

PENSACOLA STATE COLLEGE
POLICIES OF THE DISTRICT BOARD OF TRUSTEES

Policy Title:	Sexual Misconduct	<u>Number</u> 6Hx20-1.028
Legal Authority:	s. 794.011, s. 800.03, Fla. Stat.	<u>Page</u> Page 1 of
Law Implemented:		

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Pensacola State College ("PSC" or the "College") is committed to providing an environment that is free of sexual harassment and sexual misconduct. This Policy covers a broad range of behavior as defined in this Policy, including sexual harassment, sexual misconduct, and retaliation that are prohibited under this Policy as well as State and Federal law and regulations.

As a recipient of Federal funds, the College is required to comply with Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX"), which prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a person's ability to equally access our educational programs and activities. Title IX applies to students, faculty, and staff at Pensacola State College. Pensacola State College prohibits acts of sexual harassment and misconduct which include, but are not limited to, sexual assault/battery, dating violence, domestic violence, stalking, exploitation, voyeurism, or exhibitionism on any of its campuses. Under Title IX, Pensacola State College may discipline students and College employees for acts of sexual harassment and misconduct when:

- a. A College employee conditions the provision of College aid, benefit, or service on an individual's participation in unwelcome sexual conduct. This conduct is commonly known as quid pro quo harassment;
- b. The conduct is unwelcome and would be 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
- c. The conduct involves acts of sexual assault/battery, dating violence, domestic violence, or stalking as those terms are defined below.

For the purposes of this policy, Pensacola State College's educational programs and/or activities include:

- a. Educational programs and/or activities which occur on campus premises;
- b. Educational programs and/or activities ~~which occur at off-campus~~ that occur at off-campus premises that the College has substantial control over. This includes buildings or property owned or controlled by a recognized student organization; and
- c. Any education programs and/or activities occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Pensacola State College over which the College has substantial control.

Pensacola State College remains committed to addressing any act of sexual harassment and misconduct; if such acts are found to be detrimental to the interests of the College or to interfere with the educational and orderly operation of the College. To the extent the alleged sexual harassment and misconduct falls outside of the Title IX definition of sexual harassment and/or falls outside of the geographic scope of Title IX, the College reserves the right to investigate and adjudicate the alleged sexual harassment and misconduct under the Student Code of Conduct, relevant employment policies or the College's Equal Access/Equal Opportunity policy (6Hx20-1007).

For the purposes of this policy, the following definitions apply~~Pensacola State College prohibits sexual misconduct which includes but is not limited to sexual battery, domestic violence, dating violence, stalking, sexual harassment, voyeurism, or exhibitionism on any of its campuses. In addition, Pensacola State College may discipline students and College employees for acts of sexual battery, domestic violence, dating violence, stalking, sexual harassment, voyeurism, or exhibitionism committed off campus, if such acts are found to be detrimental to the interests of the College or to interfere with the educational and orderly operation of the College. These acts of sexual misconduct are defined as follows:~~

1. —Sexual Assault/Battery

Sexual Assault, as defined in 20 U.S.C.1092(f)(6)(A)(v) includes any offense classified as a forcible or nonforcible sex offense under the Uniform Crime Reporting System of the Federal Bureau of Investigation that meets the definition of rape, fondling, incest, or statutory rape. Sexual assault includes any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Florida Law refers to 'Sexual Battery' instead of Sexual Assault and includes any offense involving oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose. Sexual battery is an act performed against the victim's will and without consent. Sexual battery includes force that may involve physical violence, coercion, threat, or harm. (s. 794.011, Fla. Stat.)

2. Domestic Violence

Domestic Violence, as defined in 34 U.S.C. 12291(a)(8), includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

3. Dating Violence

Dating Violence, as defined in 34 U.S.C. 12291(a)(10), includes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: length of relationship, type of relationship, and frequency of interaction between the persons involved in the relationship.

4. Stalking

Stalking, as defined in 34 USC 12291(a)(30), includes engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for that individual's safety or the safety of others or suffer substantial emotional distress. Examples include, but are not limited to, willfully, maliciously, and repeatedly following, harassing, or cyberstalking another person where the victim was targeted due to his or her sex/gender, sexual orientationorientation, or gender identity.

5. Exhibitionism

It shall be unlawful for any person to expose or exhibit his or her sexual organs in any public place or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or so to expose or exhibit his or her person in such place, or to go or be naked in such place. (s. 800.03, Fla. Stat.)

6. Voyeurism

The condition of one who derives sexual satisfaction from observing the sexual organs or acts of others generally from a secret vantage point.

7. Sexual Exploitation

Sexual exploitation is conduct ~~which involves taking sexual advantage of another person without consent, which includes but is not limited to, the use of a person,~~that involves taking sexual advantage of another person without consent, which includes but is not limited to the use of a person in prostitution, pornography, or other sexually manipulative activity.

