

SPEAK OUT SAILFISH TITLE IX



SEXUAL MISCONDUCT POLICY

Issued (Originating Date): October 28, 2015
Last Revised: June 13, 2018
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 administrators, faculty, staff and students.

Sexual misconduct committed by a student, faculty member, or staff member against any student, faculty member, staff member, or other individual on property owned or controlled by the University is prohibited and is a violation of this policy. In addition, sexual misconduct committed by a student, faculty member, or staff member against a student, faculty member, staff member, or other individual anywhere other than on property owned or controlled by the University violates this policy if the confirmed conduct adversely and significantly affects the perpetrator's suitability as a member of the University community, in the sole discretion of the University.

REASON FOR POLICY

This policy defines sexual misconduct and acts that constitute sexual misconduct. It provides reporting procedures and accommodations for victims of sexual misconduct and outlines discipline actions 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, and the Campus Sexual Violence Elimination Act (the "SAVE Act").

POLICY STATEMENT

It is a community expectation that students, faculty, and staff 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 set forth in faculty and staff handbooks. This Sexual Misconduct Policy should be interpreted in a manner consistent with such other University policies and should not be understood, in any way, to condone or to otherwise encourage sexual activity or behavior outside of the standards articulated in the *Navigator* or the similar policies found in the faculty and staff handbooks. Where the content of the Sexual Misconduct Policy conflicts with other similar policies set forth in the student and/or faculty and staff handbooks, the requirements of this Sexual Misconduct Policy shall prevail.

All University personnel (including faculty, staff, and administrators) are obligated to report all suspected or alleged incidents of sexual misconduct to the Title IX Coordinator or one of the three Deputy Title IX Coordinators listed under *Contacts* 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.

The provisions of this policy shall be revised and updated when required by law. Such revisions or updates shall be applicable immediately to students, faculty and staff, with or without notice.

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 will be informed of the outcome of the investigation. Both the complainant and the accused will have the opportunity to be present during any disciplinary proceeding and will have the opportunity to be accompanied by an advisor of his or her choice.

ACCOMODATIONS

Regardless of whether a student or employee reports 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 work environment. Accordingly, upon request, the University will make any reasonably available change to a victim'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 and provide them with a copy of that order.

DEFINITIONS

For purposes of this policy, sexual misconduct includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature when:

1. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining education or employment,
2. Submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting that individual's education or employment,
3. That conduct has the purpose or effect of substantially interfering with an individual's education or employment, or creating an intimidating, hostile or offensive educational or employment environment.

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

The following acts constitute sexual misconduct:

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 victim; 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.

Stalking

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

1. fear for his or her safety or the safety of others; or
2. suffer substantial emotional distress

Domestic Violence

The term 'domestic violence' includes felony and misdemeanor crimes of violence committed by a current or former spouse of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse, a person similarly situated to a spouse of the victim 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.

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 victim 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 victim/survivor,
- 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 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.

REFERENCES

1. Palm Beach Atlantic University Student Code of Conduct
2. *Navigator*
3. Faculty and Staff Handbooks
4. Clery Act,

5. Violence Against Women Reauthorization Act,
6. Campus Sexual Violence Elimination Act (the "SAVE Act")

POLICY PROCEDURES AND DETAILS

Procedures for Victims

If an incident of sexual misconduct occurs, it is important to preserve evidence so that the option of pursuing successful criminal prosecution (or a protection order) remains available.

Students, faculty or staff may make a complaint of sexual misconduct to the Title IX Coordinator, Mona Hicks, Associate Vice President of Human Resources, or one of three Deputy Title IX Coordinators; Whitney Bailey, Assistant Athletic Director of Internal Operations/Senior Women's Administrator, Suzie Lenart, Director of Human Resources and Natalie Johnson, Director of Student Activities Involvement and Leadership, (if University faculty or staff is involved, Mona Hicks is the appropriate person to report such complaints). Complaints will be referred for investigation to the Dean of Student Life (if the complaint involves a student) and/or the Associate Vice President of Human Resources (if the complaint involves a faculty or staff member). Individuals who are the victim of sexual misconduct have the option to seek assistance from the University, law enforcement, both or neither if they so choose. The victim may also choose to have the University assist in contacting appropriate law enforcement authorities. All University personnel (including faculty, staff, and administrators) are obligated to report all suspected or alleged incidents of sexual misconduct to the persons listed above.

