

**PENSACOLA STATE COLLEGE**  
**MANUAL OF PROCEDURES**

Procedure Title:	Title IX Grievance Process	<u>Number</u> 129
Related Policy:	Sexual Harassment and Misconduct Policy – 6Hx20-1.028	<u>Page</u> 1 of 15

**I. Purpose**

To establish College procedures regarding incidents and/or allegations of sexual harassment and misconduct by students or employees which fall within the definition and geographical scope of Title IX as defined in College Policy 6Hx20-1.028, Sexual Harassment and Misconduct.

**II. Procedure**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed below for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. A report of sexual harassment and misconduct may be made at any time, including non-business hours.

Contact Information for the Title IX Coordinator:

Dr. Lynsey Listau  
Building 5/Room 510  
850-484-1759  
[lalistau@pensacolastate.edu](mailto:lalistau@pensacolastate.edu)

Students and employees are encouraged to report alleged sexual harassment and misconduct immediately in order for the College to conduct a thorough investigation. Reports of sexual harassment and misconduct can be made to the following:

- a. Vice President, Administrative Services and General Counsel;
- b. Executive Director, Institutional Equity and Student Conduct
- c. Director of Human Resources
- d. Public Safety;

Reports of alleged sexual misconduct made by any student or employee to any of the above parties will result in notification of the report to the Title IX Coordinator. The College will handle all reports of alleged sexual misconduct in a sensitive nature. If a student or employee wishes to speak with someone confidentially, the following services are available at no charge. Students can contact the Bay Care Student Assistance Program at 800-878-5470 and employees can contact the Employee Assistance Program through Baptist Health Care at 850-469-2383 or 800-528-8955. The College shall make every effort to resolve all reports of sexual harassment and misconduct within ninety (90) days. This timeline, and all timelines within this procedure, serve as guidelines rather than rigid restrictions.

Circumstances may arise that require additional time beyond the ninety (90) days. If this occurs all parties in the matter will be notified.

There is no time limit or statute of limitations regarding the filing of a complaint of sexual harassment and misconduct to the College. A complaint of sexual harassment and misconduct will only be addressed under the Title IX Grievance Process, if the Respondent is currently a student or employee of the College and the Complainant is currently participating in, or attempting to participate in, the education program and activities of Pensacola State College. If the Complainant and/or Respondent do not meet these criteria, the College can address a complaint of sexual harassment and misconduct pursuant to the Student Code of Conduct, and relevant employment policies or the College's Equal Access/Equal Opportunity policy (6Hx20-1007).

### **Non-Discrimination in Application**

The requirements and protections of this procedure apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

### **Definitions**

1. *Complainant* - an individual or individuals who are alleged to be the victim of conduct that could constitute sexual harassment and misconduct. A Complainant must be participating in, or attempting to participate in, a College program or activity at the time of filing a complaint.
2. *Respondent* – an individual or individuals who are alleged to have engaged in conduct that could constitute sexual harassment and misconduct. A Respondent must be enrolled or employed at Pensacola State College at the time a Formal Complaint is filed.
3. *Title IX Coordinator* - a College employee with the responsibility of administering this grievance process, including identifying and addressing any patterns or systemic problems that arise during the review of Title IX Complaints. The Title IX Coordinator is always a person of authority.
4. *Person of Authority* – Any College employees designated by the College to possess authority to promptly respond to reports of sexual harassment and misconduct and can institute corrective measures on the behalf of the College.
5. *Actual Knowledge* – Notice to the College Title IX Coordinator or to a College official with authority to institute corrective measures on behalf of the College; actual knowledge triggers the College's response obligation to allegations of sexual harassment and misconduct.

### **Intake Procedures**

After receiving notification of alleged sexual harassment and misconduct, the Title IX Coordinator, or designee, will conduct an initial intake meeting with the Complainant. The purpose of the intake meeting will be to gain a basic understanding of the alleged sexual harassment and misconduct and to provide information to the Complainant including but not limited to, the availability of supportive

measures on campus and within the community and the formal grievance process. Furthermore, the Title IX Coordinator will assess the Complainant's immediate concerns related to personal safety, retaliation and recurrence of the alleged sexual harassment and misconduct. The intake meeting does not serve as an investigation meeting and does not, in and of itself, trigger an investigation.

### **Supportive Measures**

Complainants who report allegations that could constitute covered sexual harassment and misconduct under College Policy 6Hx20-1.028 have the right to receive supportive measures from Pensacola State College regardless of whether they file a formal complaint. Supportive measures are individualized services that are reasonably available and not unreasonably burdensome to either party. Supportive measures are always non-disciplinary and non-punitive and are offered free of charge to the Complainant. They are designed to ensure equal educational access, promote safety and deter sexual harassment and misconduct. While supportive measures are initially offered to a Complainant, supportive measures must be provided to a Respondent in an equitable manner, once the Respondent receives notice of a formal complaint of sexual harassment and misconduct. Supportive measures may include, but are not limited to:

1. Counseling
2. Academic measures including class or building reassignment, finishing course via distance learning or independent study, working with instructors related to missed classes or assignments, providing medical withdrawals, extensions of deadlines or other course-related adjustments
3. Employment measures including working alternative hours to avoid contact with Respondent, assigning Complainant and/or Respondent to different work locations, or assigning Complainant or Respondent to a different department during the grievance process.
4. Campus escort services
5. Restrictions on contact between the parties (no contact orders); these must be mutual between the parties
6. Leaves of absence
7. Increased security and monitoring of certain areas of the campus

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.

### **Formal Complaint**

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner and no longer than 90 days, provided that the Process may be extended for a good reason, including but not limited to, the

absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. To file a Formal Complaint, Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. The written complaint may be delivered in person, by mail or electronically to the Title IX Coordinator. Complainants are only able to file a Formal Complaint under this Policy, if they are currently participating in, or attempting to participate in, the education programs or activities of Pensacola State College.

If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. Pensacola State College will inform the Complainant of this decision in writing, and the Complainant need not participate in the process further but will receive all notices issued under this procedure. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or a party during the grievance process and must comply with requirements for Title IX personnel to be free from conflicts and bias. Nothing in this procedure prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

The institution may consolidate Formal Complaints alleging covered sexual harassment and misconduct against more than one Respondents, or by more than one Complainants against one or more Respondents, or by one party against the other party, where the allegations of covered sexual harassment and misconduct arise out of the same facts or circumstances.

The Title IX Coordinator will determine if a Formal Complaint meets the criteria for the Title IX Grievance Process. The Process will apply when all the following elements are met:

1. The conduct is alleged to have occurred in the United States;
2. The conduct is alleged to have occurred in Pensacola State College's education program or activity;
3. The alleged conduct, if true, would constitute covered sexual harassment and misconduct as defined in Policy 6Hx20-1.028, Sexual Harassment and Misconduct.

If the above elements are met, Pensacola State College will investigate the allegations according to the Title IX Grievance Process. If any one of these elements are not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals" section below.

The Title IX Coordinator may also dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

1. A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint, or any allegations raised in the Formal Complaint;
2. The respondent is no longer enrolled or employed by Pensacola State College; or,

3. If specific circumstances prevent Pensacola State College from gathering sufficient evidence to reach a determination regarding the Formal Complaint or one or more specific allegations within the formal complaint.

Upon reaching a decision that the Formal Complaint or any specific allegation will be dismissed, the Title IX Coordinator will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. Any party may appeal a dismissal determination using the process set forth in “Appeals” section below.

Nothing in this procedure eliminates Pensacola State College’s right to investigate and adjudicate alleged sexual harassment or misconduct which does not meet the Title IX definition of sexual harassment and/or falls outside of the geographic scope of Title IX. Pensacola State College will conduct these investigations/adjudications pursuant to the Student Code of Conduct, relevant employment policies or the College’s Equal Access/Equal Opportunity policy (6Hx20-1007).

### **Notice of Allegations**

The Title IX Coordinator will draft and provide the Notice of Allegations of sexual harassment and misconduct to both parties as soon as practicable after the institution receives a Formal Complaint. The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interviews. The notice of allegations will include the following:

1. Notice of the institution’s Sexual Harassment and Misconduct Policy and the Title IX Grievance Process and any available informal resolution option.
2. Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting covered sexual harassment and misconduct, and the date and location of the alleged incident, if known.
3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
4. A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
5. A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source;
6. Pensacola State College prohibits students and employees from knowingly making false statements or knowingly submitting false information during the Title IX Grievance Process.

### **Ongoing Notice**

If, in the course of an investigation, the College decides to investigate allegations about the Complainant and/or Respondent that are not included in the original Notice of Allegations and are otherwise covered sexual harassment and misconduct falling under the Title IX Grievance Policy, the institution will notify the parties of the additional allegations by their institutional email accounts or other reasonable means. The parties will be provided sufficient time to review the additional allegations to prepare a response before any interview regarding those additional charges.

If, in the course of investigation, the College discovers information regarding the Complainant and/or Respondent related to conduct which is not covered sexual harassment and misconduct but potentially violates College policy, the College reserves the right to investigate and adjudicate such conduct pursuant to the Student Code of Conduct, relevant employment policies or the College's Equal Access/Equal Opportunity policy (6Hx20-1007). In these instances, the party or parties would be provided notice of charges and information regarding the appropriate College process to review these allegations.

