

**SPEAK
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TITLE IX**

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SEXUAL MISCONDUCT POLICY

Issued (Originating Date): October 1, 2014
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Responsible University Office: Human Resources

SCOPE

This policy will apply to all organizational units within Palm Beach Atlantic University (PBA), and will be acknowledged and adhered to by all PBA faculty, staff, students and vendors.

This policy applies in its entirety to sexual misconduct committed by faculty, staff, students or vendor(s) against any, faculty, staff, students or vendor(s) at any University-sponsored events including any University-owned building or University-owned property or vehicles, and any building controlled by a student organization that is officially recognized by the University. This policy does not include sexual misconduct committed at University-sponsored study abroad or other trip activities

REASON FOR POLICY

This policy defines sexual misconduct and acts that constitute sexual misconduct. It provides reporting procedures and accommodations for individuals who, have experienced sexual misconduct, and hereafter are referred to as the Complainant. It outlines possible sanctions for a person found to have committed sexual misconduct.

The purpose of this policy is intended to satisfy the requirements of the Clery Act, the Violence Against Women Reauthorization Act of 2013, the Campus Sexual Violence Elimination Act (the "SAVE Act"), Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 – 1688, Title 20, Education; Chapter 38, and Final Title IX Regulations of 2020 (May 6, 2020).

POLICY STATEMENT

It is a community expectation that faculty, staff and students, and vendors of Palm Beach Atlantic University (the "University") will neither engage in nor promote sexual activity or behavior that contradicts Biblical standards. In this regard, the University has articulated certain parameters for appropriate sexual behavior in the Community Values System section of the *Navigator*, (and, in particular, the section titled "Inappropriate Sexual Behavior or Activity" of the *Navigator*), and in similar policies found in the Faculty and Employee Handbooks. Where the content of the Sexual Misconduct Policy conflicts with other similar policies set forth in the student and/or-Faculty and Employee handbooks, the requirements of this Sexual Misconduct Policy shall prevail.

Palm Beach Atlantic University is deeply committed to creating and sustaining an educational, working, and living environment that is conducive to learning and scholarship and is supportive of students and employees. Part of this commitment is fostering a campus free of Sexual Misconduct in all forms.

The University and its Title IX designees, when it has actual knowledge of actionable sexual misconduct, in

an education program or activity against a member of the Palm Beach Atlantic University community, must promptly respond in a manner that is not deliberately indifferent. All University personnel, including faculty, staff, and students are obligated to report all suspected or alleged incidents of sexual misconduct to the Title IX Coordinator or a Deputy Title IX Coordinator who are listed under *University and Off-Campus Resources* in this policy.

Any student or employee reporting an incident of sexual assault, domestic violence, dating violence, or stalking to the University will receive information regarding his or her rights and options pursuant to this policy. (See Appendix A, Statement of Rights of Parties)

This Policy supersedes any previous policy(ies) sexual misconduct and/or retaliation under Title IX and will be reviewed and updated, as needed, by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect, and shall be applicable immediately to faculty, staff and students, with or without notice.

If government laws or regulations change, or court decisions alter, the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

SANCTIONS

If the results of the investigation indicate sexual misconduct has occurred, the University will take appropriate action. For students found to have committed sexual misconduct, such actions may include, but are not limited to, education, counseling, and loss of privileges, housing restrictions, probation, suspension, or expulsion. For faculty and staff, such actions may include, but are not limited to, education, counseling, oral and/or written warnings, probation, suspension, or termination of employment. Moreover, the University may issue no contact orders and/or no trespass orders. Both the Complainant and the (alleged) perpetrator, hereafter referred to as Respondent will be informed of the outcome of the investigation.

ACCOMMODATIONS

Regardless of whether a student or employee files a complaint of an incident of sexual assault, domestic violence, dating violence, or stalking to law enforcement or pursues any formal action, the University is committed to providing a safe learning and working environment. Accordingly, upon request, the University will make any reasonably available change to a Complainant's academic, living, transportation, and working situation.

The University will ensure that orders of protection issued by courts are fully upheld on all University property. For that reason, if a student or employee of the University obtains an order of protection or restraining order, he or she should promptly inform Palm Beach Atlantic University Campus Safety & Security and provide them with a copy of that order. (For more information see APPENDIX A, Resources, Support & Protective Measures)

POLICY PROCEDURES AND DETAILS

(See APPENDIX B, PBA Title IX Process Flowchart)

A. REPORT MADE OF INCIDENT AND SUPPORTIVE MEASURES OFFERED

Faculty, staff, and students may make a complaint of sexual misconduct to the Title IX Coordinator a Deputy Title IX Coordinators. The Title IX Coordinator will implement effective remedies designed to ensure it is not deliberately indifferent to sexual misconduct or retaliation, their potential recurrence, or their effects.

At this initial meeting the Complainant is notified of the right of all parties to have an Advisor to advise, support, and/or consult with them throughout the resolution process; present with both parties for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may choose Advisors from inside or outside of the PBA community. The University will provide an advisor, if a party desires to have an advisor and is unable to afford one.

1. Confidentiality and Retaliation

The University is committed to protecting the privacy of faculty, staff, and students who report incidents of sexual misconduct. If the University is required to disclose information regarding an incident, to the extent permitted by law, the University will keep the identity of the Complainant anonymous or will redact any personal identifying information specific to the Complainant.

2. Anonymous Reports

Because reporting carries no obligation to initiate a formal response, 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.

3. Three Options Available to a Complainant

Upon receipt of a complaint or notice of an alleged violation of the Policy, the Title IX Coordinator will propose at least one of three following options, which are available, to the Complainant:

- a) Supportive Measures; with or without a Formal Complaint being filed; and/or
- b) An Informal Resolution (upon submission of a formal complaint); and/or
- c) A Formal Resolution including an investigation and a hearing (upon submission of a formal complaint);

Supportive Measures

Supportive measures may be put in place for the Complainant with or without an Informal or Formal Complaint being filed. The University shall provide the individual(s) with information about resources and options, available both on and off campus; including health and mental resources and other referrals or services. Supportive measures shall be confidential, to the extent that maintaining confidentiality does not impair the University's ability to provide such measures. If it appears that the safety or security of a Complainant is in jeopardy, appropriate action will be taken to protect the Complainant. (Additional information on supportive measures can be found in Appendix A).

Informal Resolution

If Informal Resolution is applicable, the Title IX Coordinator will assess whether the complaint is suitable for Informal resolution and whether all parties are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of Complainant policy and implements agreed-upon sanctions and/or remedies, in coordination

with other appropriate University administrators, as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Resolution will begin or resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the sexual misconduct or retaliation, prevent its recurrence, and/or remedy the effects of the discriminatory conduct, both on the Complainant and the community.

Formal Resolution

At the Complainant's request, if the complaint is not resolved through the Informal Resolution process, the complaint shall be processed according to the Formal Resolution procedure. The Formal Resolution consist of three distinct stages: investigation, hearing, and appeal.

The Formal Resolution Hearing must be live and both parties must be able to see each other. Cross-examination is allowed and conducted by the parties' advisor(s), never by a party. The Hearing Officer will deliberate the opinion on the Respondent's alleged misconduct. Both parties have the right to appeal. (For more detailed information on the Formal Resolution, see Section C – Investigation Period & Formal Resolution).

B. INITIAL ASSESSMENT & WRITTEN COMPLAINT FILED

Complainant will meet with the Title IX Coordinator or Deputy Coordinator(s) to discuss the incident which occurred. Only a Complainant can file a formal complaint, which must be written. A support person/advisor of choice may be present at all meetings throughout the reporting process. Complaints need not be in writing *initially*, if a Complainant desires to move forward with the Complaint, the Complainant will be requested to submit, in writing, a detailed description of the alleged violation of this policy, as well as any additional information considered relevant to an investigation.

1. Written Notice of the Investigation and Allegations to Respondent

The Written Notice of the Investigation and Allegations, hereafter referred to as NOIA, will be provided to the Respondent upon commencement of the investigation. This notifies the Respondent of their rights and options, including the right to an Advisor. The NOIA is also copied to the Complainant, who is to be given advance notice of delivery of the NOIA to the Respondent. For a complete listing of the parties' rights see APPENDIX C, Statement of Rights of Parties).

2. Respondent May Accept Responsibility at Any Time

Resolution of a complaint may occur prior to, during or as a result of an investigation, if appropriate, if recommended by the investigator, and if acceptable to the Complainant and the Respondent. The determination shall be made on the basis of whether it is more likely than not (a preponderance of evidence) that the Respondent violated the Sexual Misconduct Policy and the Palm Beach Atlantic University Student Code of Conduct.

If the Respondent indicates an intent to accept responsibility for the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used.

The Title IX Coordinator will appoint an Investigator(s) and will ensure that all Investigators and Hearing/Appeal Officers, pursuant to this policy, will conduct the proceedings in a manner, that protects

the safety of both parties and with a presumption of innocence for both parties throughout the process till resolution has been made. All investigators and Hearing/Appeal Officers, pursuant to this policy, will be trained on methods for conducting an investigation and hearings, if applicable.

C. INVESTIGATION PERIOD AND FORMAL RESOLUTION

The Title IX Office will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties and their advisors, if any, to update them on the progress and timing of the investigation.

The investigation will afford the Respondent an opportunity to respond to the allegations. During this period, the Complainant and the Respondent, and any other persons believed to have information relevant to the investigation will be interviewed. Meeting notes will be provided for confirmation. A mutual Do Not Contact expectation may be issued to both the Respondent and Complainant. Other supportive measures may be implemented at this time.

During this period of Investigation, the Investigators will commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

Once the initial investigation phase is complete the investigator(s) in consultation with the Title IX Coordinator will determine if the case should proceed to a Formal Resolution Hearing.

1. Referral for Hearing

Provided the complaint is not resolved through Informal Resolution, and if sufficient evidence, the Title IX Coordinator will refer the matter for a hearing. The hearing cannot be less than ten (10) business days from the conclusion of the investigation, unless all parties and the Hearing Officer agree to an expedited timeline.

2. Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties, and their advisors. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

3. Pre-Hearing Meetings

The Hearing Officer may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to discuss at the hearing, consider arguments of evidence as relevant or not, and other pre-hearing duties.

4. Pre-Hearing Report

A comprehensive investigation report will be submitted, ten (10) business days prior to the conclusion of the investigation, fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. The parties and their respective Advisors, if any, are provided with a secured electronic or hard copy of the draft investigation report. The parties and their respective Advisors will have the opportunity to inspect and review all of the evidence obtained as part of the investigation, that is directly related to the reported misconduct, including evidence upon which the Title IX

Coordinator does not intend to rely in reaching a determination. They will have ten (10) days to submit a meaningful response for the consideration of the investigator.

5. Use of Electronics in Investigation and Hearings

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

Hearings must be live and conducted in real time. Upon the request of either party, the hearing may be conducted by videoconference with the parties in separate rooms. However, at all times, all participants, including the parties, advisors, witnesses, and Hearing Officer, must be able to see and hear each other. Remote options may also be needed for witnesses who cannot appear in person.

D. THE HEARING & PROCEDURES

Participants at the hearing will include the Hearing Officer, the Investigator(s) who conducted the investigation, the parties (or three [3] organizational representatives when an organization is the Respondent), Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

At the hearing, the Hearing Officer has the authority to hear and make determinations on all allegations of sexual misconduct and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual misconduct and/or retaliation, even though those collateral allegations may not specifically fall within the Policy.

1. Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

2. Presentation of the Final Investigation Report

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Hearing Officer and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

3. Testimony and Questioning

Both parties may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Hearing Officer. The parties/witnesses will submit to questioning by the Hearing Officer and then by the parties through their Advisors (“cross-examination”).

4. Notice of Outcome

The Title IX Coordinator will work with the Hearing Officer to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter with the parties simultaneously, of the final determination, rationale, and any applicable sanction(s) with the parties and their advisors within 7 business days of receiving the Hearing Officer’s deliberation statement.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section. They will contain a description of the procedural steps taken by the Title IX Coordinator; from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will also include information on when the results are considered by the Title IX Coordinator to be final, any changes that occur prior to finalization, and the relevant procedures and grounds for any available appeal options.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Title IX Coordinator records, or emailed to the parties' University-issued email. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

E. APPEALS

Both parties may request an appeal to the Title IX Coordinator, of the findings and/or sanctions within five (5) business days of delivery of the Notice of Outcome. Sanctions are imposed immediately, even pending an appeal.

The Request for Appeal will be forwarded to the Appeal Officer for consideration to determine if the request meets the grounds for appeal. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

1. Grounds for Appeal

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator(s), or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal **do not** meet the grounds in this Policy, that request will be denied by the Appeal Officer and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal **do meet** the grounds in this Policy, the Appeal Officer will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Officer.