Complaints need not be in writing initially, and every complaint of sexual misconduct will be investigated. If, during the course of the investigation, it is determined that no sexual misconduct occurred, the complaint will be filed with the Director of Residential Life or the Vice President of Human Resources. The complainant may 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. If it appears that the safety or security of a complainant is in jeopardy, appropriate action will be taken to protect the complainant.

The Director of Residential Life or Vice President of Human Resources will direct an investigation utilizing appropriate investigators, and will ensure that all proceedings provide a prompt, fair, and impartial investigation and resolution. All investigators and decision makers pursuant to this policy will be trained on methods for conducting investigation and hearings, if applicable, in a manner that protects the safety of victims and promotes accountability.

The University will notify the complainant of the time frame for the investigation. The investigation will afford the accused an opportunity to respond to the allegations. In addition, the complainant and any other persons believed to have information relevant to the investigation will be interviewed. The complainant will have the opportunity to present witnesses and evidence. 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 person accused. The determination shall be made on the basis of whether it is more likely than not that the student, employee, or faculty member violated the Sexual Misconduct Policy and the Palm Beach Atlantic University Student Code of Conduct (a preponderance of evidence). Both the complainant and the accused will be notified simultaneously of the determination in writing and how to pursue an appeal. Both will also be notified simultaneously in writing of any change in the result upon appeal and when the result becomes final. Rules of evidence as in a court of law, however, shall not apply.

Confidentiality and Retaliation

The University takes seriously the sensitive nature of sexual assault, domestic violence, dating violence, and stalking incidents. In this regard, the University is committed to protecting the privacy of students and employees who report incidents of abuse, to the extent permitted by law, and consistent with the University's need to protect the safety of the community. 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 victim anonymous or will redact any personal identifying information specific to the victim.

Retaliation or intimidation against an individual who brings a complaint or participates in an investigation of sexual misconduct or pursues legal action is prohibited and will not be tolerated. Reports of suspected retaliation or intimidation should be made using the same reporting procedure described in this policy.

Education

Consistent with the University's commitment to increasing the awareness of and the prevention of sexual misconduct, the University regularly provides students and employees with educational programming offering practical guidance for risk reduction, violence prevention, bystander intervention to address the issue of sexual misconduct, and strategies intended to prevent rape, acquaintance rape, sexual assault, domestic violence, dating violence, and stalking.

In addition to ongoing prevention and awareness programs for students and employees, the University also provides all new students and new employees with primary prevention and awareness programs that promote cognizance regarding rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking. Topics covered by such training programs including the following:

- That the University prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking;
- Definitions of domestic violence, dating violence, sexual assault, and stalking;
- The definition of consent, in the context of sexual activity;
- Safe and positive options for bystander intervention that may be taken to prevent harm or intervene when there is a risk of offense against someone else; and
- Recognition of signs of abuse behavior and how to avoid potential attacks.

RESOURCES/CONTACTS

The University, in addition to local authorities and agencies, offers resources to assist victims 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
- Courtney Lovely, Deputy Title IX Coordinator, 561-803-2337
- Suzie Lenart, Deputy Title IX Coordinator, 561-803-2188
- Natalie Johnson, Deputy Title IX Coordinator, 561-803-2661
- Campus Safety, 561-803-2500
- Campus Safety after hours, 561-803-2500
- Counseling Center, 561-803-2576

Off Campus

- Emergency HELP dial 911
- West Palm Beach Police Department, 561-822-1900
- Palm Beach County Victims Services 24 Hour Hotline, 561-833-7273 (toll free 1-866-891-7273)