

Polk State College Procedure

Subject	Reference	Date	Number
Discrimination, Harassment, and Sexual Misconduct	FS 1001.64; SBE 6A-14.060; and DBOT Rules 3.12, 3.27, and 4.01	9/1/2020	6091

I. Purpose

This document covers Polk State College's procedures regarding sexual and gender-based misconduct associated with the *Code of Federal Regulations (CFR) Title IX* such as discrimination and harassment, as well as related misconduct including sexual assault, sexual exploitation, interpersonal violence, stalking, and retaliation for reporting misconduct.

II. Introduction

Polk State College is committed to maintaining a safe and non-discriminatory learning and working environment for all students, employees, prospective students, prospective employees, and third-party stakeholders. All members of the College community are responsible to encourage, protect and maintain an environment where individuals are free to learn and work without fear of discrimination, discriminatory harassment, or interpersonal violence.

Polk State College prohibits unlawful discrimination in its educational and employment programs and activities; the College does not discriminate based on an individual's race, color, ethnicity, national origin, ethnicity, sex, gender, age, religion, sexual orientation, marital status, veteran status, genetic information, disability, pregnancy, gender identity, or any other protected status (i.e., as set forth in federal, state, and local civil rights laws, rules and regulations) with regard to any of its programs, activities, or employment practices.

The College complies with state and federal laws prohibiting discrimination, harassment, and interpersonal violence including: *Title VII of the Civil Rights Act of 1964*, *Title IX of the Education Amendments of 1972*, the *Violence Against Women Reauthorization Act of 2013 (VAWA)*, the *Florida Civil Rights Act of 1992* (i.e., Title XLIV, Chapter 760.10: *Unlawful Employment Practices* and Title X, Chapter 110.1221: *Sexual Harassment Policy, Executive Agency Rules*). Certain misconduct also requires reporting under the *Jeanne Clery Disclosure of Campus Security Procedure and Campus Crime Statistics Act (the Clery Act)*, the VAWA, and Florida state law pertaining to suspected child abuse and neglect.

The College prohibits discrimination, as well as discriminatory harassment, sexual assault, sexual exploitation, relationship violence, stalking, or sexual or gender-based harassment (as well as complicity in the commission of any act prohibited by this procedure). In addition, the College bans retaliation against any person who reports, in good faith, any of these forms of conduct, or against any person who provides information pertaining to any investigation or proceeding under this procedure (i.e., all of these behaviors and actions are collectively referred to as "prohibited conduct" within this procedure).

The College does not condone religious discrimination and provides reasonable accommodations for religious practices via mechanisms that do not create undue hardship for other parties.

The College provides reasonable accommodations for known physical and mental limitations for otherwise qualified individuals with a disability, when the accommodations do not impose undue hardship on other involved parties.

The College prohibits the abuse of authority. As such, the College prohibits amorous relationships among employee classifications in which there is an imbalance of power, and in which there is the potential for a real or apparent abuse of authority.

This procedure is meant to: (1) eliminate, prevent, and address the effects of prohibited conduct; foster a safe and respectful environment; (2) cultivate a climate in which individuals are informed and supported with regard to reporting prohibited conduct; (3) provide a fair and impartial investigative process for all parties in the resolution of such reports; and (4) indicate the standards by which violations are evaluated and disciplinary action imposed, when necessary. In addition, Polk State College conducts ongoing prevention and awareness training for employees and students to facilitate the goals of this procedure.

A student or employee who is found to have committed conduct that is prohibited is subject to disciplinary action up to and including permanent separation from the College. Any third party who commits prohibited conduct is subject to having his or her relationship or privileges with the College terminated. Where applicable, conduct and actions are reported to law enforcement, as required by federal and state mandates. The College supports and assists community members in taking actions to prevent or stop prohibited conduct. Additionally, many College employees are mandated to report alleged prohibited conduct to the College.

Retaliation against any individual who, in good faith, reports (or participates in the reporting of), investigates (or is party to an investigation), or adjudicates an investigation related to prohibited conduct is unlawful, and is not to be tolerated by the College.

III. Scope

- A. This procedure applies to all members of the Polk State College community including current students, staff and faculty members, administration, prospective students, and prospective employees, as well as any third parties interacting with students, staff and faculty members, or the administration of the College. The procedure covers members of the Polk State College community regardless of race, color, national origin, ethnicity, sex, age, religion, sexual orientation, marital status, veteran status, genetic information, disability, or pregnancy or any other protected status.
- B. This procedure covers all activities that occur on Polk State's campuses and centers, as well as off-campus College-related activities within the United States. This procedure applies to current students, staff and faculty members, administration, prospective students, prospective employees and any third-party organizations regarding circumstances that are within the College's control.
- C. This procedure addresses alleged behaviors that one or more of the following must

be present on the basis of sex, that occurs in the College's educational program or activity within the United States and jeopardizes the individual's equal access to education:

1. Allegations of *quid pro quo* harassment demonstrated by an employee.
2. Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access.

IV. Reporting Prohibited Conduct

Polk State College community members are encouraged to contact a *Title IX* Coordinator or Deputy Coordinator, or Campus Safety and Security as soon as possible after an alleged act of prohibited conduct to discuss the available options for reporting. The names and contact information for the [Title IX Coordinator](#), the [Title IX Deputy Coordinators](#), and [confidential support personnel](#) are published in the [Polk State College Catalog/Student Handbook](#) and are readily available on the College's website (<https://www.polk.edu/equity-diversity-inclusion/title-ix/>).

College employees are expected to immediately report any actual or suspected prohibited conduct, regardless of the form in which it occurs.

Note: *There are limited exceptions for certain College employees who act as [confidential support personnel](#); these individuals do not report information that is discussed with them (cf. Section VII Part B of this document).*

Polk State College is committed to protecting individuals who report incidents; this includes all students, staff and faculty members, administration, and third parties. The College provides individuals with opportunities to report acts of victimization. When a student or employee reports that he or she has been a victim of sexual harassment, sexual assault, dating violence, domestic violence, or stalking, the College provides the student with a written explanation of his or her rights and options. In many cases, timing is important for reporting and protection; the sooner an incident is reported, the quicker a person can receive assistance.

There are important confidentiality and mandatory-reporting requirements when consulting campus resources. On campus, some individuals may act as resources and maintain confidentiality, meaning they are not required to report actual or suspected prohibited conduct to appropriate College officials. These resources offer options and advice to individuals without any obligation to inform an outside agency or individual unless the victim has requested that the information be shared. Other College employees, such as the [Title IX Coordinator](#) and [Title IX Deputy Coordinators](#), serve specifically as resources to report crimes and procedure violations; these individuals take action when an incident is reported (cf. Section VII of this document).

An individual who reports prohibited conduct to the College may decide whether and how to proceed with any formal investigation or resolution process. The complainant may choose to pursue resolution through the College's system, the criminal or civil courts, both, or neither. The complainant may initiate or withdraw from the formal resolution process at any time.

In some limited circumstances, the [Title IX Coordinator](#) or a [Title IX Deputy Coordinators](#) may be required to take action through the College's process and/or report incidents to the legal authorities regardless of the complainant's wishes. In such instances, strong consideration is still given to the complainant's preferences. The College's *Title IX* reporting authorities are as follows:

A. [Title IX Coordinator](#)

The [Title IX Coordinator](#) is responsible for monitoring, oversight, and overall implementation of Title IX compliance practices and the prevention of prohibited conduct and discrimination at the College, including coordination of training, education, communication, and administration of grievance procedures related to faculty, staff, students and other members of the College community. This representative fields general questions and concerns related to *Title IX*.

B. [Title IX Deputy Coordinator for Faculty, Staff, Administration, and Third Parties](#)

This individual supports the [Title IX Coordinator](#) and acts as the reporting authority for conduct or concerns relating to faculty and staff members, as well as third parties associated with the College. The [Title IX Deputy Coordinator for Faculty, Staff, Administration, and Third Parties](#) can offer guidance and consultation on issues related to discrimination, harassment, sexual and gender-based harassment, sexual assault, sexual exploitation, stalking, interpersonal violence, and complicity in these types of activities, as well as retaliation for reporting.

C. [Title IX Deputy Coordinator for Students](#)

In addition to providing support for the [Title IX Coordinator](#), the [Title IX Deputy Coordinator for Students](#) is accessible for consultation and guidance on issues related to discrimination, harassment, sexual and gender-based harassment, sexual assault, sexual exploitation, stalking, interpersonal violence, and complicity in these types of activities, as well as retaliation for reporting. There is a [Title IX Deputy Coordinator for Students](#) located on each main campus.

