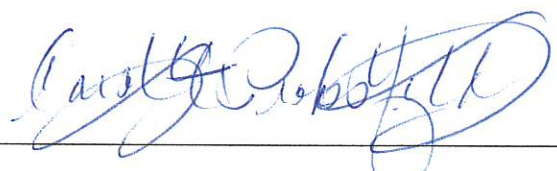


# PROCEDURE

<b>Subject</b>	<b>Sexual Misconduct / Sexual Harassment</b>	<b>Number:</b> 2.44.02
<b>Source</b>	Dean of Students	<b>Reference (Rule #)</b> <b>6HX14-2.44</b>
<b>President's Approval/Date:</b>	 3/3/02	

## (1) APPLICABILITY/ACCOUNTABILITY:

State College of Florida, Manatee - Sarasota is committed to ensuring that each member of the College Community is permitted to work, study, live and interact with each other in a dignified learning environment, free from any form of unlawful sexual misconduct. This procedure provides guidance regarding conduct that constitutes sexual misconduct, reporting responsibilities regarding such behavior, and specific information on where to go to seek supportive measures or file a complaint of sexual misconduct. If this procedure and another College rule or procedure conflict, this procedure controls.

## (2) PROCEDURE STATEMENT:

Sexual misconduct violates College procedure, federal and state laws and may also be subject to criminal prosecution. The College is committed to fostering an environment that promotes prompt reporting of all types of sexual harassment and timely and fair resolution of sexual misconduct complaints.

The College does not discriminate on the basis of sex in its educational programs and activities. Title IX of the Higher Education Amendments of 1972, 20 USC 1681 et seq. and The Violence Against Women Act of 1994 (VAWA), prohibits such misconduct, in any form, including sexual harassment. The College has designated a Title IX Coordinator (see contact information below) to handle all complaints alleging sexual misconduct and to conduct investigations of such complaints in a manner that ensures a prompt and equitable resolution. Additionally, as an employer, the College is required to comply with Title VII of the Civil Rights Act of 1964 and other federal and state laws regarding sexual harassment.

## (3) DEFINITIONS:

As used in this Procedure, the following terms have the following meanings:

(a) **Advisor.** A person chosen by either party who may assist and/or accompany the individual

throughout the process. An advisor may be a family member, friend, faculty member, staff member, or other advisor/support. An advisor may be an attorney but may not act as traditional legal counsel during the grievance process and shall have the limited role as set forth herein. An advisor cannot directly participate in the grievance process nor speak on behalf of the party except for administering cross examination questions during a live hearing if the conduct alleged is within the jurisdiction of Title IX. An advisor is not permitted to submit any written requests (including appeals) on behalf of a party. The advisor cannot serve as a witness during the grievance process. A College representative may remove any advisor that does not adhere to these expectations or other established decorum rules during the formal hearing.

- (b) **Complainant.** An individual who is alleged to be the victim of conduct that could constitute sexual misconduct under this procedure.
- (c) **Consent.** An understandable exchange of affirmative actions or words that indicate an active, knowing, and voluntary agreement to engage in mutually agreed upon sexual activity.
  - (i) Silence or previous history does not indicate consent. Consent must be given for very instance of every act.
  - (ii) Consent can be withdrawn at any time.
  - (iii) A person cannot consent if the person is incapacitated from alcohol or drugs, asleep, or is otherwise mentally or physically unable to consent to sexual activity. A person must reasonably know or should have known the person was incapacitated for there to be a lack of consent.
  - (iv) A person cannot consent if the person is under the age of consent pursuant to Florida law.
  - (v) Consent must be freely given and cannot be granted under psychological, emotional, or physical force, manipulation, coercion, persuasion, or threats.
- (d) **Dating Violence.** As defined in the Violence Against Women Act of 1994, 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 the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- (e) **Domestic Violence.** As defined in the Violence Against Women Act of 1994, any felony or misdemeanor crime of violence committed:

- (i) By a current or former spouse or intimate partner of the victim;
  - (ii) By a person with whom the victim shares a child in common;
  - (iii) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
  - (iv) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
  - (v) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- (f) **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 College investigate the allegation of sexual harassment.
- (g) **Preponderance of the Evidence.** Information, considered as a whole, that indicates the facts sought to be proved are more likely than not. This is the burden of proof that must be met in determining whether conduct is a violation of this procedure.
- (h) **Reporter.** A person who reports a violation of this policy to the Title IX Coordinator or their supervisor/manager.
- (i) **Respondent.** An individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct under this policy.
- (j) **Sexual Assault.** As defined in the Violence Against Women Act of 1994 is any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent. This includes, but is not limited to, attempted sexual assault and the following:
- (i) Rape. The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
  - (ii) Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
  - (iii) Incest. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - (iv) Statutory Rape. Sexual intercourse with a person who is under the statutory age of

consent.

(k) **\*Sexual Harassment.** As defined in Title IX, conduct on the basis of sex that satisfies one or more of the following:

- (i) A College employee conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
- (ii) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or
- (iii) Sexual assault, dating violence, domestic violence, or stalking as defined herein and consistent with federal law.

\* For instances where the conduct is outside the scope of Title IX but is within the purview of the College jurisdiction or Title VII as it pertains to employment law, the definition of sexual harassment is severe, pervasive, and objectively offensive.

(l) **Sexual Misconduct.** An umbrella term used to refer to a broad range of sexually inappropriate behaviors that includes sexual violence (rape/sexual battery/sexual assault); sexual harassment; intimate partner violence (domestic violence, dating violence, relationship violence); stalking; sexual exploitation; and other forms of sexually exploitative behavior that can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by any person and can occur between people of the same or different sex, sexual orientation, and gender identity or gender expression.

(m) **Stalking.** As defined in the Violence Against Women Act of 1994, a course of conduct directed at a specific person that would cause a reasonable person to:

- (i) Fear for the person's safety or the safety of others.
  - (ii) Suffer substantial emotional distress.
  - (iii) For the purposes of this definition: "Course of conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (1) Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.
  - (2) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

(n) **Student.**

- (i) Persons taking courses at the College (full-time or part-time).
- (ii) Persons who withdraw from the College after allegedly violating this procedure.
- (iii) Persons who have been notified of their acceptance for admission to the College.

(o) **Supportive Measures.** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment.

(p) **College Community.** For purposes of this procedure, includes individuals applying for enrollment at, or employment with the College, College students, College employees, visitors, and contracted agents and vendors.

**(4) SEEKING GUIDANCE OR FILING A COMPLAINT:**

Any member of the College Community who believes that they have been subjected to sexual misconduct, retaliation related to an allegation of sexual misconduct, or any member of the College Community who believes that others have been subjected to sexual misconduct in violation of this policy may seek guidance, supportive measures, or file a complaint by contacting:

Jaquelyn McNeil  
Title IX Coordinator  
5840 26<sup>th</sup> St. West  
Building 1, Room 122  
Bradenton, FL 34207  
(941)752-5267  
[McNeilJ@SCF.edu](mailto:McNeilJ@SCF.edu)

Allegations of a violation of this procedure, including complaints of retaliation, will be addressed by the Title IX Coordinator, in accordance with the applicable regulations, rules and procedures. Members of the College Community may contact the Title IX Coordinator to seek assistance in informally resolving the complaint or in a formal investigation. Allegations of sexual misconduct reported to the College's Title IX Coordinator in no way affect the right of the complainant to file a criminal complaint, even in the event an internal College investigation has already commenced.



## **(5) ACTIONS THAT DO NOT CONSTITUTE SEXUAL MISCONDUCT:**

The College educational environment is unique in that there must be the freedom to express ideas and to foster communication on subjects that enhance the College's educational mission. Accordingly, while the College is committed to providing a learning environment that is free from sexual harassment, the purpose of this procedure is not intended to abridge academic freedom or to interfere with speech, as guaranteed by the First Amendment. As such, pursuant to this policy, sexual misconduct does not include:

- (a) The expression of ideas in an academic context to provoke thought or discussion on topics germane to the course and advancement of the College's educational mission.
- (b) Engagement in debate or discourse over issues that society may find to be unpopular, offensive, or disagreeable.
- (c) Discussing, using, or displaying views, words, symbols or thoughts in an academic setting, which are germane to the course and which some persons may find to be offensive.