### **Advisor of Choice and Participation of Advisor of Choice**

Students and employees participating as a Complainant or a Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. Pensacola State College will provide the parties equal access to advisors. Any restrictions on advisor participation will be applied equally. The College has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, Advisors of Choice shall not participate directly in the process as per standard policy and practice of Pensacola State College.

Pensacola State College will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

The College's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this procedure, and the College will not agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. Pensacola State College will not be obligated to delay a meeting or hearing under this process more than five (5) business days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by Pensacola State College.

### **Investigation**

The Title IX Coordinator will designate an Investigator to perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment and misconduct after issuing the Notice of Allegations. The Investigator serves as a neutral fact finder and has the ability to interview the Complainant, Respondent, Witnesses and any physical or medical evidence,

including documents, communication between the parties, other electronic records, and information from law enforcement, as appropriate. The Investigator cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. Pensacola State College, and not the parties, has the burden of proof and the burden of gathering evidence; therefore, the College has the responsibility of showing a violation of Policy 6Hx20-1.028, Sexual Harassment and Misconduct, has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide to not participate in an investigation or hearing. This does not shift the burden of proof away from Pensacola State College and does not indicate responsibility of either party in the alleged sexual harassment and misconduct. Neither party can be forced to participate in the investigation. During the investigation, Pensacola State College cannot limit or inhibit the ability of either party to discuss the allegations or gather evidence. During the investigation, Pensacola State College will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations). Pensacola State College will provide written notice to a party whose participation is invited or expected in the investigative process five (5) business days in advance of an interview and the written notice will include the date, time, location or Zoom link for any investigative interview. This written notice will also provide a list of participants and purpose of all investigative interviews.

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator or designee provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties. For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted. The Title IX Coordinator or designee shall have sole authority to grant further pauses in the Process.

### **Inspection and Review of Evidence**

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond in writing to the evidence prior to conclusion of the investigation. Neither party is obligated to submit a written response.

Pensacola State College will send the parties, and their advisors, all evidence gathered by the Investigator which relates to the allegations. This evidence may be shared in electronic format or hard copy and the parties have and provide ten (10) business days to inspect, review, and respond in writing to the evidence. The College asks all parties to submit any evidence that they would like the Investigator to consider prior to when the parties' time to inspect and review evidence begins. Evidence that will be available for inspection and review by the parties will include:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the Investigator when writing the investigative report or the decision Maker(s) when in making a determination regarding responsibility.
2. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from either party or other source.

If either party submits a written response to the evidence, the Investigator will provide a copy of the response to the other party and their Advisor. The Investigator may provide the parties up to five (5) additional business days to respond in writing to the other party's written response. The Investigator will consider the parties' written responses before completing the Investigative Report.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination. The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. The parties and their advisors agree not to photograph or otherwise copy the evidence. Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator to not be directly related to the allegations in the Formal Complaint will not be disclosed or may be appropriately redacted before the parties' inspection and review.

### **Investigative Report**

At the conclusion of the investigation and after each party has reviewed the evidence, the Investigator will create an Investigative Report that fairly summarizes relevant evidence and will provide that Report to the parties at least ten (10) business days prior to any hearing for each party's review and response. The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of the relevant evidence. Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations) will be referenced in the Investigative Report. The Investigator will also address any written responses submitted by the parties after they review the evidence. If a grievance process involves multiple complainants, multiple respondents, or both, the investigator may issue a single investigative report.

If the Investigation determines that there is sufficient cause to believe a policy violation has occurred, the matter will move to a live hearing process. Both the Complainant and Respondent will be notified simultaneously whether the matter is moving to a hearing process or not.

### **Hearing**

Pensacola State College will not issue a disciplinary sanction arising from an allegation of covered sexual harassment and misconduct without holding a live hearing, unless the matter is otherwise resolved through an informal resolution process (discussed below). The live hearing may be conducted with all parties physically present in the same geographic location, or, at the discretion of the College, any or all parties, witnesses, and other participants may appear at the live hearing virtually through Zoom video conferencing or similar technology. This technology will enable participants simultaneously to see and hear each other. At its discretion, Pensacola State College may delay or adjourn a hearing based on technological errors not within the control of either party. All hearings will be recorded via Zoom video conferencing, and the recording will be retained in the



electronic case file maintained by the Title IX Coordinator. The recording of the hearing will be available for review by the parties within five (5) business days, unless there are any extenuating circumstances. The recording of the hearing will not be provided to anyone else, including advisors. Pensacola State College may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the College will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

