus Security Office (561) 868-3600

IV. REPORTING AND COMPLAINT PROCEDURES

Students may file a report using our online [Title IX Complaint Form](#).

Employees may file a report using our online [Harassment, Sexual Harassment, Discrimination, and Retaliation Complaint Form](#).

Response to an initial report will include documenting the concern, providing access to college and community resources, and other supportive measures as appropriate.

Supportive measures may include an on-campus security escort, mutual no contact order, class relocation or time change, extended deadlines for course work, counseling services, access to community agencies for off campus service. This list is not exhaustive as each situation may require a unique accommodation.

An informal report may be escalated to a formal complaint at any time.

Amnesty for Alcohol and/or Drug Use: While the use of drugs or alcohol may violate the College's Code of Conduct policy, this conduct charge will not be considered when investigating a Title IX complaint.

Once a formal complaint requesting a formal resolution is filed with or signed by the Title IX Coordinator an investigation will be conducted per the following formal procedure.

V. FORMAL COMPLAINT PROCEDURE

Students requiring ADA accommodations must contact the Center for Accessibility Services to coordinate support throughout the conduct process. Employees requiring ADA accommodations must contact Juanita Hook at the information listed above.

This complaint process is intended to provide a fair, prompt and objective determination about whether a Title IX violation has occurred. The reporting party and the responding party will be equitably treated with dignity, courtesy, sensitivity and understanding and will not be prejudged or blamed for what occurred. The College will take all reasonable steps to prevent unnecessary or unwanted contact or proximity between both parties. Supportive measures will be made available as appropriate to both parties.

A student who makes a report made in bad faith may be subject to student conduct charges provided that a determination regarding responsibility, alone, is not the basis for concluding any party made a false statement. An employee who makes a report in bad faith may be subject to disciplinary action, up to and including termination of employment.

Formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances, may be consolidated into one case.

Retaliation against anyone involved in a complaint will not be tolerated.

1. In the case of a student conduct charge being filed against the person retaliating based on items 13 and 20 of the Student Code of Conduct.
2. In the case of an employee retaliation may result in disciplinary action, up to and including termination of employment.

VI. NOTIFICATION OF FORMAL COMPLAINT

A conduct summons is issued to the responding party in person, by email and/or certified letter to the mailing address listed on the student record of the responding party. This notification will be sent with sufficient time in advance of the first meeting to prepare a response. This notification will include:

- a. Names of the parties involved, if known.
- b. Date, time and location of the alleged incident, if known.
- c. Name of the investigator and the date, time and location of the first interview.
- d. Statement that respondent is presumed not responsible, noting that any determination of responsibility will be made at the conclusion of the process.
- e. Right to have a hearing advisor of their choice, with a request for the contact information prior to the first interview, and a description of what the hearing advisor's role is.
- f. Statement referencing Student Code of Conduct item 20 regarding making false statements.
- g. If any new allegations arise from the investigation, parties will be notified.
- h. Statement regarding any basis for dismissal and referral for other remedies.
- i. No notation will be made on the responding parties' transcript.
- j. Copy of the governing policy 6Hx-18-5.86.

In the case of a student failure to attend the initial appointment with the investigator may result in a temporary suspension for non-compliance, prohibiting the responding party from attending classes or participate or attend any College activity until the interview has occurred. A hold may be placed on a responding party's record preventing them from registering for classes, receiving grades or receiving transcripts.

In the case of an employee, it is expected that employees would cooperate in the investigation process and refusal to do so may result in disciplinary action, up to and including termination of employment.

VII. INVESTIGATION

An investigation will be conducted by the Assistant Dean of Student Services at the campus the responding party attends. Investigations involving an employee as the responding party will be conducted by a representative from Human Resources.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the College and not on the parties.

This investigation will include, but is not limited to, an initial interview with each person involved (this interview may be digitally recorded); visual inspection, copying, photographing or otherwise preserving text, emails, social media post, voice messages and any other type of documentation or media relevant to the investigation. If medical/psychological documentation is provided by the parties, it will only be used with the providing parties' permission.

Any persons thought to have information relevant to the complaint shall be interviewed, and such interview shall be appropriately documented, including by digital recording. It is expected that interviewees would cooperate in providing all requested information.

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, may be subject to discipline, up to and including termination of employment.

As a condition of enrollment, students of the College are required to cooperate with any investigation related to a possible violation of the Student Code of Conduct.

Either party may provide witnesses for interview or other documentation that may support their statement.

Students are permitted to discuss the case with others, in an effort to gather evidence to provide the investigator. This does not include interaction between the reporting party and the responding party. The investigator assigned to the case will make those inquiries on the party's behalf.

Parties' hearing advisors may review any documentation being discussed with that party and may also be present at all meetings related to the investigation.

Prior to the completion of the investigative report, copies of any evidence obtained as part of the investigation that is directly related to the allegation raised in the formal complaint will be provided to each party and their hearing advisor for review and comment. The parties will have 10 business days to submit a written response. The investigator will consider any relevant comments prior to completion of the investigative report.