2. Failure to Comply with Sanctions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Hearing Officer and/or Appeal Officer.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript.

UNIVERSITY AND OFF-CAMPUS RESOURCES

The University, in addition to local authorities and agencies, offers resources to assist Complainant and Respondents of sexual misconduct. The following is a list of such resources and their respective contact information.

On Campus

- Mona Hicks, Title IX Coordinator, 561-803-2174
- Natalie Johnson, Deputy Title IX Coordinator, 561-803-2661
- Suzie Lenart, Deputy Title IX Coordinator, 561-803-2188
- Kim Martin, Deputy Title IX Coordinator, 561-803-2175
- Campus Safety & Security, 561-803-2500 (24 hours)
- Counseling Center, 561-803-2576

Off Campus

- Emergency HELP dial 911
- Sexual Assault Response Team (SART) 561-625-2568
- West Palm Beach Police Department, Sexual Assault Notification Helpline 561-688-4127
- Palm Beach County Complainants & Rape Crisis Center 24 Hr. Hotline, 561-833-7273 and toll free 1-866-891-7273
- Palm Beach County Victim Services & Certified Rape Crisis Center; 561-625-2568

REFERENCES

- Palm Beach Atlantic University *Student Code of Conduct*
- Palm Beach Atlantic University, *Navigator*
- Palm Beach Atlantic University *Faculty Handbook* and *Employee Handbook*
- Clery Act, 20 U.S.C. § 1092, with implementing regulations in the U.S. Code of Federal Regulations at 34 C.F.R. 668.46.
- Violence Against Women Reauthorization Act of 2013; P.L. 113-4
- Campus Sexual Violence Elimination Act (the “SAVE Act”) H.R.2016
- Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 – 1688), Title 20, Education; Chapter 38, and Final Title IX Regulations of 2020 (May 6, 2020)
- 2018 Annual Safety Security and Fire Report

DEFINITIONS & GLOSSARY

Ability to Confront Other Party - Complainants and Respondents are able to submit questions for those parties to the investigators and/or hearing officers. Hearing Officers have the responsibility to exclude or modify questions that are not necessary to render a decision, including but not limited to questions that are unfairly prejudicial, confusing, compound, argumentative, misleading, unnecessarily repetitive, not probative of the disputed facts or to the determination of the case, or speak only to a party’s character or non-relevant sexual history.

Advisors – an individual, friend, mentor, family member, attorney, or any other individual Complainant and Respondent choose to advise, support, and/or consult with them throughout the resolution process; present with Complainant and Respondent for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may choose Advisors from inside or outside of the PBA community. The University will provide an advisor, if a party desires to have an advisor and is unable to afford one. Advisor, should not be a witness which may create a potential for bias and conflict-of-interest.

Amnesty (For Students who Report or Participate as Witnesses) – To encourage and support the

reporting of incidents of Sexual Misconduct, students who participate as witnesses or Complainants in Sexual Misconduct investigations will not be held accountable for violations of the Student Code that may have occurred at the time of or as a result of the incident in question (for example, being under the influence of alcohol or other drugs), unless the University determines that the violation was egregious. Egregious violations include, but are not limited to, actions that place the health or safety of another other person at risk or that involve academic dishonesty.

Bad Faith Complaint of Sexual Misconduct – Reporting a knowingly false allegation of any kind of Sexual Misconduct or making a knowingly false counter-complaint. A University determination that no policies were violated following an investigation process is not, in and of itself, evidence of a bad faith complaint.

Complainant – Individual who is alleged to be the victim of conduct that could constitute sexual misconduct.

Complaining Witness – an individual, who is a third party, reported to have witnessed the prohibited conduct

Conduct of a sexual nature - This includes conduct that is verbal, visual, or physical. Conduct of a sexual nature may either be explicitly sexual or may involve conduct that derives its sexual nature from the circumstances in which the conduct occurs or when combined with other conduct that occurs in a sexual context. Conduct does not need to express any sexual desire or be directed to a specific person and can include conduct that attempts to demean, control, or stereotype others on the basis of their sex.

Conflicts of interest – Palm Beach Atlantic University is committed to the rendering of fair, objective, impartial decisions in its investigative and adjudicative processes.

The Title IX Coordinator works to identify and avoid potential bias and/or conflict of interest in the assignment of investigator(s), hearing officers, and appeal officer(s). At the outset of an investigation, the Title IX Coordinator will select investigator(s) based on the parties involved, and the need to avoid any potential conflict of interest. Complainants and Respondents may object, within two calendar days of being contacted by the investigator(s), to their selection on the basis of bias or conflict of interest. If a party objects, the Title IX Coordinator will evaluate whether the objection is substantiated.

The Title IX Coordinator will remove and replace any investigator(s) the Title IX Coordinator finds to have a conflict of interest or bias for or against any party involved. Further, Complainants and Respondents have similar opportunities regarding hearing and appeal officers.

Consent - Consent is knowing, voluntary, and clear permission by words or actions to engage in sexual activity. It is the responsibility of each party to determine that the other has consented before engaging in the activity.

Cannot be any of the following:

- Inferred from silence, the absence of a “no,” or lack of protest or resistance.
- Obtained from a person who is asleep or otherwise mentally or physically incapacitated, and this condition was known or reasonably should have been known by the other individual(s) involved in the incident.
- Obtained from a person who is incapacitated by intoxicants such as alcohol, drugs or medication, and this condition was known or reasonably should have been known by the

other individual(s) involved in the incident. Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of the sexual interaction). Note: a person may still be conscious but lack the capacity to consent to a sexual act(s).

- Obtained by threat or force.
- Obtained through coercion. Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to engage in sexual contact. When a person makes clear that they do not want to participate in a particular form or sexual contact, that they want to stop, or that they do not want to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, (iv) the duration of the pressure, and (v) the relative positions within the University community of those involved.
- Obtained through an unreasonable belief in affirmative consent that arose from an individual’s own intoxication, recklessness, or failure to determine affirmative consent.

Dating Violence - Violence committed by a person,

1. who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - a. length of the relationship
 - b. the type of the relationship
 - c. The frequency of interaction between the persons involved in the relationship.

Domestic Violence - The term ‘domestic violence’ includes felony and misdemeanor crimes of violence committed by a current or former spouse of the Complainant, a person with whom the Complainant shares a child in common, a person who is cohabitating with or has cohabitated with the -Complainant as a spouse, a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the jurisdiction, or any other person meeting criteria specified under the domestic or family violence laws of the jurisdiction.

Formal Complaint - Document filed by a Complainant or signed by the title IX Coordinator alleging sexual misconduct against a respondent and requesting that the school investigate the allegation of sexual misconduct.

Impartiality - Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Hearing Officer may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The assigned Investigator(s) and Hearing Officer are vetted by the Title IX Coordinator for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases.

Investigator – any person appointed by the Title IX Coordinator to gather information to be considered as part of a hearing or other adjudicative process.

Objectively Offensive - Conduct that would be offensive to a reasonable person under similar circumstances and with similar identities; considering the totality of the known circumstances.

Preponderance of the Evidence – A standard of proof to find a violation of University policy. The decision of responsibility for a policy violation will be made on whether it is more likely than not that the Respondent violated the policy based on the totality of information gathered during the investigation. The standard of proof Palm Beach Atlantic University uses in the Title IX process.

Procedure – Formal rules of process, procedure and/or technical rules of evidence, such as those applied in criminal or civil court, are not used in investigation and adjudication. All procedural questions are subject to the final decision of the Title IX Coordinator

Respondent - Individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct.

Retaliation – Any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of university policy, state, and federal law. Retaliation is a violation of policy whether or not the underlying complaint of Sexual Misconduct is found to be a violation of policy.

Sexual Assault - Sexual assault is any offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Sexual assault and sexual violence may include a range of sexual conduct including, but not limited to stranger rape, acquaintance rape, marital rape, same-sex assault and unwelcome touching or contact. Sexual assault may include sexual penetration (however slight) or sexual contact carried out under coercion, with the threat of force or violence (including use of a weapon), through a position of authority, or when the Complainant is incapacitated. Sexual assault may also include physical contact with a person's genital area, other bodily orifices or with a person's buttocks or breasts if the contact or touching is done without consent. The use of alcohol or drugs by either party is not considered to decrease the responsibility for sexual assault under this policy.