As a general rule, no new evidence or witnesses may be submitted during the live hearing. If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing. The Decision Maker(s) will consider this request and decide whether such evidence or witness testimony was actually unavailable prior to the hearing, and whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence standard. If the Decision Maker(s) decides to allow new evidence or witnesses, both parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

#### **Live Hearing Participants**

Pensacola State College will provide written notice to all parties whose participation is invited or expected in the live hearing at least five (5) business days in advance of the hearing and the written notice will include the date, time, location or Zoom link for the hearing. This written notice will also provide a list of participants and nature of the hearing. Live hearings are not public, and the only individuals permitted to participate in the hearing are listed below. Furthermore, Pensacola State College will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.

#### ***Complainant(s) and Respondent(s) (The Parties)***

- The parties cannot waive the right to a Live Hearing.
- The institution may still proceed with the Live Hearing in the absence of a party and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.
- For example, A verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint.
- If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.

- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.

#### *The Decision Maker(s)*

- The hearing body will consist of either a single decision-maker or a panel of decision-makers.
- No decision maker(s) will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.
- No member of the hearing body will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a Decision Maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### *Advisors*

- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination during the live hearing.
- The parties are not permitted to conduct any cross-examination; cross examination during the live hearing must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination during the live hearing at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter. If an advisor is also serving as a witness, the College will require another advisor is available to question and cross-examine the advisor when they are participating in their witness role
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.
- If neither a party nor their advisor appear at the hearing, Pensacola State College will provide an advisor to appear on behalf of the non-appearing party.

#### *Witnesses*

- Either party may call witnesses to attend the hearing.  
If a witness does not submit to cross-examination, the Decision-Maker cannot rely on any statements made by the witness in reaching determination regarding responsibility, including any statement relayed to Complainant, Respondent or another witness.

#### **Hearing Procedures**

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

1. Decision Maker(s) will open and establish rules and expectations for the hearing.
2. The Investigator will provide a summary of the investigative report.
3. The Parties will each be given the opportunity to provide opening statements and Decision Maker(s) will ask questions of the Parties.
4. Parties will be given the opportunity for live cross-examination after Decision Maker(s) conducts their initial round of questioning. During the Parties' cross-examination, the Decision Maker(s) will have the authority to pause cross-examination at any time for the purposes of asking their own follow up questions.
5. If either Party or the Party's Advisor choose not to cross-examine the other Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision Maker(s). A Party's waiver of cross-examination does not eliminate the ability of the Decision Maker(s) to use statements made by the Party.
6. The parties will be provided time for a brief closing statement and then the Decision Maker(s) will excuse the parties, advisors and witnesses to begin the deliberation process.

### **Live Cross-Examination Procedure**

Each party's advisor will conduct live cross examination of the other party and witnesses. During this live cross-examination, the advisor will ask the other party and witnesses relevant questions and follow-up questions, including that challenging credibility, directly, orally, and in real time.

Before any cross-examination question is answered, the Decision Maker(s) will determine if the question is relevant. "Relevant" evidence and questions refer to any questions and evidence that tend to make an allegation of sexual harassment more or less likely to be true. Cross-examination questions that are duplicative of those already asked, including by the decision-maker, may be deemed irrelevant if they have been asked and answered. "Relevant" evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of the Title IX Grievance Process, including the live hearing.

1. Evidence and questions about the complainant's sexual predisposition or prior sexual behavior unless:
  - a. They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - b. They concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
2. Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege.
3. Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

### **Determination Regarding Responsibility**

#### *Standard of Proof*

Pensacola State College uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Formal Complaints covered under this Policy. This means

that the investigation and hearing determine whether it is more likely than not that a violation of the Policy occurred.

*General Considerations for Evaluating Testimony and Evidence*

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker(s). Decision-makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability considering corroborating or conflicting testimony or evidence. Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety. Decision maker(s) will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion. Except where specifically barred by Title IX, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

Title IX requires Pensacola State College to allow parties to call "expert witnesses" for direct and cross examination. Pensacola State College does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be cross examined, the decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that Pensacola State College allow parties to call character witnesses to testify. Pensacola State Colleges does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be cross examined, the decision maker(s) will be instructed to afford very low weight to any non-factual character testimony of any witness.

Title IX requires that Pensacola State College admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be cross examined, the decision-maker(s) will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses. Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision maker(s) may draw an adverse inference as to that party or witness' credibility.