## **(6) VIOLATIONS:**

In determining whether alleged conduct constitutes sexual misconduct, and a violation of this procedure, the conduct will be evaluated from the perspective of a reasonable person, considering the totality of the circumstances, such as the nature of the alleged conduct and the context in which the alleged conduct occurred. A determination on the allegations is made from the facts on a case-by-case basis, using the preponderance of the evidence standard. In an academic setting, consideration will be given to free speech and academic freedom. Those members of the College Community who are found to have violated this procedure may be subject to disciplinary sanctions, including but not limited to:

- (a) Students: Alteration of class schedule, alteration of housing assignment, restriction from entering specific buildings/areas, loss of privilege, restitution, College probation, educational sanctions, removal from on-campus housing, suspension, dismissal, and expulsion.
- (b) Employees: Verbal reminders, mandatory training, reassignment of duties, written reprimand, suspension, and termination.

## **(7) RESPONSIBILITY TO REPORT SEXUAL MISCONDUCT:**

To maintain an environment free from sexual misconduct, the responsibility for reporting incidents of sexual misconduct rests with all members of the College Community. Any College employee is required to report the matter to the Title IX Coordinator or to their supervisor, or manager, or to Public Safety. Students, applicants or other members of the College Community who believe another member is being subjected to sexual misconduct in violation of this policy are strongly encouraged to report the matter to the Title IX Coordinator or to Public Safety. Once the Title IX Coordinator receives the report the College is deemed to have actual

knowledge.

- (a) **Confidential Employees.** Employees, vendors, and contractors (in their role on campus) working in counseling services or medical services, including the Campus Ministry are confidential resources and are not required to report any information regarding an incident of sexual misconduct. These individuals should:
  - (i) Inform an individual of their right to file a complaint with the College and/or a complaint with Public Safety or local law enforcement;
  - (ii) Inform the student or employee about available resources for counseling, medical, academic, and other supports;
  - (iii) Indicate that they are available to assist an individual in filing a complaint; and
  - (iv) Explain that College procedures and rules include protections against retaliation.

#### **(8) GRIEVANCE PROCESS:**

- (a) **Responsibility of Title IX Coordinator.** The Title IX Coordinator is responsible for administering the grievance process for sexual misconduct. Reports or allegations covered in this procedure will be processed upon receiving the report. The Title IX Coordinator makes an initial assessment of whether the complaint falls within the scope of this procedure.
- (b) **Respondent is not a student .** If the Respondent is not a student, and the conduct does not fall within this procedure, the complaint will be resolved using the procedures outlined in Discrimination and Harassment Complaint and Investigation Procedures.
- (c) **Respondent is a College Student.** If the Respondent is a student, and the conduct does not fall within this procedure, the complaint will be resolved using the procedures outlined in 4.10.01 Disciplinary Procedures for Violation of Standards of Student Behavior.
- (d) **Title IX Grievance Process.** Complaints that allege conduct that is within the scope of Title IX will also follow the additional provisions in section (9) below.

#### **(9) GRIEVANCE PROCESS PROVISIONS FOR TITLE IX:**

Title IX of the Higher Education Amendments of 1972, 20 USC 1681 et seq., a Federal civil rights law, prohibits sex discrimination, in any form, including sexual harassment, sexual assault, dating violence, domestic violence and stalking. The following provisions apply to allegations when the conduct constitutes Sexual Harassment under Title IX.

- (a) **Title IX Coordinator and Jurisdiction.** The College has designated a Title IX Coordinator to address complaints alleging sexual harassment in a manner that ensures a prompt and equitable resolution. The Title IX Coordinator will assess each report received

to determine whether the reported incident is within the jurisdiction of Title IX.