8. Consent

As used in this policy, the term "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender. Lack of protest or resistance does not mean Consent, nor does silence mean that Consent has been granted. Consent cannot be granted by someone who is mentally defective, mentally incapacitated, or physically helpless. (s. 794.011(1)(a), Fla. Stat.).

9. Retaliation

Retaliation includes but is not limited to, intimidation, threats, coercion, harassment, or other adverse actions threatened towards any person making a complaint of sexual harassment or misconduct, towards any person (including a witness) cooperating in the investigation/hearing of any allegation of sexual harassment or sexual misconduct, or towards any person declining to participate in an investigation/hearing related to an allegation of sexual harassment or sexual misconduct. Retaliation is prohibited by the College. Retaliation should be reported promptly and

may result in disciplinary action independent of allegations of sexual harassment and misconduct~~1.~~

~~—Sexual Battery~~

~~—Oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose. Sexual battery is an act performed against the victim's will and without consent. Sexual battery includes force that may involve physical violence, coercion, threat, or harm. (s. 794.011, Fla. Stat.)~~

~~2. Domestic Violence~~

~~Any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. (s. 741.28(2), Fla. Stat.)~~

~~3. Dating Violence~~

~~Violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:~~

- ~~a. A dating relationship must have existed within the past six (6) months;~~
- ~~b. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and~~
- ~~c. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.~~

~~4. Stalking~~

~~Willfully, maliciously, and repeatedly following, harassing, or cyberstalking another person. "Harass" means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. "Cyberstalk" means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose. (s. 784.048, Fla. Stat.)~~

~~5. Sexual Harassment~~

~~Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of employment or academic decisions affecting the victim. It includes other verbal or physical conduct relating to sex when such conduct has the purpose or effect of unreasonably interfering with an individual's performance at work or in study or creating an intimidating, hostile, or offensive environment in which to work or learn. (Title VII of the Civil Rights Act of 1964, Section 1601.00)~~

~~6. Exhibitionism~~

~~It shall be unlawful for any person to expose or exhibit his or her sexual organs in any public place or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or so to expose or exhibit his or her person in such place, or to go or be naked in such place. (s. 800.03, Fla. Stat.)~~

~~7. Voyeurism~~

~~The condition of one who derives sexual satisfaction from observing the sexual organs or acts of others generally from a secret vantage point. (Black's Law Dictionary, 6th edition)~~

~~As used in this policy, the term "consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender. Consent cannot be granted by someone who is mentally defective, mentally incapacitated, or physically helpless. (s. 794.011(1)(a), Fla. Stat.).~~

The College's Code of Student Conduct shall include sexual misconduct as an offense subject to disciplinary action. A student accused of an offense of sexual misconduct shall be entitled to the same rights of due process as students accused of other violations of the Code of Student Conduct. In all Student Conduct hearings, the preponderance of the evidence standard is used in determining outcomes.

The administration of the College shall adopt procedures for handling sexual misconduct cases, including the manner in which victims of sexual misconduct will be assisted, which may include interim measures during the investigation and hearing process. Furthermore, the College retains the authority to remove a respondent(s) from an educational program or activity on an emergency basis if:

1. the College undertakes an individualized safety and risk analysis;
2. the College determines the Respondent(s) pose an immediate, imminent threat to the physical safety or health of any student, staff, or faculty, arising from the alleged sexual harassment or misconduct; and
3. the College provides the Respondent(s) with notice and an opportunity to challenge the decision immediately following the removal.

~~Retaliation including intimidation, threats, harassment, or other adverse actions threatened towards any person making a complaint of sexual misconduct or against any person (including a witness) cooperating in the investigation of any allegation of sexual misconduct, including intimidation, threats, harassment, or other adverse actions threatened towards any person making a complaint of sexual misconduct or against~~

any person (including a witness) cooperating in the investigation of any allegation of sexual misconduct, is prohibited by the college. Retaliation should be reported promptly and may result in disciplinary action independent of allegations of sexual misconduct.

The administration shall also formulate and implement a comprehensive educational program to assure awareness of the problem of sexual ~~harassment and misconduct~~misconduct, to discourage such acts, and to encourage reporting of such offenses to proper authorities.

Campus security shall be reviewed on an ~~on-going basis, and increased if necessary,~~ongoing basis and increased if necessary to minimize the threat of sexual harassment and misconduct on campus.

Inquiries or complaints may be addressed to the Title IX Coordinator at (850) 484-1759, Pensacola campus, Building 5, Room 510.
~~Associate Vice President, Institutional Diversity and Title IX Coordinator at (850) 484-1759, Pensacola campus, Administration Building 7, Room 705.~~

History:	Adopted 8/19/92; repromulgated 2/21/06; amended 6/26/12; amended 11/16/15.
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President's Signature:	Date: <u>02/21/2017</u>
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