Conduct may be considered sexual assault even if

- The attacker is someone known to the Complainant
- The assault happens on a date,
- The individuals have engaged in sexual touching or kissing prior to the assault,
- The individuals have had consensual intercourse in the past,
- The individuals are married,
- The individuals are under the influence of alcohol or other drugs,
- There was no weapon involved,
- There was no evidence of a struggle or resistance,
- There are no other witnesses.

Sexual Battery – Any intentional sexual contact, however slight, with any object, without consent. Sexual contact includes contact above or beneath clothing with the breasts, buttocks, genitals, or areas directly adjacent to genitals (for instance, the inner thigh); touching another with any of these body parts; making another touch someone or themselves with or on any of these body parts; or any other bodily contact in a sexual manner.

Sexual Exploitation – Taking non-consensual or abusive sexual advantage of another person for the benefit or advantage of anyone other than the exploited party. Examples of sexual exploitation include, but are not limited to, the following:

- Causing or attempting to cause the incapacitation of another person to gain a sexual advantage, including but not limited to drugs and alcohol.
- Prostituting another individual
- Non-consensual streaming, sharing, or recording of audio, video or photography of any type or distribution of such
- Engaging in sexual activity in the presence of a non-consenting third party
- Exposing genitals to a non-consenting individual (including sending pictures, video, etc.) or in a public area
- Watching others when they are naked or engaged in sexual activity without their consent
- Knowingly transmitting a sexually transmitted infection/disease to another individual without their consent

Sexual Harassment - Sexual harassment includes, but is not necessarily limited to, unwelcome conduct or statements that involve sexual advances, requests for sexual favors, or joking based on sex.

Sexually harassing conduct may include, among other things, use of suggestive sexual comments or jokes; sexual remarks about a person's body, clothing, or sexual activities; patting, pinching, or other offensive touching; or displays of sexually suggestive pictures or objects.

Sexual harassment also includes any other unwelcome verbal, visual, or physical conduct of a sexual nature, particularly if:

- a. submission to such conduct is an explicit or implicit term or condition of employment, professional evaluation, or academic evaluation; or
- b. submission to or rejection of such conduct is used as the basis for making employment, professional, or academic decisions; or
- c. such conduct has the purpose or the effect of unreasonably interfering with the person's work or academic performance; or
- d. such conduct has the purpose or the effect of creating an intimidating, hostile, or offensive working, professional, or academic environment.

Sexual Misconduct – Any sexual behavior, attempted or completed, that goes beyond the boundaries of consent (as defined in Title IX Section 106.30). Any attempted or actual sexual act directed against another person without consent of the Complainant, including instances where the Complainant is incapable of giving consent; includes intimate partner violence, sexual assault, sexual battery, sexual exploitation, sexual harassment, stalking, discrimination, retaliation for reporting or supporting the reporting any of these behaviors, or filing a false complaint (Bad Faith Complaint) of Sexual Misconduct.

Sexual misconduct may include any unwelcome sexual behavior and is not limited by the gender of either the alleged Complainant or Respondent. Sexual misconduct may include physical, verbal or written conduct.

Stalking - The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- fear for his or her safety or the safety of others; or
- suffer substantial emotional distress

Standard of Proof – The standard of proof to find a violation of University policy is a preponderance of the evidence. Preponderance of the evidence means that a decision of responsibility for a policy violation will be made on whether it is more likely than not that the Respondent violated the policy based on the totality of information gathered during the investigation.

Student – a person taking courses at or through Palm Beach Atlantic University either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who are not officially enrolled but who have a continuing academic relationship with the University are considered “students.” This includes students not currently enrolled who are making up incompletes and former students still living in University-owned housing. This policy also applies to persons who have been accepted for admission to the University but have not yet begun coursework.

Student Group (may also be referred to as student club, chapter, or organization) – any number of persons organized in manners including but not limited to: clubs and organizations, athletic teams, club sports, governing bodies, societies, departmental student organizations or committees, any other University recognized student organization, any student organization seeking University recognition, or any student organization not recognized or sponsored by the University.

Third Party – Any individual who is not a University student, faculty or staff member. Third parties may be guests who enter University property, attend a University sponsored event, or University-outsourced vendors.

Title IX Coordinator – the person designated by the University to coordinate the University’s efforts to comply with its responsibilities under Title IX of the Education Amendments of 1972.

Unwelcome conduct: For purposes of this policy, conduct is considered “unwelcome” if, under the totality of the circumstances, it is 1) neither solicited nor incited, and 2) is regarded by the Complainant as undesirable or offensive.