- (i) To be considered under the jurisdiction of Title IX, the alleged Sexual Harassment must have occurred to persons participating or attempting to participate in the College's education program or activity in the United States.
    - (1) Education program or activity includes locations, events, or circumstances over which the College has exercised substantial control over both the Respondent and the context in which the sexual harassment occurred.,
  - (ii) The College must have jurisdiction over the Respondent and the Complainant during the time of reporting, this includes both students and employees.
- (b) **Supportive Measures.** The Complainant and Respondent may request and receive supportive measures without filing a formal complaint and at any time during the grievance process.
- (c) **Formal Complaint.** The Complainant or Title IX Coordinator must sign a document acknowledging the process moving forward with an informal resolution or formal investigation. There is a presumption of innocence that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- (i) If a formal complaint has been signed, the parties may agree to use an Informal Resolution. Otherwise, a Formal Investigation will be implemented.
- (d) **Notice of Allegations.** A Notice of Allegation will be sent to both parties, if a Formal Complaint has been filed. The notice will provide sufficient time to prepare a response before the initial meetings. The Notice of Allegation will include, but not be limited to:
- (i) The identity of the Complainant and Respondent;
  - (ii) An explanation of the Grievance Process;
  - (iii) Information regarding the allegations of sexual misconduct, providing sufficient details known at the time, including time and location if available;
  - (iv) Right to have an Advisor of the party's choice to accompany them through the grievance process (can, but does not need to be an attorney);
  - (iv) A statement that knowingly making false statements or submitting false information is prohibited.
  - (vi) Right to present witnesses, including fact and expert witnesses, and other evidence and to review all evidence collected.



- (e) **Informal Resolution.** Informal Resolution is a process that will allow for both parties to work on a resolution outside of an investigation. This can include mediation, or an alternative format agreed upon by both parties. Informal Resolution will not result in a procedure violation but rather an agreed upon resolution by both parties.
  - (i) This process can be used at any time before or during an investigation of a complaint and allows parties to resolve a complaint through informal means such as mediation.
  - (ii) In order to resolve complaints through Informal Resolution, both parties must agree to resolve the complaint through Informal Resolution.
  - (iii) A Complainant or Respondent may, at any time, end the Informal Resolution process.
  - (iv) If a complaint is not resolved through Informal Resolution, the Grievance Process, as described in this procedure, will continue.
  - (v) Informal Resolution cannot be used in sexual harassment allegations that involve an employee sexually harassing a student.
  - (vi) Once an Informal Resolution has been reached and both parties sign the agreed upon terms, the Grievance Process is complete.
  - (vii) However, if a party violates the agreed upon terms, the parties have the option to re-enter Informal Resolution or continue with a Formal Investigation. The party that violates the terms, may receive additional charges under College procedure.
- (f) **Formal Investigation and Investigative Report.** Prior to completion of the Formal Investigative Report, the Complainant and Respondent are both provided an equal opportunity to inspect and review any evidence obtained as part of the Formal Investigation that is directly related to the allegations raised in the Formal Complaint so that each party can meaningfully respond to the evidence prior to conclusion of the Formal Investigation.
  - (i) This includes evidence that is not intended to be relied upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. This means evidence that favors both the Complainant (inculpatory) and Respondent (exculpatory).
  - (ii) The evidence subject to inspection and review is provided to each party and their advisors in an electronic format or a hard copy. Each party has ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report.
  - (iii) The Investigative Report fairly summarizes relevant evidence determined by the Investigator and, is provided to each party and the party's advisor in electronic format or hard copy at least ten (10) business days prior to the live hearing for their review and written response.

(g) **Live Hearing.** A live hearing must be conducted for all Formal Complaints unless the Formal Complaint has been dismissed or resolved through the Informal Resolution process.

(i) **Remote Participation.** Live hearings may be conducted virtually, with technology enabling participants simultaneously to see and hear each other.

(ii) **Hearing Body.** The Hearing Body is comprised of at least three (3) staff members that have been trained to be a part of this process and are appointed by the President or President's designee. The Title IX Coordinator, investigator, or other person who participated in the informal resolution process, if any, may not be a member of the Hearing Body.

(1) Both parties may have an advisor of their choice at the live hearing. An Advisor may conduct cross examination only. An Advisor may not participate in any other part of the live hearing.

(2) During the Live Hearing, if either party does not have an advisor with them, the College will provide an advisor of the College's choosing at no cost to the party.

(iii) **Cross Examination.**

(1) Before a Complainant, Respondent, or Witness answers a cross-examination or other question from the respective Advisor, the Hearing Body must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

(2) Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

(3) Repetitive questions to the Complainant, Respondent, or Witness may be deemed not relevant if the questions have already been answered throughout the Hearing.

(4) If a Complainant, Respondent, or Witness does not participate in cross examination, the Hearing Body may still consider any of the statements or information that the individual previously provided. This includes statements made to the investigator, documentation provided by the party, and police reports that include the specific individual's statements alone.

