

## 2.6 Title IX Complaint Process

**Last Revised:** November 2020

**Policy:** The Board of Trustees of Piedmont Community College (PCC) is committed to the provision of equal opportunity as required by [North Carolina General Statute 115D-77](#) and by Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681 et seq ([Title IX](#)) and its implementing regulations, [34 C.F.R. Part 106](#). Therefore, PCC will not discriminate on the basis of sex in the education programs, or activities it operates. Inquiries concerning the application of Title IX and its implementing regulations may be referred to the Title IX Coordinator, or the Office of Civil Rights of the United States Department of Education.

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### **Purpose/Definitions:**

#### **Purpose**

Title IX of the Education Amendment of 1972 is a federal law that prohibits discrimination on the basis of sex in educational programs, activities and employment practices. Therefore, students, employees, applicants and other members of the PCC community (including without limitation, vendors, visitors, and guests) may not be subject to discrimination or harassment or otherwise treated adversely based upon a protected characteristic. This includes, without limitation, sexual harassment, sexual assault, domestic violence, dating violence, and stalking.

This policy applies to conduct occurring on campus, during any College program or activity on or off-campus, including academic programs, admissions, recruitment, financial aid, employment, as well as certain off-campus conduct perpetrated or suffered by a PCC student, employee, staff member, or third-party member of the College community.

The College encourages individuals to report all gender-based misconduct immediately to the Title IX Coordinator, or another College staff or faculty member. The College will fully and promptly investigate all allegations of gender-based misconduct and will impose disciplinary measures, or take similar actions, as may be appropriate.

#### **Definitions**

In the context of this policy, the following definitions are observed:

**Actual knowledge**—when an employee has notice of sexual harassment or allegations of sexual harassment.

**Advisor**—a person designated by one party (complainant/respondent) to ask, at the live hearing, the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

**(Business) Days**—except as otherwise noted, days will mean business days during which the college administrative offices are open. In computing any period of time, the day on which notice is received will not be counted. Saturdays, Sundays and scheduled College holidays will not be included in the computation. All grievances involving Federal, State, or other statutes must be completed in the time frame set forth in the appropriate statute or law.

**Clear and Convincing Evidence Standard**—a level of burden of proof in which the evidence is highly and substantially more likely to be true than untrue; the Decision-maker must be convinced that the contention is highly probable ([Colorado v. New Mexico, 467 U.S. 310 \(1984\)](#)). This standard is a medium level of burden of proof and is a more rigorous standard to meet than the preponderance of the evidence standard, but a less rigorous standard to meet than proof beyond a reasonable doubt. (“Clear and Convincing Evidence,” Legal Information Institute (Cornell Law School), accessed July 14, 2020, [https://www.law.cornell.edu/wex/clear\\_and\\_convincing\\_evidence](https://www.law.cornell.edu/wex/clear_and_convincing_evidence) .)

**Complainant**—an individual who is alleged to be the victim of conduct that could constitute sexual harassment or discrimination.

**Confidential employee**—an employee who is not required to make a report to the Title IX office and will typically not share information without permission. However, they may be required or allowed to share information in certain circumstances. For example, if a court order is presented, if they have reason to believe that a student is at high risk for suicide or violence toward others or if a minor is being abused. Certain positions have been identified as confidential employees. For a list of these employees and resources, visit the [Title IX webpage](#) (<https://www.piedmontcc.edu/titleIXInfo>).

**Consent**—the positive cooperation in act or attitude pursuant to the exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. Consent can be revoked by the other person, in a manner that would cause a reasonable person to believe consent is revoked.

**Deliberate indifference**—actions that are clearly unreasonable in light of the known circumstances.

**Decision-maker**—a member of the College’s Title IX team who, at the live hearing, permits each party’s Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. The Decision-maker is trained on issues of relevance, including how to apply the rape shield protections provided only for complainants, must be free from conflicts of interest or bias for or against complainants or respondents, and cannot be the Title IX Coordinator or the Investigator. The Decision-maker issues a written determination regarding responsibility with findings of fact, conclusions about whether the

alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.

**Deputy Title IX Coordinator**—any employee delegated with responsibility for compliance with Title IX and this policy by the Title IX Coordinator, and acting within the scope of authority of a Title IX Coordinator as set forth herein.

**Education program or activity**—includes any locations, events or circumstances where “the school exercised substantial control over both the respondent and the context” (*Davis v. Monroe County Board of Education*).

**Exculpatory evidence**—evidence favorable to the respondent that exonerates or tends to exonerate the respondent of guilt.

**Formal complaint**—a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. The formal complaint must contain the complainant’s signature (physical or electronic) or otherwise definitively indicate that the complainant is the person filing the complaint. Filing a formal complaint triggers the school’s duty to initiate the complaint process.