The College must send an investigative report that fairly summarizes relevant evidence to each party and the party's hearing advisor at least 10 business days prior to a hearing for the party's review and written response.

The investigator will provide written notice of any interview or meeting necessary to each party and their hearing advisor, five business days in advance, to allow the parties sufficient time to prepare.

The relevant evidence summarized in the report will include both inculpatory and exculpatory evidence.

If the investigation shows that the evidence does not support a Title IX violation, both parties will be notified of the dismissal of the Title IX complaint and why.

In the case of a student, the parties will be notified that the investigative report will be turned over to the Dean of Student Services for review regarding possible Code of Conduct Violations not related to Title IX., which will be investigated and could result in sanctions.

In the case of employees, the parties will be notified that that the investigative report will be turned over to the Chief Human Resources Officer for review regarding possible District Board of Trustees Policy violations not related to Title IX.

The College may also dismiss a complaint when

- A written request to stop the formal grievance process is submitted by the reporting party.
- The responding party is no longer enrolled or employed at Palm Beach State College.
- Specific circumstances prevent the gathering of evidence sufficient to reach a determination.

VIII. FORMAL TITLE IX HEARING

Parties will be notified; via email, 10 business days prior; of the date, time and location of the hearing. This notification will include the final investigative report and supporting documentation. Certified mail will also be sent to both parties. Redactions may be included as necessitated by applicable law including FERPA in the case of a student.

Hearings may be conducted virtually if necessary, or if in person, either party can request to be in a separate room with remote audiovisual connections to facilitate cross-examination.

The conduct hearing is a non-adversarial proceeding and is intended to be fact-finding.

Both parties must have a hearing advisor present to conduct cross examination, but the hearing advisor may not otherwise participate in the proceedings.

All hearings are only open to those involved as determined by the dean or designee and or the chairperson.

Both parties have the right to hear from the opposing party and witnesses, to direct questions to the opposing party and witnesses through the committee chair.

Live testimony may be provided in person or via electronic means if approved by the dean or designee.

The College will make a recording and will notify all parties at the beginning of the hearing. The recording will be available within 72 hours following the hearing.

Failure to appear shall not be regarded as admission of responsibility.

Pending a conduct hearing, the responding party will be permitted to attend class and otherwise participate in College activities, except in the case of a temporary suspension or restrictions based on the supportive measures provided to the complainant.

Resolution of any situation not outlined in this process will be at the discretion of the dean of student services or College designee, depending on whether it is a student or employee complaint.

The investigative report and all evidence will be provided to both participants for reference during the hearing.

IX. TITLE IX HEARING COMMITTEE

The Student Conduct Coordinator or college designee shall initiate the formation of a Title IX Hearing Committee depending on whether it is a student or employee complaint. The committee shall be composed of five persons including two students and three faculty/instructor/staff for cases involving students. Cases involving employees will be comprised of a committee of 5 faculty/instructor/staff. Where possible, alternates will be identified. Faculty/instructors, staff and students who are directly involved in the case, have an affiliation with any of the parties, or have any other bias or conflict of interest may not serve on the committee. The dean or designee shall select one of the committee members to serve as chairperson. All members serving on the hearing committee will be required to sign a confidentiality agreement.

The conduct hearing committee will determine if a Title IX violation has occurred based on the preponderance of the evidence presented by casting a vote.

Chairperson's Duties:

1. Calls the hearing to order and introduces all parties present.
2. Explains the manner in which the hearing will be conducted.
3. Reads the charges being considered.

4. Maintains proper decorum and order, dismissing any person who impedes or threatens to impede a fair and orderly hearing.
5. Ensures the committee adheres to standards of confidentiality as provided for in state and federal law (i.e., Family Educational Rights and Privacy Act).
6. Ensures both parties have the opportunity to provide testimony and witnesses and relevant evidence.
7. Facilitates cross-examination for both parties' hearing advisors.
8. Ensures all available relevant evidence is presented, that questions during cross-examination are relevant and that the decision is based solely upon the evidence and any testimony given at the hearing.
9. The committee chairperson is a neutral party and shall facilitate the hearing process, only voting in the case of a tie.
10. The chairperson may call a recess at their discretion or at the request of either party.

X. DURING THE HEARING

- Opening remarks will be given by the chairperson detailing the procedure and rules of the hearing. The chairperson will also read the notice of violation.
- Each party will be asked to present their perspective including any witnesses, reports or documentation.
- Each party's hearing advisor will conduct cross-examination of the other party through the hearing committee chairperson.
- Any witnesses can be recalled, if available, by either party or the committee chairperson.
- A summary statement will be given by each party before the conclusion of the hearing.
- At the conclusion of the hearing, the participants will be excused, and in closed session, a decision will be rendered by a majority vote of the committee.

XI. COMMITTEE DELIBERATION

The process for determining the outcome of the hearing involves a review of the documentation, consideration of testimony, and a vote. The committee will decide the matter based on the preponderance of the evidence presented to determine whether a Title IX violation has occurred. The preponderance of the evidence is when it is more likely than not that the violation occurred.

- Only evidence presented at the hearing itself may be taken into account in reaching a decision.