(iv) **Conduct of Live Hearing.**

(1) Reading of charge(s) by Hearing Body.

- (2) Respondent's response of "responsible" or "not responsible."
  - (3) Hearing Body presents information regarding the charges.
  - (4) Complainant's opening statement and presentation of information.
  - (5) Respondent's opening statement and presentation of information.
  - (6) Hearing Body questions the Complainant, Respondent, and/or witnesses.
  - (7) Complainant's advisor questions the Complainant, Respondent, and/or witnesses.
  - (8) Respondent's advisor questions the Complainant, Respondent, and/or witnesses.
  - (9) Hearing Body's final questions of the Complainant, Respondent, and/or witnesses.
  - (10) Complainant's closing remarks.
  - (11) Respondent's closing remarks.
  - (12) Hearing is brought to a close.
- (h) **Determination of Responsibility and Written Notice of Determination.** The Hearing Body determines whether alleged conduct constitutes a policy violation and will determine sanction(s) as appropriate. The conduct will be evaluated based on the facts gathered from the live hearing on a case-by-case basis. The Hearing Body will consider the totality of the circumstances and use the preponderance of the evidence standard in its determination. The Hearing Body must issue a written determination regarding responsibility. The written notice of determination must include:
- (i) Identification of the allegations potentially constituting sexual harassment;
  - (ii) A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - (iii) Findings of fact supporting the determination;
  - (iv) Conclusions regarding the application of Student Code of Conduct to the facts if the Respondent is a student;
  - (v) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Respondent, and whether remedies designed to restore or preserve equal access

to the College's education program or activity will be provided to the Complainant; and

- (vi) The procedures and permissible bases for the Complainant and Respondent to appeal.
- (i) **Appeal.** A Complainant or Respondent may appeal the findings and sanction(s) after receiving the Notice of the Determination or a dismissal of the Final Complaint or any allegations in a Formal Complaint.
- (i) An appeal must be submitted to the Title IX Office, in writing, within ten (10) business days of receipt of the issued findings and sanction(s) and must specify the basis of the appeal.
- (ii) Appeals must be based on one or more of the following provisions:
  - (1) Procedural irregularity;
  - (2) New evidence that was not reasonably available at the time of the Live Hearing or when the determination regarding responsibility or dismissal was made; and
  - (3) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent.
- (iii) Written notice of an appeal is provided to the other party. The Complainant or Respondent may submit a written response to an appeal to the Title IX Office. Such response will be attached to the final report and maintained in the same file.
- (iv) The President or designee may appoint a person with appropriate training to serve as an appellate officer to review the appeal and issue a written decision that describes the result of the appeal and the rationale for the result. A person that reached the determination regarding responsibility (Hearing Body) or dismissal, the investigator(s), nor the Title IX Coordinator can be an appellate officer.
- (v) The written decision is provided to both parties simultaneously.

#### **(10) RETALIATION PROHIBITED:**

Retaliation, or otherwise taking adverse employment or educational action, against a member of the College Community because the member, in good faith, reported an allegation of sexual harassment, participated in an investigation or review regarding a complaint, participated in the resolution process, supported a Complainant or Respondent, or assisted in providing information relevant to an investigation is strictly prohibited and a violation of this procedure. Retaliation includes adverse action, harassment intimidation, threats or coercion in any employment, educational programs, services or activity.

**(11) FRIVOLOUS OR MALICIOUS COMPLAINTS:**

In the event that a claim of sexual misconduct is found to be frivolous or malicious, the person making the frivolous or malicious complaint may be subject to disciplinary and other action.

**(12) EDUCATION AND NOTIFICATION:**

Copies of this procedure are widely disseminated to the College Community so that all members are aware of acts which constitute sexual misconduct and shall recognize that the College regards sexual misconduct to be a serious offense and will not be tolerated. Periodic workshops and other educational programs are offered to College personnel regarding the topic of sexual misconduct.

For Title IX purposes, those that are part of the process must be appropriately trained. This shall include the Title IX Coordinator, investigators, decision makers, appellate officers, and advisors. All trainings for these individuals are located on the Title IX Webpage at [www.scf.edu](http://www.scf.edu).