V. Prohibited Conduct Under this Procedure

Prohibited conduct under this procedure includes the following specifically defined behaviors: discrimination, discriminatory harassment, sexual or gender-based harassment, sexual assault, sexual exploitation, domestic violence, dating violence, stalking, and retaliation for reporting. These behaviors are prohibited regardless of the sex, sexual orientation, gender identity, or gender expression of the individuals involved.

Note: *This section provides detailed definitions related to this procedure.*

Definitions:

1. **Advisor:** During the investigation process, each party may select an advisor. This person may be (but does not need to be) an attorney. The advisor may not speak or ask questions during any aspect of the investigative procedure except during the live hearing cross-examination. The cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice (i.e., the party involved in the investigation may not personally participate in cross-examination questioning). If a party does not have an advisor present at the live hearing, the College must provide one free of charge. The selected advisor is at the discretion of the College, and the individual may or may not be an attorney.
2. **Campus Security Authority (CSA):** CSA individuals may include the members of the Campus Safety and Security Department; individuals who have responsibility for campus security, but who do not work within the Campus Safety and Security Department; individuals or organizations specified in the College's *Campus Security Procedure* for

reporting criminal offenses; and any College employees who have significant responsibility for students and campus activities, (e.g., deans, student services staff members, coordinators, club advisors, program directors, coaches, trainers, program managers, and instructional faculty). These individuals have a mandatory duty to report any allegation or information regarding prohibited conduct per this procedure.

3. **Coercion:** Coercion involves unreasonable pressure for sexual activity. Coercion is more than an effort to persuade, entice, or attract another person to have sex. Conduct does not constitute coercion unless it impairs an individual's free will regarding whether to participate in sexual activity.
4. **College Community:** Polk State College's faculty, staff, administrators, students, student employees, volunteers, and visitors make up the college and campus community.
5. **Complainant:** An individual who is alleged to be the victim of Prohibited Conduct outlined in this policy, regardless of whether this individual makes a report or seeks action under the policy.
6. **Complicity:** Complicity can refer to action or inaction that knowingly aids, facilitates, promotes, or encourages the commission of prohibited conduct by another person.
7. **Confidential Employee:** A confidential employee is a support person who is entitled under state law to have privileged communication and maintain privacy. Confidential employees cannot disclose information about prohibited conduct to the College without the permission of the complainant; however, confidentiality is subject to some exceptions (cf. Section VII Part B of this procedure).
8. **Confidentiality:** This is when information is shared with a designated community professional (referred to in this procedure as a confidential resource); this information is disclosed only with the individual's express written permission. A confidential resource does not share information about an individual (including whether the individual has received services) with anyone (including the College), without the individual's express written permission, unless there is a continuing threat of serious violence to the person or others, or there is a legal obligation to reveal such information (e.g., suspected abuse or neglect of a minor).
9. **Consent:** The term consent indicates an understood exchange of affirmative words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. Consent must be informed, and freely and actively given by clear actions or words. It is the responsibility of the initiator to obtain a clear, affirmative response at each stage of sexual involvement. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. The lack of a negative response, lack of resistance or protest, or silence do not constitute consent. Past consent to sexual activity does not imply ongoing or future consent. Consent cannot be given if any of the following are present: force, coercion, or incapacitation.

Conduct is considered to be "without consent" if no clear consent (i.e., either verbal or nonverbal) is given. Because sexual activity that is undertaken without consent is one form of prohibited conduct, each participant must obtain and give consent to each sexual act. Individuals are strongly encouraged to talk with each other before and during any

sexual interaction. Relying solely upon non-verbal communication can lead to miscommunication.

It should be noted that in some situations, an individual's ability to freely consent is obscured or removed by another person or circumstance. Examples include when an individual is significantly impaired due to alcohol or drugs, or if a person is scared, physically forced, unconscious, intimidated, coerced, mentally or physically impaired, beaten, threatened, isolated, or confined. **Note:** *An individual who is incapacitated by alcohol and/or other drugs (regardless of whether these were voluntarily or involuntarily consumed) cannot give consent. A minor under the age of 16 cannot give consent.*

A person with mental disabilities cannot give consent to sexual activity if he or she cannot understand the act, nature, consequences, and risks; this includes both the positive and negative impacts and the extent of the sexual situation. The mental disability of the victim must be known (or reasonably knowable) to a non-disabled sexual partner, in order to hold the individual responsible for the violation.

The following serves to clarify these points:

- Consent is required each and every time there is sexual activity.
- At any and all times when consent is withdrawn (or not verbally agreed upon), the sexual activity must stop immediately.
- Consent to some levels of sexual activity does not imply consent to all levels of sexual activity.
- Each new level of sexual activity requires consent.
- The person (or persons) who initiates a new level of sexual activity is responsible for asking for consent.
- A current or previous dating or sexual relationship with an individual does not constitute consent for a given activity.
- Being intoxicated does not diminish the person's responsibility to obtain consent.
- Bodily movements and non-verbal responses such as moans are not consent.
- Silence, passivity, or lack of active resistance is not consent.
- Intentional use of alcohol or drugs does not imply consent to sexual activity.
- Seductive dancing or sexy or revealing clothing does not imply consent to sexual activity.
- Anyone under the age of 16 cannot give consent to any sexual activity.
- The use of agreed upon forms of communication such as gestures or safe words is acceptable, but these must be discussed and verbally agreed upon by all parties before sexual activity occurs.

10. **Course of Conduct:** Course of conduct means two or more acts, including but not limited to, acts in which a targeted person is directly, indirectly, or through third parties, by any action, method, device, or means followed, monitored, observed, surveilled, threatened, or communicated with in a manner that places the targeted person in reasonable fear for his or her safety or the safety of others. A course of conduct shall not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person.

11. **Dating Violence:** This refers to violence committed by a person who is (or has been) in a social relationship of a romantic or intimate nature with the victim. The existence of such

a relationship is determined based on consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Dating Violence can include:

- Physical assault (e.g., shoving, kicking, or punching)
- Verbal abuse (e.g., belittling or calling names)
- Controlling behavior (e.g., not letting the victim see friends and family, or telling the victim what to wear)
- Sexual abuse (e.g., forced kissing, hugging, or sexual contact)
- Psychological abuse (e.g., threatening to hurt the victim, family, or friends; or instilling fear with threats)

12. **Decision Maker:** This is the person selected to conclude whether alleged prohibited conduct occurred, as well as determine the rationale for the result as to each allegation, assign any disciplinary sanctions to the respondent, and consider possible remedies that can be provided regarding the complaint. The decision maker cannot be the [Title IX Coordinator](#) or the investigator assigned to a complaint.
13. **Disability:** Disability refers to a physical or mental impairment that substantially limits one or more major life activities (or a record of such an impairment). A qualified person with a disability must be able to perform the essential functions of the employment role, internship, volunteer position or academic or extracurricular program, with or without reasonable accommodation.
14. **Discrimination:** Discrimination is any unlawful distinction, preference, or detriment to an individual that is based upon an individual's race, color, ethnicity, national origin, religion, non-religion, age, genetic information, sex (including pregnancy and parental status), gender identity or expression, sexual orientation, marital status, physical or mental disability (including learning disabilities, intellectual disabilities, and past or present history of mental illness), political affiliation, veteran's status (as protected under the *Vietnam Era Veterans' Readjustment Assistant Act*), or membership in other protected class set forth in state or federal law and that: (1) excludes an individual from participation in; (2) denies the individual the benefits of; (3) treats the individual differently with regard to; or (4) otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in a College program or activity.

Discrimination includes failing to provide a reasonable accommodation, consistent with state and federal law, to a person with a disability.

Discrimination includes failing to reasonably accommodate an employee's or student's religious practices wherein the accommodation does not impose an undue hardship on others.

15. **Discriminatory Harassment:** Discriminatory harassment consists of verbal, physical, electronic or other conduct based upon an individual's race, color, ethnicity, national origin, religion, non-religion, age, genetic information, sex (including pregnancy and parental status), gender identity or expression, sexual orientation, marital status, physical or mental disability (including learning disabilities, intellectual disabilities, and past or present history of mental illness), political affiliation, veteran's status (as protected under the *Vietnam Era Veterans' Readjustment Assistant Act*), or membership in any other protected class set

forth in state or federal laws. It applies to conduct that interferes with that individual's educational or employment opportunities, participation in a College program or activity, or receipt of legitimately requested services, and which meets the definition of either *Hostile Environment Harassment* or *Quid Pro Quo Harassment* (cf. Appendix).

Discriminatory harassment may take many forms, including verbal acts, name-calling, graphic or written statements (including through the use of cell phones or the Internet), or other conduct that may be humiliating or physically threatening.

16. **Document Filed by a Reporting party:** This refers to the document or electronic submission (e.g., by e-mail or through an online portal) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the individual filing the formal complaint.
17. **Domestic Violence:** This term refers to violence committed by a current (or former) spouse of the victim, by a person with whom the victim shares a child, by a person who is cohabitating with (or who has cohabited with) the victim as a spouse (or someone similarly situated to a spouse), or by any other person from whom the victim is protected under domestic and family violence laws.

Domestic violence can include:

- Physical assault (e.g., shoving, kicking, or punching)
- Verbal abuse (e.g., belittling or calling names)
- Controlling behavior (e.g., not letting the victim see friends, or telling the victim what to wear)
- Sexual abuse (e.g., forced kissing, hugging, or sexual contact)
- Psychological abuse (e.g., threatening to hurt the victim, family, or friends; or instilling fear with threats)

18. **Employee:** This refers to any individual employed by Polk State College, including all full-time and part-time faculty members, administrative personnel, career personnel, instructional personnel, professional/technical personnel, student employees, work-study students, part-time employees, and temporary employees.
19. **Force:** This encompasses the use of physical violence, or imposing on someone physically, to gain sexual access. Force also includes the use of threats, intimidation, implied threats, or coercion to overcome resistance.
20. **Formal Complaint:** A formal complaint is a document filed by a complainant or signed by the [Title IX Coordinator](#) that alleges sexual harassment or prohibited conduct against a respondent. The document serves as a formal request for the College to investigate an allegation of sexual harassment. The formal complaint document states the following conditions:
At the time of filing a formal complaint, a complainant must be participating in (or attempting to participate in) an education or employment program or activity at the College.

A formal complaint may be filed with the [Title IX Coordinator](#) in person, by mail, or by electronic mail, using the published contact information; or the person may file a formal complaint using any other method designated by the College.

21. **Gender-Based Harassment:** Gender-based harassment includes harassment based on gender, sexual orientation, gender identity, or gender expression; this may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature. This includes activities defined as *Hostile Environment Harassment* or *Quid Pro Quo Harassment* (cf. Appendix).
22. **Harassment:** Harassment refers to verbal, physical, electronic, or other discriminatory conduct based on an individual's protected status and which interferes with the individual's educational or work environment, participation in College programs or activities, or receipt of legitimately requested services (e.g., disability or religious accommodations). Harassment also encompasses behaviors classified as *Hostile Environment Harassment* or *Quid Pro Quo Harassment*.
23. **Hostile Environment Harassment:** This refers to discriminatory harassment that is so severe or pervasive that it unreasonably interferes with, limits, deprives, or alters the terms or conditions of education (e.g., admission, academic standing, grades, assignment); employment (e.g., hiring, advancement, work assignment); or participation in a program or activity, when viewed from both a subjective and objective perspective. In evaluating whether a hostile environment exists, the College considers the totality of known circumstances, including, but not limited to:

The frequency, nature, and severity of the conduct.

Whether the conduct has been physically threatening.

The effect of the conduct on the complainant's mental or emotional state.

Whether the conduct was directed at more than one person.

Whether the conduct arose in the context of other discriminatory conduct or other misconduct.

Whether the conduct unreasonably interfered with the complainant's educational or work performance and/or participation in College programs and activities.

Whether the conduct raises concerns related to academic freedom or protected speech.

A hostile environment can be created by pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. An isolated incident, unless sufficiently serious, does not amount to *Hostile Environment Harassment*.

24. **Incapacitation:** Incapacitation is a state in which an individual cannot make rational, reasonable decisions because of mental or physical helplessness, being asleep or unconsciousness, or due to a lack of awareness that sexual activity is taking place. A person may be incapacitated due to the consumption of alcohol or other drugs, or this may be resultant from a temporary or permanent physical or mental health condition. A person who is incapacitated lacks the capacity to give consent because the individual cannot properly assess or understand the environment, events, or consequences of sexual interaction at that time.

Incapacitated persons cannot give consent. A person who is incapacitated as a result of alcohol or other drug consumption (i.e., whether voluntarily or involuntarily), or who is

unconscious, unaware, or otherwise helpless, is incapable of giving consent. It is unlawful to engage in sexual activity with a person who is known to be (or should reasonably be known to be) incapacitated. Physically incapacitated persons are considered incapable of giving consent, as these individuals lack the ability to rationally and reasonably appreciate the nature and extent of the situation.

Examples of incapacitation include an individual who is unconsciousness or sleeping, a person who is fearful or being threatened, or a person who is being physically or psychologically pressured. Incapacitation can result from a psychological health condition, a physiological health condition, or voluntary or involuntary intoxication via any drug, intoxicant, or controlled substance.

25. **Interpersonal Violence:** Interpersonal violence refers to physical, sexual, emotional, economic, or psychological actions (or threats of actions) that a reasonable person in similar circumstances would find intimidating, frightening, terrorizing, or threatening (e.g., threats of violence to an individual or an individual's family member).
26. **Privacy:** With respect to this procedure, privacy protects information related to a report that can be shared only with those College employees who need to know in order to assist in the active review, investigation, or resolution of the report.
27. **Privileged Communication:** This refers to private statements that must be kept in confidence by the recipient for the benefit of the communicator (e.g., statements made between an attorney and a client, discussions between a doctor and a patient, confessions made by a penitent and a priest).
28. **Prohibited Conduct:** For the purposes of this procedure, prohibited conduct refers to discrimination, as well as discriminatory harassment, sexual assault, sexual exploitation, relationship violence (including domestic violence and dating violence), stalking, and sexual or gender-based harassment. This also includes retaliation against a person for reporting, in good faith, any of these forms of conduct, as well as retaliation for participating in or being a party to an investigation or proceeding under this procedure.
29. **Protective Status:** Consistent with federal, state, and local laws, the College prohibits discrimination and harassment based on specific characteristics that grant a person "protected status." These characteristics include an individual's race, ethnicity, color, national origin, age, religion, disability, marital status, gender, genetic information, sexual orientation, gender identity, pregnancy, and any other factors that are protected under applicable federal, state, and local civil rights laws, rules, and regulations.
30. **Quid Pro Quo Harassment:** This is discriminatory harassment where submission to, or rejection of, unwelcome conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's education (e.g., admission, academic standing, grades, or assignment), employment (e.g., hiring, advancement, or assignment), or participation in a College program or activity.
31. **Race:** This refers to an individual's actual or perceived racial or ethnic ancestry, or the physical characteristics associated with a person's ethnic ancestry, such as a person's skin color, hair, facial features, height, and weight.

32. **Retaliation:** The College prohibits retaliation against anyone who files a sexual harassment complaint in good faith, regardless of the outcome of that complaint. Additionally, the College prohibits retaliation or adverse actions against any person charged in a complaint where the complaint has been determined to have no merit.

The College maintains confidentiality regarding the identity of complainants, respondents, and witnesses--except as permitted by the *Family Educational Rights and Privacy Act* (FERPA), as required by law, or as necessary to carry out a *Title IX* proceeding or accommodation.

A complaint alleging retaliation can be filed using the College's grievance policies (cf. [Polk State College Procedure 6013: Employee Grievance Procedure](#), or [Polk State College Procedure 5027 Student Code of Conduct: Sexual Misconduct Procedure](#)). A person exercising his or her right to file a grievance is protected under the *First Amendment*.

Charging an individual with a Code of Conduct violation for making a materially false statement in bad faith during the course of a *Title IX* grievance proceeding does not constitute retaliation; however, a determination regarding responsibility (alone), is not sufficient to conclude that a person made a bad faith and materially false statement.

33. **Religion:** Religion encompasses all aspects of spiritual observance and practice that are part of an organized belief system that is held by many individuals, and which may not necessarily involve belief in a supreme being. The College accommodates individuals' required religious observances and practices, unless it is unable to reasonably accommodate the practice without undue hardship on others or the College.
34. **Reporting Party:** A reporting party may seek to informally or formally report prohibited conduct covered under this procedure. Sometimes the reporting party is not the complainant of the conduct; in other instances, a third party is the reporting party who makes the College aware of the prohibited Conduct. In the latter situation, the third party is not entitled to the procedural rights afforded to the Complainant, but the individual is still protected from retaliation for involvement in the proceedings.
35. **Respondent:** This term refers to any individual (or group) who has been accused of prohibited conduct under this procedure; a person who is alleged to have perpetrated discrimination, harassment, sexual or gender-based harassment, sexual assault, sexual exploitation, stalking, or interpersonal violence; an individual who has been complicit in these activities; or an individual who has retaliated against a person who has reported these types of conduct violations.
36. **Responsible Employee:** Any employee who is not a confidential support person can act as a responsible employee who is required to report allegations, information, or knowledge regarding prohibited conduct to the [Title IX Coordinator](#). Responsible employees include (but are not necessarily limited to) faculty members (full-time and part-time), staff members (full-time and part-time), College advisors, club advisors, directors, program managers, deans, and Campus Security Authorities (CSAs). The College reserves the right to designate other individuals involved in College-sponsored or College-related activities as responsible employees on a case-by-case basis.

37. **Sexual Assault:** Sexual assault is any type of sexual conduct or contact that occurs without the explicit consent of the recipient.

Non-consensual sexual contact includes any intentional sexual touching (however slight) with any object or body part, by a person of any gender, age, or sexual orientation, which is done without consent.

Non-consensual sexual penetration includes any sexual penetration (i.e., anal, oral, or vaginal), however slight, with any object or body part, that is committed by a person of any gender, age, or sexual orientation, and which is done without consent.

38. **Sexual Exploitation:** Sexual exploitation occurs when a person takes non-consensual or unjust sexual advantage of a person for his or her own advantage or benefit, or to benefit another person other than the individual being exploited.

Examples of sexual exploitation include, but are not limited to:

Non-consensual video recording, photographing, or audio recording of sexual activity

Non-consensual distribution of a video-recorded, photographed, or audio-recorded sexual activity

Non-consensual nude photography

Non-consensual distribution of a nude photograph

Going beyond the boundaries of consent (e.g., allowing friends to hide in a closet to watch individuals having consensual sex)

Engaging in peeping behavior or indecent exposure

Inducing incapacitation through alcohol or drugs with the intent of sexually assaulting the person, regardless of whether or not the sexual contact actually takes place (e.g., spiking someone's drink).

39. **Sexual Harassment:**

The College prohibits sex-based misconduct per the *First Amendment*. *Quid Pro Quo* Harassment and *Clergy Act* or *VAWA* offenses are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such misconduct is sufficiently serious to deprive a person of equal access.

Note: *The College uses the Supreme Court's Davis Definition of misconduct (i.e., 'severe, pervasive, and objectively offensive conduct, effectively denying a person equal educational access') as one of the three categories of sexual harassment, so that where unwelcome sex-based conduct consists of speech or expressive conduct, the College balances Title IX enforcement with respect for free speech and academic freedom based on the First Amendment.*

Note: *The College uses the Supreme Court's Title IX-specific definition rather than the Supreme Court's Title VII workplace standard (i.e., severe or pervasive conduct creating a hostile work environment). First Amendment concerns differ in educational environments and workplace environments. The Title IX definition provides First Amendment protections appropriate for educational institutions where students are learning, and employees are teaching. Students, teachers, faculty, and others are afforded free speech and academic freedom protections, even when speech or expression is offensive.*

40. **Stalking:** Stalking is defined as 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 would cause a person to experience substantial emotional distress.

Cyberstalking is a form of stalking where a person engages in a course of conduct using the Internet, email, or other electronic communication devices to pursue or track another person, and in a way that would cause a reasonable person to fear for his safety (or the safety of others), or would cause the person to experience substantial emotional distress.

Stalking can include:

Unwanted telephone calls

Unwanted letters, email messages, social messages (e.g., via Twitter or Facebook), or other forms of communication and messaging

Unwanted or threatening gifts

Pursuing or following a person without his or her consent

Unwanted appearances at a person's place of residence, school, or work

Surveillance or other types of observation

Use of electronic devices or software to track or obtain private information

41. **Student:** This refers to any individual defined as a student by Polk State College.
42. **Substantial Emotional Distress:** This refers to mental suffering or anguish that may (but does not necessarily have to) require medical treatment, professional assistance, or counseling.
43. **Supportive Measures:** A supportive measure is an individualized service that can be reasonably made available to a person, and which is non punitive, non-disciplinary, and not unreasonably burdensome to the other party. It is designed to ensure equal educational access, protect safety, or deter sexual harassment activities.
44. **Third-Party:** This term refers to any contractor, vendor, visitor, applicant or other non-student or nonemployee who has a connection or affiliation with Polk State College.
45. **Title IX Coordinator:** This is the designated College official with primary responsibility for coordinating the College's compliance with requirements associated with *Title VII* and *Title IX* legislation, as well as other federal and state regulations pertaining to equal access and equal opportunity for the College's educational and employment offerings.

VI. Rights of Polk State College Community Members in Instances of Reported Prohibited Conduct

- A. A person who experiences and reports any type of prohibited conduct, or any person who suspects or witnesses and reports such misconduct to the College, can expect the following:
1. Each allegation is treated seriously.
 2. Each individual involved is treated with dignity and respect and in a non-judgmental manner.
 3. The College sets forth a process to investigate and resolve any claim of prohibited conduct that is made in good faith. This is accomplished through a designated, trained

- official who is free from conflicts of interest or bias against either party. After the investigation is complete, the College implements an appropriate resolution.
4. All parties involved are given timely notice of any required meetings and are provided the opportunity to review any investigative report after the investigation has concluded.
 5. Whenever the College investigates a complaint or allegation of prohibited conduct, every reasonable attempt is made to process the case according to the wishes of the complainant. This effort must be balanced with the College's obligation to ensure the safety of the community and to comply with federal reporting requirements.
 6. All parties in the investigation, except witnesses, are afforded the same opportunity to bring an advisor with them during meetings. (Information about the role of an advisor is provided in Section IX, Part F.)
 7. The College notifies the reporting party and the complainant about options to notify law enforcement, including local police. Additionally, if the reporting party or complainant chooses to notify the authorities, the College assists the individual in making contact with law enforcement.
 8. All parties are informed regarding the outcome of the investigation and sanction(s) occurring pursuant to this procedure.
 9. The College provides written notification of available health and mental-health counseling, victim advocacy, legal assistance, and other services for victims of prohibited conduct, regardless of whether the conduct occurred on or off campus.
 10. The individual is entitled to seek, and the College is required to provide, appropriate interim measures to protect a reported victim or complainant.
 11. Any accommodation(s) or protective measure(s) provided to a reporting party or complainant are confidential, to the extent that maintaining such confidentiality does not impair the ability of the College to provide the accommodation(s) or protective measure(s).
 12. The complainant is afforded protections as per *Rape Shield laws* (i.e., no irrelevant questions or evidence about a complaint's prior sexual behavior are allowed unless these are offered to prove that someone other than the responding person committed the alleged prohibited conduct -- or that this information is necessary to prove consent).
 13. A complaint regarding prohibited conduct is ineligible to be mediated unless this is specifically agreed to in advance by all parties.
 14. Any party may appeal the decision of the investigation; this is accomplished in accordance with the standards for appeal established in this procedure.
 15. All parties are informed of the names of all witnesses, except in cases where a witness's identity cannot be revealed to the respondent for compelling safety reasons (i.e., this does not include the name of the reported victim, which must always be revealed).
 16. Any party may petition that any member of the investigative team be removed from the case on the basis of demonstrated bias.
 17. All parties are informed of the investigative procedures, as well as the extent and nature of the alleged violation.
 18. The College allows the reporting party (or complainant) to give testimony during the investigation by means other than being in the same room with the respondent.
 19. The College's investigators and appeals officers receive annual training regarding prohibited conduct.
 20. All parties are informed in advance of any public release of information by the College regarding the alleged misconduct.

21. The College does not release to the public any personally identifiable information pertaining to the alleged misconduct without the consent of the reporting party (and complainant).

B. The respondent in an investigation can expect the following:

1. The person is to be treated equitably and cannot have disciplinary sanctions imposed without the College following the investigative process outlined in this procedure.
2. The respondent is not considered to be responsible for the alleged conduct unless a determination of responsibility is made at the conclusion of the investigation (i.e., the person is presumed innocent of the allegation unless the investigation concludes otherwise).

VII. Reporting Prohibited Conduct

A complainant has the right to have formally reported information taken seriously, with the College investigating and resolving incidents using published policies.

If a complainant does not wish for his or her name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, this individual must explicitly request this in writing to the [Title IX Coordinator](#). The Coordinator then makes a determination if this is appropriate in light of the College's duty to ensure campus safety and comply with state and federal laws. In the case where there is a pattern of behavior, the indication of predation, specific threats made, or the possibility of weapons or violence, the College is unlikely to honor a request for confidentiality.

In a case where the complainant requests confidentiality and the circumstances allow the College to honor the request, the College may offer interim support or remedies to the complainant without otherwise pursuing formal action.

Formal reporting still affords some privacy to the reporting party. Only a small group of officials who are involved in the investigation (or who are necessary to provide accommodations) are told about the particulars of a report. Individuals fitting this description include, but are not limited to, the [Title IX Coordinator](#), the appropriate [Title IX Deputy Coordinators](#), the appropriate President's Staff member, Campus Safety and Security personnel, and the College's Care Team. Information is only shared as necessary with investigators, witnesses, and the respondent.

Notwithstanding any other information in this procedure, in instances where there is an imminent and severe threat to the safety of the College community, it may be necessary for College administrators, in private consultation with Campus Safety and Security, to issue immediate public warnings (or otherwise pursue immediate disciplinary action) to protect the College community. Such measures are required for Polk State College to comply with its obligations under the *Clery Act*. In such instances, the [Title IX Coordinator](#) makes a reasonable attempt to notify the reporting party and complainant beforehand. No personally identifiable information about the reporting party or complainant are included in any public warning issued.

A. Obtaining Assistance after a Sexual Assault

A victim of sexual assault should follow these steps:

1. Get to a safe place as soon as possible.

2. Seek medical attention. It is important to seek immediate and follow-up medical attention in an emergency room:
 - a. To assess and treat any physical injuries sustained.
 - b. To determine the risk of sexually transmitted infections or pregnancy.
 - c. To obtain evidence to aid in criminal prosecution if the victim later decides to file criminal charges.
3. Consider reporting the assault. A victim may report the assault to the College or local law enforcement. Seeking medical attention at a hospital does not obligate the victim to report the crime. The decision to report is very personal and should only be made by the victim.
4. Preserve all physical evidence. It is best for physical evidence to be collected immediately, ideally within the first 24 hours. (**Note:** *Evidence can be collected up 72 hours after an assault.*) The victim should avoid washing, douching, brushing teeth, or changing clothing. While this may be difficult, cleansing actions may destroy evidence that is essential for criminal charges. If the victim must change clothing, he or she should place all items worn at the time of the assault in individual paper bags (i.e., not plastic bags).

B. Confidential Resources and Reporting

Confidential resources are available to discuss incidents without a report being submitted to the [Title IX Coordinator](#). The College's [confidential support personnel](#) are listed in the [Polk State College Catalog/Student Handbook](#) and are available on the College's website (<https://www.polk.edu/equity-diversity-inclusion/title-ix/>). An individual can also request the contact information of a confidential resource via the [Title IX Coordinator](#), the [Title IX Deputy Coordinators](#), or the Director of Disability and Counseling Services, or by contacting Student Services personnel. All Polk State College personnel who act as confidential resources maintain confidentiality regarding the information discussed, except in the case of imminent or severe threat or danger to an individual or the campus, or in the case of suspected abuse of a minor.

Additionally, students can access trained off-campus confidential resources through Polk State College's BayCare Student Assistance Program (863.669.2309 or 1800.878.5470).

BayCare counselors are available to help free of charge and can be seen by appointment during normal business hours. After normal business hours, counselors can be contacted via telephone. These individuals submit anonymous, aggregated statistical information for *Clery Act* reporting purposes (unless they believe that providing this information would be harmful to a specific client).

For College employees, the New Direction Employee Assistance Program (EAP) offers trained confidential resources (1800.624.5544).

Note: *Other than the College's specific confidential resources, and BayCare and New Direction personnel, all other Polk State College faculty and staff members are required to report to the [Title IX Coordinator](#) when any incidents that are brought to them. If a complainant is unsure how private or confidential a staff or faculty member can keep specific information, the complainant should ask this information prior to disclosure. Faculty and staff members can direct the individual to an alternative confidential resource if needed.*

The following is a list of other confidential support resources that are located off campus:

- Peace River Rape Crisis Services 863-413-2707 (Confidential)
1806 S. Crystal Lake Drive Lakeland, FL 877-688-5077
(**Note:** For 24/7 confidential counseling and forensic examinations.)
- National Sexual Assault Hotline 800-656-4673
- Florida Sexual Violence Hotline 888-956-7273
- National Stalking Resource Center 800-FYI- CALL
- Florida Coalition Against Domestic Violence 800-500-1119

C. Formal Reporting

A complainant must be participating in (or attempting to participate in) an educational program or activity of the College at the time of filing a complaint with College personnel. This stipulation also covers employees and prospective employees. A formal complaint may be filed in person, by mail, by electronic mail, or by utilizing contact information for the [Title IX Coordinator](#) or a [Title IX Deputy Coordinators](#).

A variety of formal reporting options are available to any individual who believes that prohibited conduct has occurred and who wishes to bring it to the attention of the College. Once the College receives a report of the alleged prohibited conduct, the College is obligated to assess the situation to determine if the incident poses an imminent and severe campus threat.

1. Online Reporting: Members of the Polk State College community are encouraged to report incidents directly through the online reporting form (<https://www.polk.edu/equity-diversity-inclusion/title-ix/>). Reports submitted through this online form go directly to the [Title IX Coordinator](#). The reporting party or complainant receives follow-up after the report is filed (i.e., if he or she wishes to be contacted).
2. Reporting an Incident to a Faculty or Staff Member: An individual may also report prohibited conduct to any College faculty or staff member directly, but all faculty and staff at Polk State College are **mandatory reporters** (except those who are explicitly designated as confidential resources). Within 24 hours of being notified, the faculty or staff member who received the information is expected to report the allegation of prohibited conduct to the [Title IX Coordinator](#). Failure to disclose this information is a violation of College procedure. **Note:** *The complainant may write to the [Title IX Coordinator](#) requesting confidentiality; this may or may not be possible given the reported information. Even in formal reporting, some confidentiality is afforded to the reporting party and reported victim, as aforementioned.*

D. Child Abuse Reporting Obligations

All College employees are **mandated** to report suspicions of child abuse, neglect, or abandonment, as defined by *Florida Statutes* (cf. [Chapter 39 Sections 201 to 205](#)). The law requires that any person who knows (or has reasonable cause to suspect) that a child is being abused, abandoned, or neglected must report this information to the Department of Children and Families (DCF), regardless of the location in which the abuse occurs. For the purposes of this document, it is the age of the person at the time

of the incident of child abuse, neglect, or abandonment (i.e., not the time when the employee is made aware, or has reasonable cause to suspect the abuse) that triggers the reporting duty. When a Polk State College employee becomes aware of suspected child abuse, the employee must report the incident to an appropriate administrator. The administrator then files the DCF report, listing all employee reporters on the reporting form. The law further prohibits Polk State College administrators from knowingly and willfully preventing another person from reporting this type of activity. A report can be made directly to the Department of Children and Families (DCF) via the following resources:

- Fax: 1-800-914-0004 (The form is available at: <http://www.dcf.state.fl.us/programs/abuse/docs/faxreport.pdf>)
- Online: <https://reportabuse.dcf.state.fl.us/>
- Florida Abuse Hotline: 1-800-96ABUSE (1-800-962-2873) (Or TDD: 1-800-453-5145)

Note: If a child is in imminent danger, the person should immediately dial 911 and then file a report with DCF.

E. Pressing Charges

A person who has experienced a sexual assault or other act of sexual violence may contact the Polk State College [Title IX Coordinator](#) or local law enforcement (e.g., by calling 911) to discuss filing a criminal complaint. The [Title IX Coordinator](#) is available to assist individuals in making contact with any of the following law enforcement authorities:

- Polk County Sheriff's Office 863-298-6200
1891 Jim Keene Blvd. Winter Haven, FL
- Bartow Police Department 863-534-5034
450 N. Broadway Ave. Bartow, FL
- Lakeland Police Department 863-834-6914
219 N. Massachusetts Avenue Lakeland, FL
- Lake Wales Police Department 863-678-4223
133 E. Tillman Ave. Lake Wales, FL
- Winter Haven Police Department 863-291-5858
125 N. Lake Silver Dr. NW Winter Haven, FL
- Polk County Clerk of Courts: Domestic Violence Department
(**Note: This resource is to file civil domestic violence reports and obtain injunctions for protection against domestic violence.**)
 - Polk County Circuit Court: Lakeland Branch 863-603-6412
930 E. Parker Street, Lakeland, FL

- Polk County Circuit Court: Bartow Courthouse
255 N. Broadway Street Bartow, FL 863-534-4184
- Clerk of the 10th Judicial Court of Polk County Florida
(Note: This resource is to file Injunctions such as an Order of Protection or Restraining Order in response to reported dating or domestic violence, stalking, or sexual violence.)
 - Polk County Circuit Court: Bartow Courthouse
255 N. Broadway Street Bartow, FL 863-534-4000

Any pending criminal investigation or criminal proceeding may have some impact on the timing of the College's investigation, but Polk State commences its investigation as soon as is practicable under the circumstances. The College reserves the right to commence and/or complete its own investigation prior to the completion of any criminal investigation or criminal proceeding.

An employee or student may also file a complaint of prohibited conduct with any of the following agencies:

- Florida Department of Human Relations 850-488-7082
800-342-8170
- U.S. Department of Education's Office for Civil Rights 800-421-3481
- Office of Civil Rights 800-368-1019

VIII. Additional Procedure Provisions

A. Attempted Violations

In most circumstances, the College treats attempts to commit any of the violations listed in the prohibited conduct portion of the procedure as if the attempts had been completed.

B. False Reports

Polk State College does not tolerate intentional, false reporting. Any person alleging prohibited conduct who is suspected of false reporting, or of making a report for the purpose of harassing the respondent or disrupting the College's operations, is subject to investigation, resolution procedures, and disciplinary action, up to and including dismissal (for students) or termination of employment (for faculty and staff).

IX. The Investigation and Resolution Process for Alleged or Suspected Misconduct

Polk State College is committed to providing a prompt, fair, and impartial resolution to the greatest extent possible when prohibited conduct has been alleged, regardless of whether a formal complaint has been filed or where the conduct at issue occurred. Polk State College's ability to investigate in a given situation, or the extent of the investigation, may be affected by any number of factors, including, but not limited to, whether the victim is willing to file a complaint or is willing to consent to an investigation, the location where the alleged conduct occurred, and the College's access to information relevant to the alleged or suspected conduct. Polk State College is

nonetheless committed to investigating all alleged and suspected violations of this procedure to the fullest extent possible under the circumstances.

This Investigation and Resolution Process herein is applied to all suspected and alleged prohibited conduct covered under this procedure, and this document is used in place of [Polk State College Procedure 6013: Employee Grievance Procedure](#), [Polk State College Procedure 5028: Student Code of Conduct: Sanctions and Assignment of Penalties](#), and other document or information contained in any *Polk State College Catalog/Student Handbook*, program handbook, District Board of Trustees Rule, or other publication that appears on the College's website.

Sanctions or other corrective actions imposed against employees or students, as well as appeals to these decisions, are in accordance to this Investigation and Resolution Process, rather than in accordance with any other rule or procedure governing conduct (i.e., unless the College determines in its discretion that another process should be used to resolve a particular matter). In addition, the College may modify the Investigation and Resolution Process in the interest of promoting a full and fair resolution or to comply with applicable law.

A. Informal Resolution

1. The College, in its discretion, may choose to offer and facilitate an informal resolution to the occurrence of prohibited conduct. This may include factors such as mediation or restorative justice, and can be applied only in the event that both parties give voluntary, informed, and written consent to attempt the informal resolution. Any person who facilitates an informal resolution must be well trained in this type of negotiation.
2. The College may not require an individual to waive the right to a formal investigation and adjudication as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right. Similarly, the College cannot compel either party to participate in an informal resolution process; Polk State may not offer an informal resolution process unless a formal complaint is filed.
3. At any time prior to agreeing to the resolution of an informal process, any party has the right to withdraw from the informal resolution process and resume the formal investigative process with respect to a formal complaint.

Note: The College cannot offer (or facilitate) an informal resolution process to resolve allegations that an employee sexually harassed a student.

B. Initial Informational Meeting with [Title IX Coordinator](#)

When the [Title IX Coordinator](#) receives a report or notification of alleged prohibited conduct involving a currently enrolled student, or a faculty or staff member, the [Title IX Coordinator](#) first requests a private meeting with the reported victim. This initial meeting usually occurs as soon as practicable. At this meeting, the [Title IX Coordinator](#) (or his or her designee) reviews the College's procedures, as well as the rights of the complainant, the Coordinator (or designee) shares information about available resources and support services and explains any interim measures that can be put in place while the investigation proceeds.

If it is determined that a formal investigation must be opened (i.e., based on the information gathered and according to the reported victim's desire, or due to the College's determination that there is an immediate threat to the campus community), the Coordinator contacts the alleged perpetrator, referred to as the "respondent." The respondent is officially notified of

the complaint and investigation at the onset. This notice includes sufficient details about the allegations to indicate the alleged activity, the identity of the parties involved, the specific section of the procedure alleged to have been violated, and the date and location of the alleged incident. After receipt of this notice, the respondent must attend an informational meeting with the Coordinator to review the College's procedures, the investigative and resolution process, and the respondent's rights.

C. Interim Measures

Polk State reserves the right to take any interim measures the College deems appropriate to protect the rights, interests, and personal safety of the complainant, the reporting party, the respondent, and the College community pending the outcome of an investigation or grievance. The College keeps any interim remedies and actions private to the greatest extent possible. These interim remedies may include, but are not limited to:

- Relocation of the reporting or respondent.
- Exam, paper, or assignment rescheduling.
- Arrangement for an *Incomplete* class grade (I).
- Transfer of class sections.
- Temporary withdrawal from classes.
- Alternative course completion options.
- Obtaining a *No Contact Order* and restricting or prohibiting contact with specific individuals on campus.
- Suspension of a member of the Polk State College community and implementing interim removal from (or restriction from) particular areas of the campus.

D. The Investigation Process

The [Title IX Coordinator](#) designates at least one investigator to conduct a prompt, thorough, fair, and impartial investigation of the reported conduct. The investigator may be a Polk State College employee, an external party, or a combination of external and internal individuals; the selection of the person(s) performing the investigation is at the sole discretion of the College. The investigator(s) is selected from a group of qualified individuals who are trained by the College in conducting investigations under this procedure. After the investigator(s) complete the investigation, a *Final Investigative Report* is prepared.

The [Title IX Coordinator](#) simultaneously provides all parties with the name(s) of the person(s) assigned to investigate the report. Any party having a conflict or potential conflict of interest with the investigator(s) should inform the [Title IX Coordinator](#) as soon as practicable after receiving these name(s). The [Title IX Coordinator](#) (or his or her designee) considers the nature of the conflict and determines which individual(s) should be assigned to investigate, using a good faith effort to assign an investigator who is free from any conflict of interest and who is without bias toward any party in the investigation. The [Title IX Coordinator's](#) (or his or her designee's) determination regarding any conflict of interest is final.

It is the responsibility of the College, not of the parties, to gather relevant information to the extent reasonably possible. The investigator(s) conducts the review in a manner appropriate to the circumstances of the case.

Depending upon the nature of the alleged or suspected conduct, the investigator conducts an investigation either alone or with one or more other College officials who have been selected to assist (i.e., if additional investigators are deemed necessary by the College). The nature and extent of the investigation varies depending upon the circumstances. A formal investigation of prohibited conduct generally includes:

- Separate meetings with the complainant(s), respondent(s), and relevant witnesses (if applicable).
- Collection of all relevant information, including written statements by the respondent(s), complainant(s), and witnesses (as applicable), as well as physical evidence (if available).
- Preparation and delivery of a *Final Investigative Report*, summarizing the investigation and recommendations, to the [Title IX Coordinator](#).

To help ensure a prompt and thorough investigation, the reporting party(s) or complainant is asked to provide as much information as possible including, but not limited to, the following:

- The name and class, or department and position of the person(s) allegedly involved in the prohibited conduct.
- A description of any relevant incident(s), including the date(s), location(s), and the presence of any witnesses.
- The effect of the incident(s) on the reported victim's opportunity to benefit from the College's programs or activities.
- The name(s) of any other individual(s) who might have been subject to the same or similar acts of prohibited conduct.
- Although it is not required, any steps the complainant or reporting party has taken to try to stop the prohibited conduct.
- Any other information the reporting party or complainant believes to be relevant.

The respondent is also expected to provide as much information as possible in connection with the investigation. Any party providing information relevant to an investigation may do so by e-mail, as a hardcopy, or via any other convenient delivery format to the [Title IX Coordinator](#).

Medical and counseling records of the complainant and respondent are privileged, confidential records (cf. Appendix). An individual is not required to disclose this information; however, these records may contain information that a person may voluntarily choose to share with the investigator(s). Any records provided by a person become part of the investigative file and are available for review by the opposing party.

During the investigation, the investigator(s) must send evidence directly related to the allegations via electronic or hard copy and provide at least 10 days for the parties to inspect, review, and respond to the evidence.

Both the complainant and the respondent in any investigation are each provided with the following opportunities during the investigation and resolution process:

- The opportunity to speak on his or her own behalf.

- The opportunity to identify witnesses who can provide information about the alleged conduct.
- The opportunity to submit other evidence.
- The opportunity to review any information offered by another party in support of the that party's position; this opportunity is provided to the greatest extent possible as consistent with the *Family Educational Rights and Privacy Act* (FERPA) and other applicable laws.
- The right to simultaneously (i.e., to the greatest extent possible and consistent with FERPA or other applicable laws) be informed in writing of the findings of fact and the conclusions of the investigator, and to respond to the findings of fact and conclusions in writing or at a live meeting before a determination of responsibility and sanctions for the case.
- The right to simultaneously (i.e., to the greatest extent possible and consistent with FERPA or other applicable laws) be informed in writing of the outcome of the investigation, any sanctions imposed, and the rationale for the decision and sanctions.
- The opportunity to appeal the outcome of the investigation.
Notification in writing of any investigative interviews, meetings, or hearings.
- An unrestricted ability to discuss allegations and gather evidence (i.e., neither person is placed under a "gag" order).

While face-to-face interviews are the preferred method (i.e., either in person or via video conferencing), other means may be offered and used at the discretion of the investigator(s) (e.g., phone interviews, written testimony) in order to move the investigation forward. Every opportunity is provided for an individual to participate in the investigative process; however, if a party chooses not to participate, the investigation still continues and a decision is rendered based on the information gathered.

Upon concluding the investigation, the investigator documents findings in a *Final Investigative Report* that fairly summarizes the relevant evidence. Copies of this report are provided to all parties and their advisors via electronic format or hard copy. At least 10 days are given for the parties to respond.

At any point during the investigation, if it is determined there is no reasonable cause to believe that a College procedure has been violated, the [Title IX Coordinator](#) has authority to terminate the investigation and resolution proceedings. For investigations of alleged sexual harassment, if allegations in a formal complaint do not meet the definition of sexual harassment, did not occur in a College education program or activity, or did not apply to a person in the United States, the College must dismiss the allegations due to the scope of *Title IX* procedures; however, the College may address the allegation in any other manner appropriate.

The College may, at its discretion, dismiss a formal complaint (or allegation) if the complainant withdraws the formal complaint (or allegation) through a written statement to the [Title IX Coordinator](#). The complaint or allegation may also be dismissed if the responding person is no longer enrolled or employed at the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination. In such a case, the College must promptly notify all parties in writing of the dismissal and provide the justification.

The investigation of any suspected or alleged prohibited conduct must be completed within 60 days of receipt of a filed complaint (or within 60 days of when the College first became aware of a suspected violation of this procedure). If Polk State College determines that more time is required to complete the investigation, the College must notify all parties involved, in writing, of the extended timeframe and include a rationale and revised timeline for completion.

E. Standard of Evidence and Written Determination

The standard used by the College to determine whether prohibited conduct has occurred is 'preponderance of the evidence;' this is defined as 'it is more likely than not' that the respondent is responsible for prohibited conduct.

Upon the investigative report being finalized, a written determination regarding responsibility is sent to each party with findings of fact, conclusions, the rationale for the result regarding each allegation, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant through an appropriate administrator. The administrator(s) responsible for remedies becomes the decision maker in resolutions. The decision maker(s) is required to objectively evaluate all relevant evidence, both inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.

Neither the [Title IX Coordinator](#) or the investigator can act as a decision maker in the process. A final written determination is provided via the decision maker, and this is sent simultaneously to the complainant, witness, and respondent along with information about how to file an appeal, if desired.

F. Advisors

Any reporting party, complainant, or respondent who is involved in an investigative process may be accompanied by an advisor of his or her choosing during the process. A person who is acting as a witness cannot also serve as an advisor. The role of an advisor is to provide support, guidance, or advice to the individual, as well as to cross-examine the other person(s) involved during the live hearing. The choice whether or not to invite an advisor to meetings is solely that of the party involved. The College can assign an advisor to a student if this is requested. The assigned advisor may or may not be an attorney.

Aside from the live hearing, the advisor may not ask questions, interject, coach, advocate for, or otherwise speak on behalf of the individual being advised during a meeting or interview. An advisor must request time or wait for a break in a proceeding if he or she wishes to interact with College officials. An advisor may confer quietly with the person being advised as necessary, as long as this does not disrupt the meeting or interviewing process. For a longer or more involved discussion, the party and his or her advisor should ask for a break and then step out of the meeting to allow for a private conversation. If an advisor's conduct is inconsistent with these guidelines, the individual can no longer be considered an advisor; the investigative officer may remove the advisor from participation in the resolution process.

If an advisor is an attorney, or if the advisor is acting under the supervision and direction of an attorney hired by a participant during the investigation process, this information must be disclosed to the College. Polk State College reserves the right to have its own legal counsel present for any meeting.

Note: A person involved in an investigation may elect to change his or her advisor during the process.

During live hearings, the role of the advisor changes. If a party does not have an advisor present at a live hearing, the school must provide an advisor free of charge; the College selects the assigned advisor, who may or may not be an attorney, to conduct cross-examinations on behalf of the individual

G. Witnesses

Witnesses are permitted in the investigation process and may be invited by anyone involved in the investigation, including but not limited to the reporting party, the complainant, the respondent, or the investigative officer. A witness is someone who can provide a firsthand account of something seen, heard, or experienced that relates to the alleged incident. Character witnesses and other witnesses deemed irrelevant by the investigative officer are not permitted.

A list of witnesses must be submitted prior to the investigation meeting or hearing. The list should include contact information and a brief description of each witness's contribution.

H. Authorized Audio and Video Recording

In some cases, at the discretion of the College, meetings that are part of the investigation may be recorded (i.e., audio or video). Deliberations by investigative officers are never recorded. All live hearings are audio recorded or audio/video recorded. All recordings are College property and are retained in the [Office of Equity, Diversity, and Inclusion](#). Recordings may be reviewed in the event of an appeal, or these may be used internally for documentation or training purposes.

I. Sanctions and Remedies

Sanctions for violations vary depending on the circumstances, and may include (but are not be limited to) any of the following:

Student Sanctions:

- Expulsion from the College
- Suspension from the College
- Withdrawal-Without Refund from a Class or Classes
- Discretionary Sanctions (e.g., work assignments)
- Disciplinary Probation
- Warning
- Other lesser sanctions (e.g., limiting activities or a stern verbal warning)
- Restitution
- Fines and Obligations

Employee Sanctions:

- Verbal Counseling
- Letter of Warning
- Specific Activities or Training (e.g., training to discourage sexual harassment in future interactions)

- Probation
- Suspension
- Reassignment
- Non-Renewal of Contract
- Termination

Any person found responsible for non-consensual sexual contact or non-consensual sexual intercourse is likely to receive a sanction ranging from probation to expulsion (student), or suspension to termination (i.e., employee). The severity of sanctions is dependent on the specifics of the incident; however, determination of sanctions takes into account previous disciplinary violations. Any person found responsible for sexual exploitation or sexual harassment is likely to receive sanctions ranging from a warning to expulsion or termination, depending on the severity of the incident; again, previous disciplinary violations are taken into account.

The College considers the safety and concerns of the complainant, the respondent, all witnesses, and the entire Polk State College community in determining appropriate sanctions. The College reserves the right to broaden or lessen the range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the investigating officer(s) nor the officer for the appeal deviates from the range of recommended sanctions unless there is compelling justification to do so.

Note: Any employee who is found to have violated this procedure may be terminated or subjected to other disciplinary action. Any guest or other third party who is found to have violated this procedure is subject to corrective action as deemed appropriate by the College. This may include removal from the College and termination of any applicable contractual or beneficial arrangements.

In an instance where the College is unable to take disciplinary or other corrective action in response to a violation of this procedure because the complainant insists on confidentiality (or for some other reason), the College nonetheless may pursue other steps to limit the effects of the conduct at issue and to prevent its recurrence.

J. Notification of the Investigative Outcome

After the conclusion of the investigation, the College provides written notification of the outcome to the complainant, the respondent, and the advisors. Notice is issued simultaneously to all parties to the extent practicable. The College may also disclose information about any sanctions or corrective actions taken that relate directly to the reported victim to this person (e.g., the issuance of a *No Contact Order* (NCO)). The [Office of Equity, Diversity, and Inclusion](#) maintains documentation of all investigative paperwork and other proceedings undertaken pursuant to this procedure.

Note: *The reported victim is never required to abide by a nondisclosure agreement that would prevent the disclosure of the outcome of the investigation.*

K. Hearings

All investigations that pertain to incidents of alleged sexual harassment must include a live hearing with cross-examination. Hearings must allow for the following:

- The decision maker must allow each party's advisor to ask the other party and witnesses all relevant questions and follow up questions, including questions challenging individuals' credibility.
- Cross-examination conducted directly, orally, and in real time by the party's advisor of choice (i.e., a party directly involved in an investigation cannot personally direct questions for cross-examination).
- At the request of either party, the College must provide for the entire live hearing (including the cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.
- Only relevant cross-examination questions and related questions may be asked of a party or witness. Before a reporting party, complainant, respondent, or witness answers a cross-examination question or other question, the decision maker must first determine whether the question is relevant and explain the rationale to the party's advisor if a decision is made to exclude a question as not relevant.
- If a party or witness does not submit to cross-examination at the live hearing, the decision maker cannot rely on any statement of that party or witness in reaching a determination regarding responsibility. This is provided, however, that the decision maker cannot draw an inference about this determination based solely on a party's or witness's absence from the live hearing, or his or her refusal to answer cross-examination questions.
- Live hearings may be conducted with all parties physically present in the same geographic location; however, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.
- The College must create an audio or audiovisual recording, or transcript, of any live hearing.
- The College must provide *Rape Shield* law protections for complainant(s). This prevents inclusion of irrelevant questions and evidence regarding the complainant's prior sexual behavior unless this information shows that someone other than the respondent committed the prohibited conduct or the information is offered to prove consent.

X. Right to Appeal the Outcome and Resolution of an Investigation

Once written notification of the resolution has been provided, all parties have the opportunity to appeal all (or part of) the decision regarding responsibility. Additionally, a person may appeal the College's dismissal of a formal complaint or allegation.

During an appeal, all sanctions imposed by the original decision remain in effect. A request may be made to the [Title IX Coordinator](#) to delay implementation of sanctions until the appeal is decided, but the College's presumptive stance is to implement sanctions immediately. Graduation, study abroad, internships, externships, and other benefits offered through the College do not constitute exigent circumstances. A student cannot participate in these types of activities during an appeal. In cases where an appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts are made to restore the student to his or her prior status, recognizing that some opportunities that are lost may be irreparable.

A. The Grounds for Appeal

Any request for appeal must be based on one or more of the following grounds:

1. New Information: An appeal may be justified by new substantive information available that could not have been discovered by a diligent party at the time of the investigation and that would have likely changed the outcome of the case.
2. Procedural Change - An appeal may be justified by a substantive procedural error or error in the interpretation of College procedures that in some way affected the outcome of the matter.
3. Conflict of Interest: An appeal is justifiable if one of the *Title IX* personnel involved in the original investigation had a conflict of interest or bias that affected the outcome.

B. Timeline and Format for an Appeal

A request for an appeal must be submitted in writing to the [Title IX Coordinator](#) within three business days of receiving the written decision. Failure to submit a request during this period of time waives the right to appeal and renders the decision final. Once an appeal has been submitted by one party, the other is notified and has another three business days (i.e., from notice of the intent to appeal) to review the appeal request and submit a response or a cross-appeal. If a cross-appeal is filed, the originally appealing party must be notified and given another three business days (i.e., from the date of notice of the cross-appeal) to respond; after this response is filed, no further responses are permitted. The response of each party to the appeal and/or cross-appeal is always shared with the other party.

For example, if the respondent files an appeal, the appeal is shared with the reported victim (who is also the complainant in this case). The reported victim may respond to the appeal's allegations and also file a cross-appeal on separate grounds. The response and cross-appeal are shared with the respondent (i.e., the initial appealing party). The respondent may then respond only to the cross-appeal, and this response is shared with the reported victim. At this point, no further responses or cross-appeals are allowed.

There is [Title IX Coordinator](#) no hearing in connection with an appeal or cross-appeal, but the *Title IX* Coordinator, Vice President of Student Services, or Vice President of Business Administration and Finance (or his or her designee) may request written submissions from the parties or consider any other information deemed appropriate.

B. Content of an Appeal

A request for an appeal must include the grounds for the appeal, a personal statement explaining in detail why the party is contesting the results of the investigation, and relevant documentation available that substantiates or clarifies the appeal request.

D. Review of the Appeal and the Final Decision

All requests for appeals are considered by the [Title IX Coordinator](#), Vice President for Student Services, and the Vice President of Business Administration and Finance (or his or her designee). These individuals collectively determine whether there is sufficient basis for modifying the original decision. It is the responsibility of the appealing person to provide clear and convincing information demonstrating that the original process or decision was substantively flawed.

The [Title IX Coordinator](#), Vice President for Student Services, and Vice President of Business Administration and Finance (or his or her designee) must select from four possible appeal outcomes:

- 1) Affirm the original decision and uphold the original sanction(s).
- 2) Affirm the original decision but modify the original sanction(s).
- 3) Overturn all or part of the original decision and uphold, modify, or remove the sanction(s) as appropriate.
- 4) Affirm the case to be re-reviewed by different investigative officer(s).

Both parties are informed in writing of the outcome of any appeal within fourteen days of the date from which all requested information is received, unless the [Title IX Coordinator](#), Vice President for Student Services, and Vice President of Business Administration and Finance (or his or her designee) determine that additional time is required.

XI. Parental Involvement in Title IX Procedures

Title IX processes are designed for the protection of those within the Polk State College community. Because of the sensitive nature, only those who are directly involved in a given situation may participate in the investigation. The College does, however, recognize the legal rights of parents and guardians to act on behalf of participants who are involved in *Title IX* matters (including by filing formal complaints). Outside involvement in the investigation hinders the College's ability to successfully complete the process; therefore, as described above, any reported victim or respondent involved in a *Title IX* investigation may be accompanied by an advisor of his or her choice. If the student wishes, he or she may choose a parent to serve as the advisor during the investigation.

XII. Employees Responsible for Investigations, Security, and Reporting

Employees with administrative or supervisory responsibilities on campus, and those who have been designated as Campus Security Authorities (CSA), are considered Responsible Employees (RE). A designated RE is a person who has the authority to address sexual misconduct, a person who has a duty to report incidents of sexual misconduct, or an individual who, as a member of the Polk State community, is reasonably believed have these responsibilities. The College has an obligation to make reasonable efforts to investigate and address instances of known or suspected sexual misconduct. Any RE or CSA who has information or receives a report of sexual misconduct, interpersonal violence, or stalking must immediately share this information with the [Title IX Coordinator](#).

The College's Responsible Employees include, but are not limited to, the following individuals:

- President's Staff Members (e.g., the College President, the Vice Presidents, the Associate Vice President, Chief Information Officer, Chief Diversity Officer, the Faculty Senate President, and Executive Assistants to the President)
- Administrators and professional staff (e.g., deans, associate deans, district directors, directors, program directors, coordinators, and supervisors)
- All faculty and staff members who accompany students on College-related trips, both within the United States and abroad.
- All faculty members; faculty and staff advisors for student organizations, clubs, and activities; Student Success advisors; TLCC leaders; and tutors.
- Campus Safety and Security Department members and security officers.

XIII. Training Requirements and Other Stipulated Requirements

The following are the training requirements for any person who is involved in *Title IX* investigations and hearings:

- Those involved in the investigation, decision making, and hearing, must, at a minimum, receive annual training on issues related to dating violence, domestic violence, sexual assault, sexual harassment, and stalking. These individuals must also be trained on how to conduct an investigation that protects a victim's safety and promotes accountability.
- *Title IX* personnel must be trained on the scope of the College's education programs and activities.
- *Title IX* personnel must be trained on conducting an investigation, hearing, and appeal, as well as how to facilitate an informal resolution. Further, they must receive instruction on maintaining impartiality, avoiding prejudgment of the facts, identifying conflicts of interest, and assessing bias.
- Decision makers must receive training on any technology used for live hearings.
- Decision makers and investigators must receive training on issues of relevance, including how to apply the protections afforded by *Rape Shield* laws.

The following are other stipulated requirements pertaining to *Title IX* policies, investigations, and live hearings:



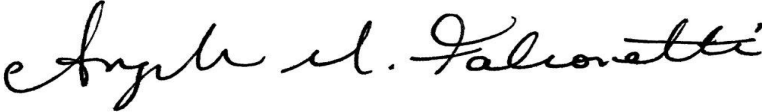
- Polk State College must display the contact information (i.e., the name, title, office address, email address, and telephone number) for the [Title IX Coordinator](#), [Title IX Deputy Coordinators](#), and confidential support resources on the College's website, the [Polk State College Catalog/Student Handbook](#), and employee handbooks for access by all College stakeholders including students, employees, parents, applicants for admission, applicants for employment, and vendors.
- The College must post materials used to train *Title IX* personnel on the website or make these materials available for members of the public to inspect.

XIV. Records

The [Title IX Coordinator](#) will retain records of all reports, regardless of whether the matter is resolved through remediation or disciplinary resolution for not less than a period of seven years from the date of the receipt of the initial report.

History:

Adopted: September 1, 2020

	9/8/2020		9/8/2020
Executive Responsible for Procedure	Date	President's Staff Member's Approval	Date
			9/8/2020
President's Approval			Date

Appendix: Polk State College Procedure 6091

Note: Portions of this procedure are based on a model provided by the Association of Title IX Administrators (ATIXA) and authored by the NCHERM Group, LLC.