- The committee may consider the prior conduct history of the responding party in determining sanctions. The Dean of Students Services, in the case of a student and the Chief Human Resources Officer, in the case of an employee, will determine if the parties prior conduct history is relevant and provide the information to the hearing committee chair once a determination has been made.
- Findings and sanctions will be delivered by the committee chairperson to the dean or designee, who will notify both parties simultaneously via College email, if applicable, within two business days and in writing to the address on record within five business days.

This determination will include

- the allegations constituting sexual harassment,
- a timeline of the steps taken from receipt of the formal complaint through the determination,
- findings of fact that support the determination
- conclusions regarding the application of the College's code of conduct or District Board of Trustees Policy to the facts
- a statement of, and rationale for, the result as to each allegation including a determination regarding responsibility, any sanctions imposed on the responding party, and whether remedies provided for the reporting party. (See list of possible sanctions in the Student Conduct section above.)
- procedures for either party on how to appeal the determination.
- In the case of students, the dean's office will maintain findings, including any supportive measures, sanction(s) to be imposed and supporting documentation for seven years.
- No transcript notation will be made to a student respondent's transcript if responsibility is determined.
- In the case of employees, the Office of Human Resources will maintain findings, including any supportive measures, disciplinary action imposed and supporting documentation for seven years.

XII. APPEAL OF THE OUTCOME OF A HEARING

If the respondent is a student and either party disagrees with the determination, an appeal may be made to the Vice President of Student Services and Enrollment Management or designee within 10 business days of receipt of the results of the hearing. If the respondent is an employee and either party disagrees with the determination, an appeal may be made to the College President within 15 business days of the receipt of the results. Grounds for appeals are as follows:

- 1) a procedural error occurred that significantly impacted the outcome of the hearing or sanction;
- 2) consideration of new evidence, unavailable during the original investigation that could substantially impact the finding or sanction (a summary of this new evidence and its potential impact must be included)

- 3) the sanction imposed is substantially disproportionate to the severity of the violation, and
- 4) either the party believes there was an abuse of discretion, conflict of interest or bias on the part of either the Title IX Coordinator, investigator or hearing committee member(s).

Once an appeal is filed the other party will be notified immediately, so that party may also supply a statement to the Vice President.

The Vice President of Student Services and Enrollment Management or designee, for complaints against students, or the College President, for complaints against employees, shall issue a written decision within 30 business days of receiving the request to both parties. This decision may include an affirmation of the findings and sanctions, or reduced or increased sanctions, or offering a different finding and or sanction. The decision will also include the rationale for the decision.

Vice President of Student Services and Enrollment Management or designee, for complaints against students, or the College President, for complaints against employees, has discretion in determining whether a sufficient reason was stated for an appeal and may dismiss the appeal if it is found to be insufficient.

The decision of the Vice President of Student Services and Enrollment Management or the College President is final.

Upon completion of the investigation a written report will be prepared and provided to both parties. The report shall include a summary of the complaint and a summary of the evidence. Parties can offer additional information or challenge the report, resulting in conversation with the investigator to determine the relevancy of any new information. A copy of this report will be provided to both parties for review and commentary before the report is sent to the Title IX coordinator and the campus dean of student services or designee, in the case of a student, or the Chief Human Resources Officer in the case of an employee, as appropriate by the investigator. During the investigation either party may request to review documents in the investigation file.

The decision-maker(s) for the appeal will not be the same as the decision-maker(s) that reached in the initial determination regarding responsibility or dismissal which shall include the investigator, or the Title IX Coordinator.

Should the respondent retaliate or issue threats as a result of the complaint, the following process may be followed.

XIII. TEMPORARY SUSPENSION

In the case of a Title IX Violation related to students, the responding party may be temporarily suspended if the Panther Care Team determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. The Campus Dean of Student Services is notified to facilitate the temporary suspension.

In the case of a Title IX violation related to an employee, the responding party may be temporarily suspended if an immediate threat to the physical health or safety of any employee or other individual arising from the allegations of sexual harassment justifies removal. The Chief Human Resources Officer is notified to facilitate the temporary suspension.

Prior to a temporary suspension, notice of the infractions must be given to the student or employee verbally, in person or telephonically. A hold is placed on the student's record until such time as the charges are resolved.

The respondent will be notified, via email, as to the date, time and location of the conduct review session. A video conference will be conducted if the respondent is unable to be present or at the discretion of the Dean of Students or their designee in the case of a student, or the Chief Human Resources Officer in the case of an employee for campus safety concerns. The respondent will be notified of the pending conduct charges and the reason for the temporary suspension; the respondent will also have an opportunity to discuss the information presented, ask questions and provide information regarding the incident. If the respondent is not satisfied, they may submit an appeal via email to the Vice President for Student Services and Enrollment Management or the College President, who will respond within 3 business days.

If the appeal is denied, the College will continue with the conduct process to resolve the matter.

If the appeal is upheld, the temporary suspension will be lifted, and the respondent may return to campus. The Dean or designee in the case of a student or the Chief Human Resources Officer in the case of an employee, may elect to place other restrictions until the conduct process is complete.