Witness – any person(s) who can be called upon to provide relevant information about an incident in which they are not the Respondent or Complainant. Witnesses may be excluded from a hearing if:

- They do not have first-hand information about the reported incident;
- They did not respond to or investigate the incident in question;
- They can only provide repetitive information;
- They did not communicate with the Respondent or Complainant about the incident in question; or
- They can only present information that is deemed to be unnecessary for the deliberation process.

CONTACTS

Palm Beach Atlantic University
Mona Hicks, Title IX Coordinator
Vice President
Human Resources
901 S. Flagler Drive
West Palm Beach, FL 33401
561-803-2174

Palm Beach Atlantic University
Natalie Johnson, Deputy Title IX Coordinator
Director of Student Activities, Involvement & Leadership
Student Development
901 S. Flagler Drive
West Palm Beach, FL 33401
561-803-2661

Palm Beach Atlantic University
Suzie Lenart, Deputy Title IX Coordinator
Director of Human Resources
Human Resources
901 S. Flagler Drive
West Palm Beach, FL 33401
561-803-2188

Palm Beach Atlantic University
Kim Martin, Deputy Title IX Coordinator
Human Resources Administrator
Human Resources
901 S. Flagler Drive
West Palm Beach, FL 33401
561-803-2175

APPENDIX A: RESOURCES, SUPPORT AND PROTECTIVE MEASURES

Supportive measures are available regardless of whether or not the complainant chooses to report full details (such as the name of the respondent) to the University or to law enforcement. Supportive measures shall be confidential, to the extent that maintaining confidentiality does not impair the University's ability to provide such measures.

Supportive measures for students – The University shall provide supportive measures (temporary and/or ongoing) as reasonably available. Students who are complainants, respondents, and witnesses may make requests for supportive measures to the Title IX Coordinator, who will help identify all available options and determine which measures to take to support the student. Supportive measures for students may include, but not be limited to, the following options:

Supportive Measures for Students, where applicable:

- Transferring to another section of a lecture or laboratory
- Rescheduling an academic assignment or test
- Accessing academic support (e.g., tutoring)
- Arranging for incompletes, a leave of absence, or withdrawal from course(s)
- Preserving eligibility for academic, athletic, or other scholarships, financial aid, internships, or study abroad
- Medical and mental health services, including counseling
- Change in campus housing and/or dining locations
- Consultation with the Campus Safety & Security or local police agency as appropriate
- Assistance in arranging for alternative University employment arrangements and/or changing work schedules, if available
- Providing an escort, for a determined amount of time, to ensure that the student can move safely between school programs and activities
- Transportation and parking assistance
- Assistance identifying any additional resources including off-campus support and services
- No contact orders

Supportive measures for employees - For employees, where applicable, supportive measures may include, but not be limited to:

- Assistance in arranging for alternative University employment arrangements and/or changing work schedules, if available
- Providing an escort to ensure that the employee can move safely around campus, for a determined period of time
- Consultation with the Campus Safety & Security or local police agency as appropriate.
- Transportation and parking assistance
- Assistance identifying any additional resources including off-campus support and services
- No contact orders

APPENDIX B: PBA Title IX Process Flowchart

PBA Title IX Process Flowchart



APPENDIX C: STATEMENT OF RIGHTS OF THE PARTIES

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or retaliation made in good faith by Title IX officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by Title IX officials.
- The right to have University policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by University officials from reporting sexual misconduct or retaliation to both on-campus and off-campus authorities.
- The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by Title IX authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by University law enforcement and/or other Title IX officials.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; student financial aid; or other services, both on campus and in the community.
- The right to a University-implemented no-contact order, or a no-trespass order against a non-affiliated third party, when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.

- The right to have the University to maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator(s) and Hearing Officer to identify and question relevant witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Hearing Officer with a list of questions that, if deemed relevant by the Investigator(s)/Hearing Officer, may be asked of any party or witness. The right to have inadmissible prior sexual history or irrelevant character evidence excluded by the decision-maker.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Hearing Officer who have received relevant annual training.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.

- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to the use of the appropriate standard of evidence, [preponderance of the evidence] to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Hearing Officer following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the Title IX Coordinator is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
- The right to a fundamentally fair resolution as defined in these procedures.