

STUDENT SEXUAL MISCONDUCT PROCEDURE

Sexual Harassment/Misconduct Procedure

Broward College Procedure 5.39 (http://www.broward.edu/legal/policies-and-procedures/_docs/procedure/a6hx2-5.39.pdf)

This procedure provides for a prompt and equitable resolution of student and employee complaints alleging any action prohibited by the provisions of Title IX of the Education Amendments of 1972, including the regulations promulgated thereunder located at 34 C.F.R. Part. 106. A report or formal complaint of sex discrimination other than sexual harassment/misconduct should be reported pursuant to Policy 6Hx2-3.34 and its accompanying procedure.

Policy 6Hx2-3.39, and this Procedure, explains how to make a report or file a formal complaint of sexual harassment, and how the College will respond.

This procedure provides a consistent and transparent grievance process for resolving formal complaints of sexual harassment under Title IX.

Officials With Authority to Institute Corrective Measures

The following College officials have authority to institute corrective measures to remedy Sexual Harassment/Misconduct pursuant to by Policy 6Hx2-5.39:

If a respondent is a student

- Title IX Coordinator
TitleIXCoordinator@broward.edu
954-201-4866
- Dean of Students (on any campus)
- District Director, Student Conduct & Integrity
Conduct@broward.edu

If a respondent is an employee

- Title IX Coordinator
TitleIXCoordinator@broward.edu
954-201-4866
- Executive Director, Talent & Culture
Edhumanresources@broward.edu
954-201-7695
- District Director, Employee Relations
ERAA@broward.edu

Reporting

Any person may report sexual harassment/misconduct - whether or not the person reporting is the person alleged to be the victim of that conduct. A report may be made through the use of the Broward College Discrimination, Retaliation, and Sexual Harassment/Misconduct Reporting Form (http://cm.maxient.com/reportingform.php?BrowardCollege&layout_id=19) and is also available from the College officials identified above. A report may also be made in person, by mail, by telephone, by e-mail, or by any other means that results in the Title IX Coordinator (or designee) receiving the person's verbal or written report. Such a report may be made at any time, including during non-business hours, by using the Reporting Form, or to the Title IX Coordinator using the contact information provided above for the Title IX Coordinator.

Response to Report

The College will respond promptly to reports of Sexual Harassment/Misconduct in the following manner:

1. Supportive measures.
 - a. Offer of supportive measures. The College will offer supportive measures to the Complainant. Within two (2) business days of receiving a report or complaint of sexual harassment/misconduct, the Title IX Coordinator will contact the Complainant to:
 - i. explain the availability of supportive measures designed to restore or preserve equal access to the College's educational program or activity, protect the safety of the parties or the College's educational environment, and/or deter sexual harassment;
 - ii. explain that supportive measures are available with or without the filing of a formal Complaint;
 - iii. consider the Complainant's wishes with respect to supportive measures.
 - b. Description of supportive measures. Supportive measures are appropriate non-disciplinary, non-punitive individualized services available to the College, provided free of fee or charge to the Complainant. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security, monitoring of certain areas of campus, or other

similar measures that do not unnecessarily burden a Respondent unless and until a determination has been made against a Respondent in accordance with the Grievance Process below.

- c. Confidentiality regarding supportive measures. Any supportive measures provided to the Complainant will be maintained as confidential to the extent that maintaining such confidentiality does not impair the College's ability to provide those supportive measures.
2. Explanation of process of filing of formal Complaint. Within two (2) business days of receiving a report or complaint of sexual harassment/misconduct, the Title IX Coordinator will contact the Complainant to explain to the Complainant the process of filing a formal Complaint as set forth in this Procedure A6Hx2-5.39.

Grievance Process For Formal Complaints

1. Requirements.

- a. Equitable treatment. The College will treat Complainants equitably by providing remedies to a Complainant where a determination of Sexual Harassment/ Misconduct has been made against the Respondent, with such remedies designed to restore or preserve the Complainant's equal access to the College's education programs and activities. The College will treat Respondents equitably by following this Grievance Process before the imposition of any disciplinary sanctions or other actions against a Respondent that are not supportive measures.
- b. Objective evaluation of all relevant evidence; recognition of legal privileges. The College will evaluate all relevant evidence, including both inculpatory and exculpatory evidence. The College will make no credibility determinations based on a person's status as a Complainant, a Respondent or a witness. No questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege shall be required, allowed, relied upon, or otherwise used in any proceeding under this Procedure, unless the person holding such privilege has made a clear waiver of such privilege.
- c. Presumption of non-responsibility and standard of evidence. Any Respondent shall be presumed not to be responsible for any conduct alleged unless and until a determination regarding responsibility is made at the conclusion of the grievance process provided for in this Procedure. Such determination shall be made pursuant to a preponderance of the evidence standard, which shall apply to all formal complaints of sexual harassment against students and employees (including faculty).
- d. No conflicts of interest or bias; required disclosure. Neither the Title IX Coordinator, nor any investigator, decision-maker, or person designated by the College to facilitate an information resolution process, may have any conflict of interest or bias for or against Complainants or Respondents generally, or any individual Complainant or Respondent. Any person designated as an investigator, decision-maker or facilitator of an information resolution process, shall promptly disclose to the Title IX Coordinator any fact or reason that may reflect any actual or potential conflict of interest or bias on the part of such person. The Title IX Coordinator shall promptly disclose to the College Ombudsperson any fact or reason that may reflect any actual or potential conflict of interest on the part of the Title IX Coordinator.
- e. Required training. The Title IX Coordinator and any investigator, decision-maker, or person designated by the College to facilitate an information resolution process shall, prior to service in such capacity, have received training on:
 - i. the definition of Sexual Harassment;
 - ii. the scope of the College's educational programs and activities;
 - iii. how to conduct an investigation and grievance process, including hearings, appeals and information resolution processes, as applicable; and
 - iv. how to serve impartially, including by avoid prejudgment of the facts at issue, conflicts of interest, and bias. Further, any person designated as a decision-maker shall, prior to service in such capacity, have received training on any technology to be used at a live hearing, and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant. Any person designated as an investigator shall, prior to service in such capacity, have received training on issues relevant to the creation of an investigative report that fairly summarizes relevant evidence. All materials used to train Title IX Coordinators, investigators, decision-makers or any person who facilitates an informal resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment.

2. Required procedure.

- a. Initial notice of allegations; notice of additional allegations subject to investigation. Upon receipt of a formal complaint, written notice will be provided to the parties who are known:
 - i. of the grievance process provided for by this Procedure; and
 - ii. of all allegations potentially constituting Sexual Harassment/Misconduct as defined in Policy 6Hx2-5.39, as well as:
 1. the identities of the parties involved in the incident, if known;
 2. the conduct allegedly constituting sexual harassment/misconduct;
 3. the date and location of the alleged incident, if known; and
 4. any other details or information known at the time pertinent to the alleged incident.

Such notice shall be provided at least 5 business days prior to any initial interview conducted with the party.

If, in the course of the investigation, the College decides to investigate additional allegations about the Complainant or Respondent that are not included in the written notice previously provided to the parties, written notice of these additional allegations will be provided to the parties whose identities are known.

- b. Optional informal means of resolution. If a formal Complaint is filed, and if requested by or agreed to by the parties, Broward College will attempt informal resolution of the complaint to the satisfaction of all parties, through the use of principles of mediation, communication,

negotiation, facilitation, and problem-solving that emphasize fairness, the needs and interests of the participants, and, to the extent possible, confidentiality. No party is or will be required to engage in informal resolution of any allegations of Sexual Harassment. No formal complaint involving allegations that a College employee sexually harassed a student are subject to an informal resolution process.

- i. As part of the informal resolution process, Employee Relations, in the Office of Talent and Culture (for matters involving employees) or the Title IX Coordinator (for matters involving students), or their respective designees, may review all relevant information, interview pertinent witnesses, and conduct other communications with the complainant and respondent. If a resolution satisfactory to both the complainant and the respondent is reached, written notice to that effect along with the terms of any agreement reached and a copy of the complaint will be sent to the complainant and respondent(s). Any agreement reached shall be signed and dated by the complainant, the respondent(s) and the appropriate College official(s).
 - ii. At any time during the process of informal resolution prior to agreeing to a resolution, either party may request that the informal resolution process be terminated and the matter proceed as a formal complaint.
3. Broward College may initiate or continue inquiry into matters addressed and resolved by informal resolution to the complainant's satisfaction, should such matters be of independent or continuing concern to the College
- a. Dismissal of formal Complaint; consolidation.
 - i. Required dismissal. A formal Complaint subject this Procedure will be dismissed for purposes of sexual harassment under Title IX or 34 C.F.R. Part 106 if, after the allegations of a formal Complaint are investigated, the College determines that:
 1. the conduct alleged in the formal Complaint would not constitute Sexual Harassment as defined by Policy 6Hx2- 5.39 even if proved;
 2. the conduct alleged in the formal Complaint did not occur in the College's education program or activity;
 3. did not occur against a person in the United States.
 Written notice of such dismissal and the reason(s) for the dismissal will be sent promptly and simultaneously to the parties.
 - ii. Permitted dismissal. A formal Complaint (or portion thereof) subject to this Procedure may be dismissed by the College if:
 1. the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal Complaint or any allegations therein;
 2. the Respondent is no longer enrolled or employed by the College;
 3. specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal Complaint or allegations therein.
 Written notice of such dismissal and the reason(s) for the dismissal will be sent promptly and simultaneously to the parties.
 - iii. Related/subsequent investigations not precluded. Dismissal of a formal Complaint (or a portion thereof) does not preclude the College from investigating the allegations of a formal Complaint under other applicable rules or College policies, including Policy 6Hx2-3.25 (Resignation and Termination of Non-Instructional Personnel), Policy 6Hx2-3.34 (Discrimination and Retaliation), Policy 6Hx2-5.02 (Student Code of Conduct), Policy 6Hx2-5.23 (Complaint Process for Non-Instructional Issues) and accompanying procedure(s).
 - iv. Consolidation of formal Complaints. The College may consolidate formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations arise out of the same alleged facts or circumstances.
 - b. Investigation of a formal Complaint.
 - i. Personnel. Where the Respondent is a student, the investigation will be conducted by the College's Student Conduct Specialist or other designee. Where the Respondent is an employee, the investigation will be conducted by the District Director, Employee Relations or the Senior Analyst, Employee Relations. Should such person have or disclose any conflict of interest or bias, or other circumstances preclude service in that capacity, the College will designate or engage other qualified personnel to conduct the investigation.
 - ii. Burden of proof and burden of gathering evidence. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the College and not on the parties. The College will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in such capacity, in connection with the provision of treatment to that party, unless that party provides voluntary written consent from that party to do so for a grievance process under this Procedure.
 - iii. Equal opportunities in grievance process. The parties will:
 1. have an equal opportunity to present witnesses, including fact and expert witnesses and other inculpatory and exculpatory evidence;
 2. not be restricted in their ability to discuss the allegations under investigation nor gather and present relevant evidence;
 3. have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice (who may, but is not required to be, an attorney);
 4. not be limited in their choice to have an advisor present in any meeting or grievance proceeding;
 5. be provided, where their participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time to prepare to participate;
 6. have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal Complaint, including any evidence on which the College does not intend to rely in reaching a determination regarding responsibility and including any inculpatory or exculpatory evidence whether obtained from a party or other source, so each party can meaningfully respond to the evidence prior to the conclusion of the investigation.
4. Investigation evidence. Fourteen (14) days prior to completing the Investigative Report, the College will send to each party (and the party's advisor, if any) the evidence subject to inspection encompassed by this Procedure in electronic format or hard copy. Within fourteen (14) days thereafter,

each party may submit a written response, which the investigator will consider prior to completion of the Investigator's Report. All such evidence will also be made available at any subsequent hearing conducted under this Procedure, to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

5. Investigative report. The College will create an investigative report that fairly summarizes relevant evidence and send the investigative report to each party (and the party's advisor, if any) in electronic format or hard copy, and will do so at least ten (10) days prior to any hearing or other determination regarding responsibility, for their review and any written response they choose to submit prior to the hearing or other determination regarding responsibility.
6. Live hearing. A live hearing will be held to determine whether a preponderance of the evidence establishes the responsibility of Respondent(s) for contact in violation of Title IX (i.e., overcomes the Respondent's presumption of non-responsibility). Neither the Title IX Coordinator, nor any investigator(s) in the matter, may be the decision-maker(s) with respect to any such determination.
 - a. Conduct of live hearing.
 - i. Advisors. If a party does not have an advisor present at the live hearing, the College will provide an advisor, who may but is not required to be an attorney, of the party's choice to that party, to conduct cross-examination on behalf of that party.
 - ii. Party and witness questioning.
 1. At the live hearing, each party's advisor will be permitted to ask the other party, and any witnesses, all relevant questions and follow-up questions, including those challenging credibility.
 2. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice, and will not be conducted by the party personally. Only relevant cross-examination and other questions may be asked of a party or witness. Before a party or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and must explain any decision to exclude the question as not relevant. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) may not rely on any statement of that party or witness in reaching a determination of responsibility, provided however that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on the absence of a party or witness from the live hearing or refusal to answer cross-examination or other questions.
 3. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
 - a. offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or
 - b. concern specific instances of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
 - iii. Location; separate rooms. The College has the discretion to determine whether to conduct the live hearing with all parties physically present in the same geographic location, or to conduct the live hearing virtually, with technology enabling participants to simultaneously see and hear each other. Further, either party may request that the live hearing proceed with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witnesses answering questions.
 - b. Written determination. Following the live hearing, a written determination will be made by the hearing officer with the following content, and will be provided to the parties simultaneously.
 - i. Identifying the allegations potentially constituting sexual harassment.
 - ii. Describing the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held.
 - iii. Findings of fact supporting the determination.
 - iv. Conclusions regarding application of the College's Code of Conduct to the facts.
 - v. A statement of and rationale for the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the Respondent(s), and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant.
 - vi. Describing the College's procedures and permissible bases for the Complainant(s) and Respondent(s) to appeal.
 - c. Finality of determination. The written determination becomes final:
 - i. on the date the College provides the parties with the written determination of the result of any appeal filed; or
 - ii. the date the appeal is no longer considered timely.
 - d. Appeal. Within five (5) business days of the date the determination is provided to the parties, any party may appeal (i) regarding responsibility; (ii.) dismissing a formal complaint or any allegations therein. Employees may appeal to the Executive Director of Talent and Culture and students may appeal to the College Ombudsperson or Vice Provost for Student Services, as indicated in the determination letter. All parties will be notified of an appeal filed by any other party.
 - i. No decision-maker(s) regarding the appeal may be a decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator;
 - ii. Grounds for appeal:
 1. Procedural irregularity that affected the outcome of the matter;
 2. new evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter; or
 3. a conflict of interest or bias by the Title IX Coordinator, investigator(s) or decision-maker(s) for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome of the matter.

- iii. Written submission(s): within five (5) business days of the date the notice regarding an appeal is issued, each party may submit a written statement in support of, or challenging, the outcome of the determination that is the subject of the appeal.
- iv. The decision-maker(s) regarding the appeal will issue a written decision describing the result of the appeal and the rationale for the result and provide that written decision simultaneously to the parties within five (5) business days of receiving a written statement from the party(ies) as outlined in item 3.

Emergency Removal of Respondent

The College may remove the Respondent from an education program or activity on an emergency basis provided that the Title IX Coordinator (or designee) undertakes a safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. The Respondent will be provided with written notice and an immediate opportunity to challenge the removal, and any submission by the Respondent be considered promptly. No challenge (or lack thereof) by a Respondent to emergency removal will be considered pertinent to the determination of responsibility through the formal proceedings required above.