**Grievance**—a formal written statement by an individual indicating that they have been adversely affected by a violation, misapplication, or misinterpretation of the NC General Statutes, College policies, rules, or regulations. A grievance must specify the statute, policy, rule, or regulation in question and the details of the alleged violation, misapplication, or misinterpretation of same.

**Inculpatory evidence**—evidence that shows or tends to show a person’s involvement in an act or evidence that can establish guilt.

**Informal Resolution**—a resolution option such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to participate in such a process.

**Investigator**—a person appointed by the Title IX Coordinator to impartially gather facts and evidence from the complainant, the respondent, and any material witnesses or evidence related to the case. The Investigator is trained on issues of relevance, including how to apply the rape shield protections provided only for complainants and cannot have direct supervisory responsibility for either the complainant or the respondent or be an employee of the Title IX Coordinator. Further, the Investigator may not also serve as either the Title IX Coordinator or the Decision-maker; however, a trained Investigator not assigned to the active complaint may be appointed by the Title IX Coordinator to act as a College-assigned Advisor.

**Notice**—delivery of any written material required or allowed to be given to another under this policy may be (i) by personal delivery, (ii) by certified or registered U. S. Mail, return receipt requested, or (iii) by commercial courier service.

**Officials with authority (OWAs)**—the Title IX Coordinator, Deputy Title IX Coordinator, or any College official with authority to implement corrective measures. The following have been identified and designated as OWAs: Director, Campus Safety; Director, Human Resources; Vice president, Student Development; Vice President, Instruction; Vice President, Administrative Services, Affirmative Action/Equal Employment Opportunity Officer; Deans; Supervisors; Faculty. Notice received by any of these OWAs constitutes actual knowledge upon which the College’s mandatory response obligations arise under this policy.

**Pervasive conduct**—unwelcome influence or physical effect that spreads widely throughout an area or group of people.

**Qualifying complainant**—an individual who is participating in or attempting to participate in the school’s education program or activity (i.e., students, employees, applicants and, in some cases, parents).

**Report**—a report of sex discrimination (including sexual harassment) made by any person, at any time, and by any means (in person, phone, mail or email) that results in the Title IX Coordinator receiving the person’s verbal or written report. Reports are not limited to a school’s campus community and may come from others, such as on-campus visitors.

**Respondent**—an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or discrimination.

**Sexual Discrimination**—treating someone unfavorably because of that person’s sex, including transgender status or sexual orientation.

**Sexual harassment**—includes any of three types of misconduct on the basis of sex and covers conduct by employees against other employees, not just conduct directed at students.

1. “quid pro quo” harassment, when a school employee conditions access to educational or employment benefits or status on unwelcome sexual conduct. Note that this provision does not cover sexual conduct by students or other agents.
2. unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education or employment program or activity.
3. four components from the Clery Act (20U.S.C.§1092(f)) and the Violence Against Women Act: sexual assault, domestic violence, dating violence and stalking. These additions are intended to clarify that one particularly severe incident (even if not

“pervasive”) can qualify as Title IX sexual harassment if it falls within any of these definitions.

**Supportive Measures**—individualized, non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent. These measures are designed to preserve the complainant’s access to education or employment without unreasonably burdening the respondent.

**Time**—in computing any period of time prescribed or allowed by this policy, the day of receipt of the document is not to be included. The last day of the period so computed is to be included unless it is not a business day as defined in this policy, in which event the period runs until the end of the next day which is a business day.

**Title IX Coordinator**—an official of the College with authority to coordinate the College’s efforts to comply with Title IX responsibilities including instituting corrective measures on the College’s behalf when a verbal or written report is received of an alleged incident of sexual discrimination, including sexual harassment, in person, by U.S. Mail, by telephone, by email, or by any other means that results in the Coordinator receiving the report.

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**Approval Authority/Monitoring Authority:** Piedmont Community College’s Board of Trustees has approval authority for this policy. The Vice President, Administrative Services/CFO and Vice President, Student Development will have monitoring authority for this policy.

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**Procedure:**

Section 1: Reporting Gender-based Misconduct

- 1.1. Any individual who thinks he or she has been discriminated against on the basis of gender should contact the Vice President, Student Development who is the College’s Title IX Coordinator or the College’s Deputy Title IX Coordinator.
- 1.2. Any employee who is not a designated confidential employee and who has knowledge of an individual who thinks he or she has been discriminated against on the basis of gender has a duty to contact either the Title IX Coordinator, Deputy Title IX Coordinator, or any Official with Authority (OWA).
- 1.3. The Title IX Coordinator may be contacted in any of the following ways:
  - 1.3.1. Direct meeting with the Title IX Coordinator, Building E, Room 146 or the Deputy Title IX Coordinator

1.3.2. Email: [titleix@piedmontcc.edu](mailto:titleix@piedmontcc.edu)

1.3.3. [College website link](#)

1.3.4. Phone: (336) 322-2163

1.4. To be classified as a Title IX complaint, the following criteria must be met:

1.4.1. The incident occurred within an educational or employment program or activity in the United States where the College exerts substantial control over the program/activity.

1.4.2. The complaint must be filed by a qualifying complainant.

1.4.3. The complaint pertains to sexual discrimination, sexual harassment, parenting, or pregnancy-related incidences.

1.5. Complaints that do not meet the criteria in item 1.4 will be handled through one of the College's other grievance processes.

1.5.1. Students should refer to Policy 7.12 Student Grievance Process for information specific to non-Title IX complaints.

1.5.2. Employees should refer to Policies 2.3 Affirmative Action and Equal Opportunity Plan, 2.17 Unlawful Harassment, 2.18 Sexual Assault, and/or Policy 5.20 Employee Grievance Procedure for information specific to complaints involving employees.

## Section 2: Title IX Coordinator Response upon Receiving a Report of Sexual Discrimination

2.1. On receiving a report, the Title IX Coordinator will, within ten (10) days of receipt:

2.1.1. contact the complainant, i.e., the alleged victim (if that person can be identified)

2.1.2. offer the complainant Supportive Measures

2.1.3. explain the process of filing a formal complaint

2.1.4. explain the entire Title IX process

2.1.5. explain that Supportive Measures can be available with or without a formal complaint

- 2.1.6. contact the respondent, who must also be offered Supportive Measures
  - 2.1.7. consider the complainant's and the respondent's wishes with regard to Supportive Measures
  - 2.1.8. if Supportive Measures are refused by the complainant or respondent, the Title IX Coordinator must document why s/he did not provide a complainant with Supportive Measures
- 2.2. Upon receipt of a formal complaint, the Title IX Coordinator will, within fifteen (15) days of receipt:
- 2.2.1. Send written notice to both parties (complainants and respondents) of the allegations
  - 2.2.2. Assign an Investigator to investigate the allegations
- 2.3. The Title IX Coordinator may initiate the complaint process if s/he believes a non-deliberately indifferent response to the allegations requires an investigation. *Note:* If proceeding against the wishes of the complainant, the Title IX Coordinator should do so thoughtfully, not automatically, and written documentation of the decision to proceed or not to proceed should be generated and retained.

### Section 3: Supportive Measures

- 3.1. Supportive Measures should be coordinated by the Title IX Coordinator and kept confidential to the extent reasonably possible.
- 3.2. Supportive Measures should be equitably offered to both the complainant and the respondent, and may include, but are not limited to or required to include, one or more of the following or additional relevant measures:
  - 3.2.1. Referral to counseling and health services
  - 3.2.2. extensions of deadlines or other course-related adjustments
  - 3.2.3. modifications of work or class schedules
  - 3.2.4. campus escort services
  - 3.2.5. mutual contact restrictions
  - 3.2.6. altering work arrangements for employees

3.2.7. leaves of absence (employees)

3.2.8. increased security and monitoring of certain areas of campus

#### Section 4: Informal Resolution

- 4.1. An Informal Resolution can only be offered if a formal complaint is filed.
- 4.2. An Informal Resolution may not be forced upon either the complainant or the respondent.
- 4.3. Voluntary, informed written consent from both parties must be obtained if an Informal Resolution is chosen to resolve the complaint.
- 4.4. The College will not offer or facilitate an Informal Resolution process to resolve allegations that an employee sexually harassed a student.
- 4.5. At any time, either party has the right to withdraw from the Informal Resolution process and resume the resolution process with respect to the formal complaint.

#### Section 5: Investigation

- 5.1. The Investigator will impartially gather facts and evidence from the complainant, the respondent, and any material witnesses or evidence related to the case.
- 5.2. The burden of gathering evidence and burden of proof must remain on the College, not on the parties.
- 5.3. The Investigator will provide equal opportunity for the parties to present facts and expert witnesses and other inculpatory and exculpatory evidence.
- 5.4. The Investigator must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”).
- 5.5. The Title IX Coordinator will assign an Advisor to both parties when an Investigator is assigned to the complaint; however, either party may select an Advisor of their choice who may be, but need not be, an attorney.



- 5.5.1. If either party chooses not to use the College-assigned Advisor, they have five (5) days to notify the Title IX Coordinator of their choice, including name and contact information.
- 5.6. Once appointed, the Investigator must send written notice of any investigative interviews, meetings, or hearings to the involved parties within thirty (30) days.
- 5.7. The Investigator must send the parties, and their Advisors, evidence directly related to the allegation(s), in electronic format or hard copy, with at least ten (10) days for the parties to inspect, review, and respond to the evidence before the Investigator may send an investigative report to the Title IX Coordinator.
- 5.8. The Title IX Coordinator must send the parties, their Advisors, and the Decision-maker the investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, at least ten (10) days in advance of the live hearing.
  - 5.8.1. Both parties have the right, if they choose, to provide a written response to the investigative report prior to the hearing.
- 5.9. The Title IX Coordinator may, in their discretion, dismiss a formal complaint or allegations therein for any of the following reasons:
  - 5.9.1. the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein
  - 5.9.2. the respondent is no longer enrolled or employed by the College
  - 5.9.3. specific circumstances prevent the College from gathering sufficient evidence to reach a determination
- 5.10. The Title IX Coordinator must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.
- 5.11. The Title IX Coordinator may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts.
- 5.12. The College may not access or use a party's medical, psychological, and similar treatment records unless the College obtains the party's voluntary, written consent to do so.

Section 6: Live Hearing

- 6.1. The Title IX complaint resolution process includes a live hearing to be scheduled by the Title IX Coordinator.
- 6.2. At the live hearing, the Decision-maker(s) must permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- 6.3. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally.
- 6.4. At the request of either party, the Title IX Coordinator must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.
- 6.5. Only relevant cross-examination and other questions may be asked of a party or witness in compliance with rape shield protections and other limitations.
- 6.6. If a party does not have an Advisor present at the live hearing, the Title IX Coordinator will provide, without fee or charge to that party, an Advisor of the College's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.
- 6.7. If a party or witness does not submit to cross-examination at the live hearing, the Decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- 6.8. Live hearings may be conducted with all parties physically present in the same geographic location or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.
- 6.9. The Title IX Coordinator must create an audio or audiovisual recording, or transcript, of any live hearing.

Section 7: Standard of Evidence & Written Determination

- 7.1. The Decision-maker will apply the clear and convincing evidence standard for all formal complaints, whether the respondent is a student or an employee (including faculty member).
- 7.2. The Decision-maker must issue a written determination regarding responsibility with
  - 7.2.1. findings of fact
  - 7.2.2. conclusions about whether the alleged conduct occurred
  - 7.2.3. rationale for the result as to each allegation
  - 7.2.4. any disciplinary sanctions imposed on the respondent
  - 7.2.5. whether remedies will be provided to the complainant
- 7.3. The Title IX Coordinator will send the Decision-maker's written determination simultaneously to the parties along with information about how to file an appeal.

Section 8: Appeals

- 8.1. Either party may appeal a determination regarding responsibility, and from the College's dismissal of a formal complaint or any allegation therein, on the following basis
  - 8.1.1. Procedural irregularity that affected the outcome of the matter
  - 8.1.2. Newly discovered evidence that could affect the outcome of the matter
  - 8.1.3. Title IX Coordinator, the Investigator, or the Decision-maker had a conflict of interest or bias that affected the outcome of the matter
  - 8.1.4. The Decision-maker's determination is not supported by clear and convincing evidence
- 8.2. IX appeals should be made, in writing to the Title IX Coordinator within ten (10) days from receipt of the written determination, who will convene an ad hoc committee of three appropriately trained College personnel to review all documentation relevant to the complaint process.

- 8.2.1. The committee shall, within ten (10) days of receipt by the Title IX Coordinator of the written notice of appeal, make a written recommendation to the President to approve, disapprove or modify the recommendation of the Decision-maker.
- 8.2.2. The President will review the work of the committee and make a decision, within ten (10) days of receipt of the committee recommendation, to approve, disapprove or modify the recommendation of the committee.

#### Section 9: Retaliation Prohibited

- 9.1. College expressly prohibits retaliation. Complaints alleging retaliation may be filed according to PCC Policy 2.32 Non-Retaliation (for employee complainants) or PCC Policy 7.12 Student Grievance Process (for student complainants).
- 9.2. An individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.
- 9.3. The College must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as otherwise required by law, or as necessary to carry out a Title IX proceeding.
- 9.4. The exercise of free speech rights protected under the First Amendment to the U. S. Constitution does not constitute retaliation.
- 9.5. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX complaint proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.

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**Legal Citation:** [Title IX of the Education Amendments of 1972 \(U.S.C. §1681 - §1688\)](#), [N.C.G.S. 115D-77](#); [Colorado v. New Mexico, 467 U.S. 310 \(1984\)](#); [Gebser v. Lago Vista Independent School Dist., 524 U.S. 274 \(1998\)](#); [Davis v. Monroe County Bd. of Ed., 526 U.S. 629 \(1999\)](#);

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