The Determination Regarding Responsibility will be written by the Decision Maker(s) and will be issued simultaneously to all parties through their institution email account, or other reasonable means as

necessary. If there are no extenuating circumstances, the determination regarding responsibility will be issued by Pensacola State College within ten (10) business days of the completion of the hearing.

The Written Determination will include:

1. Identification of the allegations constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding if the Respondent has or has not violated College policy.
5. For each allegation:
  - a. A statement of, and rationale for, a determination regarding responsibility
  - b. A statement of, and rationale for, any disciplinary sanctions (remedies) the recipient imposes on the Respondent; Remedies may include but are not limited to:
    - i. Formal Warning
    - ii. Continued no contact between the parties
    - iii. Restriction from certain activities and/or buildings on campus
    - iv. Suspension/Expulsion from the College or loss of employment with the College
  - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant.;
6. The College's procedures and the permitted reasons for the Complainant and Respondent to appeal the determination of responsibility (see below).
7. The College will provide the Complainant with a statement of, and a rationale for, any remedies that are issued to the Respondent

### **Appeals**

Each party may appeal (1) the dismissal of a Formal Complaint or any included allegations within the Formal Complaint and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within ten (10) business days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

1. A procedural irregularity occurred that affected the outcome of the matter or procedural rights of either party were violated;
2. New evidence that was not reasonably available at the time of the hearing and the determination regarding responsibility;
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.
4. The evidence and information presented during the hearing does not support the decision, or;
5. The sanction(s) imposed were not appropriate for the violation.

The submission of appeal stays any sanctions for the pendency of an appeal. All supportive measures remain available during the pendency of the appeal. If a party appeals, the College will as soon as practicable notify the other party in writing of the appeal. However, the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals will be decided by a designee appointed by the Vice President, Administrative Services; who will be free of conflict of interest and bias, and will not serve as the Investigator, Title IX Coordinator, or Decision Maker in the same matter. The outcome of appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

### **Finality**

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written outcome of the appeal or if an appeal is not filed, the date on which the opportunity to appeal expires.

### **Informal Resolution**

Pensacola State College, at its discretion, may offer and facilitate an informal resolution option, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person the College chooses to facilitate an informal resolution process will receive comprehensive training and will not serve as the Title IX Coordinator, the Investigator or the Appeal Officer in the matter. Pensacola State College may not require a waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment and misconduct as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right. Similarly, Pensacola State College may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. At any time prior to agreeing to a resolution, either party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. Pensacola State College will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

### **Comprehensive Education Program to Promote Awareness of the Problem of Sexual Harassment and Misconduct**

1. Periodically, the College will communicate with students and employees regarding sexual misconduct through the employee and student newspaper, bulletin boards, and other communication resources.
2. At the beginning of each academic year, athletic teams will receive special information through the coaching staffs regarding sexual misconduct.
3. A video (either purchased or produced by the College) will be available for play in the student centers or other student facilities in game areas, and in classes for group discussion when appropriate.
4. The Executive Director of Institutional Equity and Student Conduct will schedule awareness programs and speakers periodically throughout the year to promote awareness of sexual

misconduct offenses and the reporting of incidents that occur. Additionally, training sessions with faculty and staff regarding awareness and reporting sexual misconduct offenses will be scheduled.

**Procedures to Enhance Campus Security**

Campus security should be reviewed and increased as is necessary to minimize the threat of sexual assault on campus. The following will be important in this regard:

- a. Lighting. All lighting on campuses meets Rule 6A-2, F.A.C., requirements. Initially public safety personnel will survey areas that appear to need larger output of existing lighting or that require new lighting in order to provide a safer environment. Recommendation will be forwarded to the Director, Physical Plant. Maintenance crews will check lighting on a regular basis to monitor status. Burned out bulbs will be replaced as soon as possible after being identified.
- b. Landscaping. Landscaping patterns will be reviewed around parking lots and buildings to determine the existence of possible hiding places. Those found to be deficient will be altered to provide additional visibility. Thereafter, checks will be made on a recurring basis.
- c. Rape prevention and sensitivity training for Pensacola State College public safety officers. Each full-time public safety officer at Pensacola State College will receive rape prevention training and sensitivity training to deal with victims of sexual battery. This training is available through a Florida Department of Law Enforcement approved trainer.
- d. Pensacola State College Public Safety Student Services Program. Public safety officers are available to provide services to any student, staff or faculty member who wish to be accompanied from a building to their automobiles. This process will be reviewed periodically to determine if the numbers involved are sufficient to perform the service for students, staff and faculty.

**Disability Accommodations**

This Procedure does not alter any College obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other College programs and activities.

Responsible Official: Title IX Coordinator	
President's Signature:	Date: