

PENSACOLA STATE COLLEGE
POLICIES OF THE DISTRICT BOARD OF TRUSTEES

Policy Title:	Sexual Harassment and Misconduct	<u>Number</u> 6Hx20-1.028
Legal Authority:	Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 <i>et seq.</i> ("Title IX") 85 Fed. Reg. 30026 (May 19, 2020) s. 794.011, s. 800.03, Fla. Stat.	<u>Page</u> 1 of 4
Law Implemented:		

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 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:

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 orientation 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, 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.

The administration of the College shall adopt procedures for handling sexual harassment and misconduct complaints, including the manner in which complainants and/or respondents of alleged sexual harassment and misconduct will be assisted with supportive measures before or 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.

The administration of the College shall also formulate and implement a comprehensive educational program to assure awareness of the problem of sexual harassment and 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, 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.

History:	Adopted 8/19/92; promulgated 2/21/06; amended 6/26/12; amended 11/16/15; amended _____
President's Signature:	Date: