

PHILLIPS COMMUNITY COLLEGE
ADMINISTRATIVE PROCEDURE

Administrative Procedure: 275.01

Subject: Sexual Discrimination Procedures (Title IX Compliance)

Applicable Board Policy: 275

Date Adopted: 10/14

**Phillips Community College of the University of Arkansas Policy for
Discrimination, Harassment, Retaliation and Sexual Misconduct Complaints**

POLICY STATEMENT

PCCUA is committed to providing an environment that emphasizes the dignity and worth of every member of its community and that is free from harassment and discrimination based upon race, color, religion, national origin, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, pregnancy, physical or mental disability, gender identity, sexual orientation or genetic information. Such an environment is necessary to a healthy learning, working, and living atmosphere. Accordingly, all acts of discrimination, harassment, retaliation and sexual misconduct as defined by this Policy are prohibited.

JURISDICTION

Title IX protects the PCCUA community from sexual discrimination, harassment, and misconduct in a school's education program and activities. Title IX protects the PCCUA community in connection with all academic, educational, extracurricular, athletic and other PCCUA programs, whether those programs take place on PCCUA property, in PCCUA transportation, at a class or training program sponsored by PCCUA at another location or elsewhere.

This Policy shall not be construed or applied to restrict academic freedom at PCCUA, nor shall it be construed to restrict constitutionally protected expression.

Consistent with state and federal law, reasonable accommodation will be provided to persons with disabilities.

All Complaints or any concerns about conduct that may violate this Policy should be submitted to the Title IX Coordinator:

Vice Chancellor for Student Services/Registrar
PCCUA, Administration Building
1000 Campus Drive
Helena, AR 72342
(870) 338-6474, ext. 1235

A complaint may also be submitted to the Title IX Deputies:

Vice Chancellor for College Advancement & Resource Development
PCCUA, Administration Building
1000 Campus Drive
Helena, AR 72342
(870) 338-6474, ext. 1130

Vice Chancellor-Stuttgart Campus/Director PCC Career & Technical Center
PCCUA-Stuttgart
2807 Hwy. 165 S., Box A
Stuttgart, AR 72160
(870) 673-4201, ext. 1813

Vice Chancellor, DeWitt Campus
PCCUA-DeWitt
1210 Rice Belt Avenue
DeWitt, AR 72042
(870) 946-3506, ext. 1605

FILING REPORT WITH LOCAL LAW ENFORCEMENT

In some instances, sexual misconduct may constitute both a violation of PCCUA Policy and criminal activity. The PCCUA grievance process is not a substitute for instituting legal action. **PCCUA encourages individuals to report alleged sexual misconduct promptly to campus officials AND to law enforcement authorities, where appropriate.** Individuals may file a report directly with local law enforcement agencies by dialing 911. Individuals may also contact any of the following for assistance in filing a report with local law enforcement:

DeWitt City Police Dept.	Helena-W. Helena Police Dept.	Stuttgart Police Dept.
120 Court Square	98 East Plaza Street	514 South Main Street
DeWitt, AR 72042	Helena-W. Helena, AR 72390	Stuttgart, AR 72160
(870) 946-2122	(870) 572-2528	(870) 673-1414

PRESERVING EVIDENCE

It is important that evidence of sexual assault be preserved, because it may be needed for prosecuting the criminal case. Victims and others should not alter the scene of the attack. The victim should not change clothes, bathe or shower, drink or eat anything, or brush her/his teeth before reporting the assault. Any items worn by the victim during the assault, but are not currently being worn, and any materials encountered during the assault (i.e., bed sheets, blankets, etc.) should be placed in a plastic bag and brought along with the victim to a local hospital emergency department that has kits to collect and preserve evidence of rape and sexual assault.

STUDENT AND VISITOR RESPONSIBILITY TO REPORT

Students and visitors to PCCUA are strongly encouraged to report allegations of discrimination, harassment, retaliation, and sexual misconduct to the Title IX Coordinator and/or deputies. A report should be made as soon as possible after the incident in order to facilitate an effective response. The longer a report is delayed, the more difficult it will be for PCCUA to investigate. Reports may be made by the person experiencing the misconduct or by a third party, such as a witness or someone who is told of the misconduct.

MANDATORY EMPLOYEE REPORTING

In order to enable PCCUA to respond effectively and to proactively stop instances of discrimination, harassment, retaliation, and sexual misconduct at PCCUA, all employees must, within 24 hours of receiving information regarding a potential violation of this Policy, report information to the Title IX Coordinator and/or deputies. Only employees who are statutorily prohibited from reporting such information (e.g., licensed health-care professionals) are exempt from these reporting requirements. This Policy is not intended to restrict curriculum or prohibit or abridge the use of particular textbooks or curricular materials.

OFF-CAMPUS CONDUCT

Conduct that occurs off campus can be the subject of a Complaint or report and will be evaluated to determine whether it violates this Policy. Allegations of off-campus sexual misconduct should be brought to PCCUA's attention.

CONFIDENTIALITY

Subject to the other provisions of this Policy and the requirements of law, every possible effort will be made to ensure that all information received as part of PCCUA's Complaint/Grievance Procedure is treated discreetly. All parties to the Complaint are required to maintain the confidentiality of all information received during this process. However, it is not possible to guarantee that all Complaints will remain confidential because of PCCUA's obligation to investigate allegations of misconduct. All requests to maintain confidentiality shall be directed to the Title IX Coordinator who has the authority to make such determinations.

Except as compelled by law or in the interest of fairness, just resolution or health and safety considerations, disclosure of information contained in Complaints, their substance, procedures and the results of investigations will be limited to the immediate parties, witnesses, and other appropriate officials. Limited disclosure may also be necessary to conduct a full and impartial investigation.

AVAILABILITY OF COUNSELING AND ADVOCACY

Counseling and other mental health services for victims of sexual assault are available in the community. Some of the services available are

Arkansas County

Southeast Arkansas Behavioral Healthcare
121 Commercial Drive B
Stuttgart, AR 72160
(870) 673-1633

Phillips County

Mid-South Health Systems
801 Newman Drive
Helena, AR 72342
(870) 338-3900

EDUCATION AND AWARENESS PROGRAMS

PCCUA's Title IX Coordinator, in conjunction with other campus offices, is responsible for planning and coordinating campus education and awareness programs about all forms of sexual assault, including rape, acquaintance rape, domestic violence, dating violence, and other sex offenses. Programs are presented regularly throughout the academic year to students and employees.

POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, or supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have

consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of Policy.

PCCUA does not wish to interfere with private choices regarding personal relationships when those relationships do not interfere with the goals and policies of PCCUA. However, for the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student or employee) are prohibited except in extraordinary circumstances.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisors. This will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or will shift the student or employee out of being supervised or evaluated by someone with whom he or she has established a consensual relationship. Failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee, up to and including termination.

COMPLAINT/GRIEVANCE PROCEDURE

These procedures are intended to apply to all grievances involving discrimination, harassment, retaliation, and sexual misconduct as described in this Policy, including but not limited to those brought by a student against an employee and/or fellow student, employee against fellow employee and/or student, and third party against employee and/or student. All other grievances by students, employees or third parties shall be addressed through other grievance procedures. PCCUA benefits from formal and informal procedures that encourage prompt resolution of Complaints and concerns raised by members of the PCCUA community.

INFORMAL COMPLAINT PROCESS

PCCUA does not require a Complainant to utilize the Informal Complaint Process if doing so is impracticable or unsafe, or if the Complainant believes that the conduct cannot be effectively addressed through informal means. For example, the Informal Complaint Process should not be used to address allegations of sexual assault. However, in other circumstances where it is practical and safe to do so, every reasonable effort should be made to constructively resolve issues with students, faculty, staff, and administrators before pursuing the Formal Complaint Process.

Under the Informal Complaint Process, a Complainant may elect to resolve his/her Complaint by discussing it with the offending party. If the offending party is an employee

and satisfactory resolution cannot be reached after discussion, the Complainant may also contact the individual's direct supervisor to resolve the Complaint. If the offending party is a student, the Complainant may contact the Vice Chancellor for Student Services or appropriate Vice Chancellor in Arkansas County. If these efforts are unsuccessful, the Formal Complaint Process may be initiated.

FORMAL COMPLAINT PROCESS

Upon receiving a report of alleged or possible violation of this Policy, the Title IX Coordinator and/or deputies will evaluate the information received and determine what further actions should be taken. The Title IX Coordinator will follow the procedures described in this Policy. The Title IX Coordinator and/or deputies will take steps, either directly with the complainant or through a reporting employee, to provide information about PCCUA's Complaint/Grievance Procedure, as well as available health and advocacy resources and options for criminal reporting.

INVESTIGATION

The Title IX Coordinator and investigator will be responsible for overseeing the prompt, fair, and impartial investigation and resolution of Complaints filed with PCCUA, and will recommend any accommodations or other remedial short-term actions necessary in light of the individual circumstances presented.

The Title IX Coordinator or investigator will apprise the Vice Chancellor for the appropriate division or department of the Complaint, or if the Complaint is against a student, the Vice Chancellor for Student Services and/or Vice Chancellor in Arkansas County.

The investigator, who will have been properly trained, will:

- Identify the correct policies allegedly violated;
- Conduct an immediate initial investigation to determine if there is reasonable cause to charge the Respondent(s);
- Meet with the Complainant to finalize the Complaint
- Prepare the notice of charges on the basis of initial investigation;
- Develop a strategic investigation plan which may include a witness list, an evidence list, an intended timeframe, and an order of interviews for all witnesses, including the Respondent;
- Conduct a thorough, reliable and impartial investigation during which witnesses may or may not be given notice prior to the interview;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;

- Make a written finding on the case, based on a preponderance of the evidence, which indicates that it is more likely than not that a Policy violation has or has not occurred, and identifies appropriate remedies and/or sanctions, if any; and
- Prepare a complete report on the investigation and findings.

As noted above, an investigation of the Complaint will be conducted by the Title IX Coordinator or his/her designee unless it is clear from the face of the Complaint or the Title IX Coordinator's initial meetings with the parties that no reasonable grounds exist for believing that the conduct at issue violates this Policy.

In the event that the Complaint was made by someone other than the alleged victim, the Title IX Coordinator will consider the following factors in determining whether it is reasonable to investigate the Complaint:

- The source and nature of the information,
- The seriousness of the alleged incident,
- The specificity of the information,
- The objectivity and credibility of the source of the information,
- Whether the alleged victims can be identified, and
- Whether those individuals wish to pursue the matter.

In the event that the Title IX Coordinator determines that an investigation of the Complaint should not be conducted, he/she will determine and document (in consultation, as necessary, with the alleged victim, the Respondent and any other PCCUA administrators) the appropriate resolution of the Complaint and inform the parties of the same.

With all Complaints, if the Title IX Coordinator determines that an investigation should be conducted, the Title IX Coordinator will promptly investigate the matter. The existence of concurrent criminal investigations or proceedings shall not delay the investigation of any Complaint filed under this Policy.

If another individual is designated to investigate the matter, the Title IX Coordinator will share the investigator's name and contact information with the alleged victim and the Respondent and will forward the Complaint to the investigator. Within three (3) days of such appointment, the investigator, the alleged victim or the Respondent may identify to the Title IX Coordinator in writing any real or perceived conflicts of interest posed by assigning such investigator to the matter. The Title IX Coordinator will carefully consider such statements and will assign a different individual as investigator if it is determined that a material conflict of interest exists.

Upon receipt of the Complaint, the Title IX Coordinator will promptly begin the investigation, which shall include but is not limited to the following:

- Conducting interviews with the Complainant, the alleged victim (if not the Complainant), the Respondent, and third-party witnesses (including expert witnesses, where applicable) and summarizing such interviews in written form;
- Visiting, inspecting, and taking photographs at relevant sites; and
- Where applicable, collecting and preserving relevant evidence (in cases of corresponding criminal reports, this step may be coordinated with law enforcement agencies).

Throughout the investigation, the Title IX Coordinator will remain neutral. The Title IX Coordinator should obtain, where applicable and where possible, the written consent of any third-party witnesses to the disclosure, as contemplated by this Policy, of any personally identifiable information contained in the Complaint, the Investigative Report, and for any other documents the disclosure of which is contemplated by this Policy in order to further the resolution of the Complaints.

Initial Meeting with Complainant and/or Alleged Victim. As soon as is practicable, the Title IX Coordinator will contact the Complainant and the alleged victim (if not the Complainant) to schedule an initial meeting to, as applicable:

- Provide a copy of this Policy;
- Provide a copy of the Discrimination, Harassment and Sexual Misconduct Complaint Form (a copy of which is attached as Exhibit A) on which the Complainant may, if he or she agrees to disclose the information, provide details regarding the allegation, including the name of the accused individual and the date, location and general nature of the alleged violation of Policy (the Complaint Form may be completed by Complainant or dictated to the Title IX Coordinator, who will confirm the accuracy of his or her documentation with the Complainant);
- Explain avenues for resolution;
- Explain the steps involved in an investigation under this Policy;
- Discuss confidentiality standards and concerns;
- Determine whether the Complainant or the alleged victim (if not the Complainant) wish to pursue a resolution through PCCUA or no resolution of any kind;
- Refer to law enforcement, counseling, medical, academic or other resources, as appropriate; and
- Discuss, as appropriate, possible interim measures that can be provided during the pendency of the investigative and resolution processes.

Interim Measures. Unless circumstances dictate otherwise, the Title IX Coordinator will promptly issue a “No Contact” order to all parties upon notice of any sexual assault Complaint. In all cases, PCCUA may implement any necessary interim measures, deemed appropriate and reasonably available, regardless of whether a Complaint has been filed (with either campus administrators or law enforcement agencies) or whether an investigation has commenced (by either campus administrators or law enforcement agencies). Interim measures may include, but are not limited to:

- Issuing no-contact orders;
- Providing an escort to ensure that an individual can move safely between classes, work, and/or activities;
- Reassigning on-campus housing;
- Dissolving a campus housing contract and offering a pro-rated refund;
- Changing work arrangements or location;
- Rescheduling class work, assignments, and examinations;
- Arranging for the Complainant to take an incomplete in a class;
- Reassigning class section;
- Permitting a temporary withdrawal from PCCUA;
- Providing alternative course completion options;
- Providing information about counseling services; and
- Providing academic support services.

Following the initial meeting with the Complainant and the alleged victim (if not the Complainant), the Title IX Coordinator will, if applicable, promptly determine the interim measures to be provided to the alleged victim. Such determination will be promptly communicated to the alleged victim, and no later than the point at which it is communicated to the Respondent.

Initial Meeting with Respondent. If the Complainant or alleged victim (if not the Complainant) wishes to pursue resolution through PCCUA or if PCCUA otherwise deems that a further investigation is warranted, as soon as is reasonably practicable after the Title IX Coordinator’s initial meeting with the Complainant (and, if applicable, the alleged victim), the Title IX Coordinator will schedule an initial meeting with the Respondent. During the initial meeting with the Respondent, the investigator will, as applicable:

- Provide sufficient written information, consistent with privacy laws and any request for confidentiality, to allow Respondent to address the allegation (e.g., the name of the Complainant/alleged victim, the date, location, nature of the alleged violation of Policy, etc.);

- Provide a copy of this Policy;
- Explain PCCUA's procedures for resolution of the Complaint;
- Explain the steps involved in an investigation under this Policy;
- Discuss confidentiality standards and concerns;
- Discuss non-retaliation requirements;
- Inform of any interim measures already determined and being provided to the Complainant and/or the alleged victim that would directly affect the Respondent (e.g. changing his or her class schedule, moving him or her to an alternate residence hall, etc.);
- Refer to law enforcement, counseling, medical, academic or other resources, as appropriate; and
- Discuss, as appropriate, possible interim measures that can be provided to the Respondent during the pendency of the investigative and resolution processes.

Investigative Report. The Title IX Coordinator shall complete a written investigative report ("Investigative Report") that shall include the following items:

- The name and sex of the alleged victim, and, if different, the name and sex of the person reporting the allegation (it should also include any other relevant protected class characteristics if the Complaint involves a violation of this Policy based on a protected status other than gender);
- A statement of the allegation, a description of the incident(s), and the date(s) and time(s) (if known) of the alleged incident(s);
- The date that the Complaint or other report was made;
- The date the Complainant and alleged victim (if not the Complainant) were interviewed;
- The date the Respondent was interviewed;
- The names and sex of all persons alleged to have committed the alleged violation of this Policy (it should also include any other relevant protected status characteristics if the Complaint involves a violation of this Policy based on a protected status other than gender);
- The names and sex of all known witnesses to the alleged incidents(s);
- The dates that any relevant documentary evidence (including cell phone and other records as appropriate) was obtained;
- Any written statements of the Complainant (or victim, if different from the Complainant), the Respondent and any witnesses;
- Summaries of all interviews conducted, photographs, and descriptions of relevant evidence, summaries of relevant electronic records, and a detailed report of the events in question;

- A written finding on the case, based on a preponderance of the evidence which indicates whether or not it is more likely than not that a Policy violation has occurred;
- The policy or policies violated and, in consultation, as necessary, with the Complainant, alleged victim (if different than the Complainant), Respondent, and other PCCUA officials, any remedial and/or disciplinary action deemed appropriate under the circumstances;
- The response of PCCUA personnel, including any interim measures and permanent steps taken with respect to the Complainant, alleged victim (if different than the Complainant) and the Respondent; and
- A narrative of all action taken to prevent recurrence of any harassing incident(s), including any written documentation.

If the Title IX Coordinator is unable to obtain the consent of third-party witnesses, he or she will redact the Investigative Report to the extent necessary to avoid inappropriate disclosure of such witness's personally identifiable information, while ensuring that such redaction does not prevent resolution of the Complaint.

If the Title IX Coordinator determines and documents, based on the investigation, that reasonable grounds exist to believe that the conduct at issue constitutes a violation of this Policy, the Title IX Coordinator will determine the appropriate remedy and/or sanction to be imposed and will include the appropriate remedy and/or sanction in the Investigative Report. Imposition of the appropriate remedy and/or sanction will be imposed only after all appeals have been exhausted.

In determining the appropriate remedy and/or sanction, PCCUA will act to end the discrimination, harassment, retaliation, or sexual misconduct, prevent its recurrence and remedy its effects on the victim and/or PCCUA community. Sanctions will depend upon the nature and gravity of the misconduct, any record of prior discipline for a violation of this Policy, or both. Sanctions may include, without limitation, withholding a promotion or pay increase, reassigning employment, terminating employment, temporary suspension without pay, compensation adjustments, expulsion or suspension from PCCUA, disciplinary probation, expulsion from campus housing, mandated counseling and/or educational sanctions as deemed appropriate.

The Title IX Coordinator shall complete and distribute the Investigative Report, concurrently, to the alleged victim and Respondent within thirty (30) calendar days following receipt of a Complaint. All parties to whom the Investigative Report is distributed pursuant to this Policy should maintain it in confidence. The Investigative Report may only be disclosed as contemplated by this Policy.

If the Title IX Coordinator finds no reasonable grounds to believe that the conduct at issue constitutes a violation of this Policy, then the Title IX Coordinator will determine and document the appropriate resolution of the Complaint in the Investigative Report and will promptly notify the parties of that determination.

APPEAL INVOLVING FACULTY/STAFF

All appeals where the Respondent is a PCCUA faculty or staff member shall be made to the Chancellor or his/her designee. Both the alleged victim and the Respondent may appeal any or all of the Title IX Coordinator's decision in writing to the Chancellor or his/her designee within ten (10) days of receipt of the Investigative Report. The appealing party must also provide a copy of the appeal to the Title IX Coordinator within the same time period. The appeal should include a brief statement describing any or all parts of the Investigative Report that is being appealed and the reason for the appeal. Acceptable means of notification include email, facsimile, hand delivered notification, or postal delivery. The Title IX Coordinator will promptly inform the other party of the appeal.

Within thirty (30) days of receipt of the appeal, the Chancellor or his/her designee will make a final determination as to whether the Complaint should be closed, whether a violation of Policy has occurred, and/or whether any additional or different remedial action or sanctions are warranted. The Chancellor or his/her designee will concurrently notify the alleged victim and the Respondent of his/her decision.

All faculty and staff members of PCCUA are at-will employees who may be terminated at any time, with or without cause. With regard to such faculty and staff, nothing in this Policy shall create an expectation of continued employment with PCCUA or be construed to prevent or delay PCCUA from taking any disciplinary action deemed appropriate (including suspension and immediate termination of employment) for any violation of state law, federal law, or PCCUA policy.

APPEAL INVOLVING A STUDENT

In those instances where the Respondent is a PCCUA student, the alleged victim and/or the Respondent may appeal any or all of the Title IX Coordinator's decision to a Hearing Panel by providing a written appeal to the Chancellor or his/her designee with a copy also being provided to the Title IX Coordinator. The appeal must be submitted within ten (10) days of receipt of the Investigative Report and must include a brief statement describing any or all parts of the Investigative Report being appealed and the reason for appeal. Acceptable means of notification include email, facsimile, hand delivered notification or postal delivery.

Within three (3) days of receiving the appeal, the Chancellor or his/her designee will appoint the members of the Hearing Panel, to include at least three faculty and/or staff members. The Chancellor or his/her designee will select one member of the Hearing Panel to act as the Chair. The Title IX Coordinator will provide a copy of the Complaint and the Investigative Report to each member of the Hearing Panel and, if only a portion of the Title IX Coordinator's findings and determinations are appealed, the Title IX Coordinator will specify which part(s) of the alleged misconduct will be the subject of the hearing.

Promptly after the appointment of the members of the Hearing Panel, the Title IX Coordinator will provide concurrent written notice to the alleged victim and the Respondent, setting forth the names of the individuals selected to serve on and chair the Hearing Panel. If only a portion of the findings and determination are appealed, the Title IX Coordinator will also specify in the notice which part(s) of the alleged misconduct will be the subject of the hearing.

The parties may challenge the participation of any member of the Hearing Panel by submitting a written objection to the Chancellor or his/her designee within three (3) days of receipt of the notice of the composition of the Hearing Panel. Any objection must state the specific reason(s) for the objection. The Chancellor or his/her designee will evaluate the objection and determine whether to alter the composition of the Hearing Panel. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the composition of the Hearing Panel. Any changes in the composition of the Hearing Panel will be provided in writing to both parties prior to the date of the hearing.

Submission of Written Materials. Within five (5) days of receipt of the notice of the initial composition of the Hearing Panel, the alleged victim and the Respondent may provide the Chair of the Hearing Panel with a list of witnesses, if any, that they propose that the Hearing Panel call and a brief description of each proposed witness's connection to and/or knowledge of the issues in dispute, any supporting documents or other evidence, and a written statement of position.

Notice of the Hearings. Not less than five (5) days but not more than ten (10) days after delivery of notice of the initial composition of the Hearing Panel to the parties, the Hearing Panel will provide a separate notice to the alleged victim, Respondent and any witnesses or other third parties whose testimony the Hearing Panel deems relevant, requesting such individuals to appear before the Hearing Panel. The notice should set forth the date, time, and location for the individual's requested presence. The Hearing Panel shall provide the names of the witnesses or other third parties that the Hearing Panel plans to call in its notices to the alleged victim and the Respondent. The hearing

shall be conducted within twenty (20) days but no sooner than ten (10) days of the receipt of the appeal.

Failure to Appear. If any party fails to appear before the Hearing Panel if requested to do so, and such party was provided proper notice of the hearing as set forth above, then absent extenuating circumstances, the Hearing Panel will proceed to determine the resolution of the Complaint.

Support Persons. Both the alleged victim and the Respondent may be accompanied by one support person to assist them during the hearing process. This support person can be anyone, including an attorney, but the support person may not take part in the hearing. The support person may not address the Hearing Panel, present evidence, make objections or statements, ask questions of any party or witness or otherwise participate in the hearing, beyond privately communicating with the party that he/she is supporting. The Chair must be notified five (5) business days in advance of the hearing if a party will be accompanied by a support person. The Chair may disallow the attendance of any support person if he/she is also a witness or if, in the discretion of the Chair, such person's presence would be disruptive or obstructive to the hearing or otherwise warrant removal. All support persons must agree to keep any and all information presented in the hearing confidential in order to attend. Absent accommodation for disability, the parties may not be accompanied by any other individual during the hearing process except as set forth in this Policy. PCCUA officials may seek advice from the University of Arkansas System's Office of General Counsel on questions of law and procedure at any time during the process.

Evidentiary Matters. The alleged victim and the Respondent will have an equal opportunity to present evidence during their hearing. Formal rules of evidence will not be observed during the hearings.

Prior Sexual Conduct. Evidence of the prior sexual conduct of the alleged victim and the Respondent with others will not be permitted at the hearings, with the following exceptions:

- Evidence is permitted to show that the alleged victim has in the past been formally disciplined by PCCUA for falsely filing Complaints alleging a violation of this Policy;
- Evidence is permitted to show that the Respondent has in the past been either convicted in a criminal proceeding or formally disciplined by PCCUA for conduct which would violate this Policy, if deemed relevant; and
- Evidence regarding the past sexual activity of the Respondent (regardless of whether the Respondent was formally charged with a violation of the Policy with

respect to such conduct) may be permitted to show that the Respondent has engaged in a pattern of behavior similar to the alleged violations of policy at issue before the Hearing Panel, provided that (1) the Respondent has not been found “not responsible” by PCCUA in a proceeding related to such conduct and (2) the Chair has made written findings both that the evidence is reliable and trustworthy and that the conduct is sufficiently and substantially similar to the conduct at issue before the Hearing Panel to suggest a pattern of behavior.

Hearing Procedure. The Hearing Panel will conduct a hearing during which it will interview and question the Complainant, the alleged victim, the Respondent, and any witnesses or other third parties whose testimony the Hearing Panel deems relevant. The parties will not be allowed to personally question or cross-examine each other during the hearing, but will be allowed to question witnesses. The Chair will resolve all questions concerning procedure or the admission of evidence or testimony, including the relevancy and reliability of the evidence and testimony. All participants at the hearing are expected to provide truthful testimony. The Complainant and/or alleged victim have the option not to be in the same room with the alleged Respondent during the hearing. Any party may choose not to testify or appear before the Hearing Panel; however, his/her exercise of that option will not preclude the Hearing Panel from making a determination regarding the Complaint filed against the Respondent.

Decision of the Hearing Panel. Following the conclusion of the hearing, the Hearing Panel will confer and by majority vote determine whether the evidence (including the information provided in and by the Investigative Report, the parties’ written statements, if any, the evidence presented at the hearings, and the testimony of the parties and witnesses) establishes that it is more likely than not that the Respondent committed a violation of this Policy. In other words, the standard of proof will be the preponderance of the evidence. If the Hearing Panel determines that more likely than not the Respondent committed a violation of this Policy, the Hearing Panel will recommend sanctions and give consideration to whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation. The Hearing Panel will forward its recommendations regarding sanctions to the Chancellor or his designee, who will make the final determination regarding all sanctions.

Sanctions for a finding of responsibility will depend upon the nature and gravity of the misconduct, any record of prior discipline for a violation of this Policy, or both. Sanctions may include, without limitation, expulsion or suspension from PCCUA, disciplinary probation, expulsion from campus housing, mandated counseling, and/or educational sanctions deemed appropriate by the Hearing Panel.

Ordinarily, sanctions will not be imposed until the resolution of any timely appeal under this Policy. However, if it is deemed necessary to protect the welfare of the victim or the PCCUA community, the Hearing Panel may recommend and the Chancellor or his/her designee may determine that any sanctions be imposed immediately and continue in effect until such time as the appeal process is exhausted.

At such time that the appeal process is exhausted, the Title IX Coordinator will determine the final accommodations to be provided to the victim, if any, and the Title IX Coordinator will communicate such decision to the victim and the Respondent to the extent that it affects him/her.

The Title IX Coordinator will also take steps to prevent any harassment of or retaliation against the Complainant, the victim (if not the Complainant), or third parties, such as informing them about how to report subsequent problems, following up with them to ensure that there are no subsequent problems, providing training for the campus community, and providing counseling for the Respondent. The Title IX Coordinator will also take steps to prevent the harassment of or retaliation against the Respondent.

Furthermore, the Title IX Coordinator will take prompt corrective action if the Complainant or the victim (if not the Complainant) experiences retaliation or is subjected to further violation of this Policy or if the original sanctions imposed on the Respondent are ineffective to protect the safety and well-being of the Complainant, the victim (if not the Complainant), or other members of the PCCUA community. The Title IX Coordinator will also take reasonable steps to eliminate any hostile environment that has been created, such as conducting trainings and disseminating informational materials. In taking the above-outlined steps, the Title IX Coordinator will make every reasonable effort to minimize the burden on the Complainant and/or alleged victim.

Final Outcome Letter. Within ten (10) calendar days following the conclusion of the hearings, the Hearing Panel will issue a written decision letter (the "Final Outcome Letter") concurrently to the Respondent and the alleged victim. The Final Outcome Letter will set forth (1) the name of the Respondent, (2) the violation(s) of this Policy for which the Respondent was found responsible, if any, (3) the recommended sanctions imposed on the Respondent, if any, and it may set forth names of other individuals, such as a victim or witness, provided that such other individuals provide their written consent to such inclusion.

In order to comply with FERPA, the letter will not include information considered part of a party's "education record" (as that term is defined by FERPA) that is not otherwise exempt from disclosure under the Act, or other information about sanctions that do not relate to the victim.

Confidentiality and Disclosure. In order to comply with FERPA and Title IX and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, documents prepared in anticipation of the hearings (including the Complaint, the Investigative Report, the notices of hearing, and the pre-hearing submissions referenced above) and documents, testimony, or other information introduced at the hearings may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law.

TIME PERIODS

PCCUA will make every reasonable effort to ensure that the investigation and resolution of a Complaint occurs in as timely and efficient a manner as possible. PCCUA's investigation and resolution of a Complaint (including an appeal, if applicable) will generally be completed within sixty (60) calendar days of the receipt of the Complaint, absent extenuating circumstances. Hearings, if at all, will take place after the conclusion of the investigation. If hearings have taken place, both the Complainant and the Respondent generally will receive a Final Outcome Letter within ten (10) calendar days of the conclusion of the hearing.

Any party may request an extension of any deadline by providing the Title IX Coordinator or his or her respective deputies with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request.

For purposes of calculating all time periods set forth in this Complaint and Grievance Policy, a business day is defined to mean normal operating hours, excluding recognized national and state holidays and PCCUA closings.

Timelines may not be modified in cases where information is not clear, judged to be incomplete, relevant parties are not available for interview, and/or other related circumstances as may arise. The Title IX Coordinator may also modify any deadlines contained in this Policy as necessary and for good cause.

ACKNOWLEDGEMENT OF RESPONSIBILITY

At any time prior to the issuance of the Investigative Report or the date of his/her designated hearing, the Respondent may elect to acknowledge his/her actions and take responsibility for the alleged policy violation. In such situations, the Title IX Coordinator will propose sanctions. If either party objects to the proposed sanction(s), they may appeal the sanction pursuant to this Policy.

NO RETALIATION

Retaliation against any person who files a Complaint, participates in an investigation, or opposes a discriminatory employment or educational practice or policy is prohibited. A person who believes retaliation has occurred should notify the Title IX Coordinator as soon as possible.

FALSE REPORTS

Willfully making a false report of sexual harassment is a violation of PCCUA policy and is a serious offense. Any person who willfully makes or participates in making a false or frivolous report of discrimination, harassment, retaliation or sexual misconduct will be subject to disciplinary action. False reporting may also violate state criminal statutes and civil defamation laws.

OFFICE OF CIVIL RIGHTS COMPLAINT

Although Complainants are encouraged to resolve their grievances related to discrimination by utilizing this Complaint/Grievance Procedure, they have the right to file a complaint directly with the U.S. Department of Education, Office for Civil Rights (OCR). Information regarding applicable timelines and procedures is available from OCR. You may call 1-800-421-3481 to obtain further information about filing a complaint with OCR.

EFFECTIVE DATE

PCCUA reserves the right to make changes and amendments to this Policy as needed, with appropriate notice to the community. However, the Policy in force at the time that a Complaint is filed will be the Policy used throughout the investigation, hearing and any appeals that are heard.

DOCUMENTATION

PCCUA will retain documentation (including but not limited to the written Complaint, notifications, the Investigative Report, any written findings of fact, petitions for appeal, and any written communication between the parties), for at least three (3) years. Documentation pertaining to terminations, expulsions or educational sanctions may be retained indefinitely.

DEFINITION OF TERMS

Complainant: Any party who makes a Complaint against a student, employee, staff member, or campus visitor.

Consent: Consent is clear, knowing, and voluntary. Consent is active, not passive. If a person is mentally or physically incapacitated or impaired so that such person cannot

understand the fact, nature or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious. Incapacitation is a state where someone cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent. There is no consent when there is force, expressed or implied, or use of duress or deception upon the victim. Silence does not necessarily constitute consent. Past consent to sexual activities does not imply ongoing future consent. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that he/she does not want sex, that he/she wants to stop, or that he/she does not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes overt threats, implied threats, intimidation, and coercion that overcome resistance or produce consent.

Under Arkansas law, the age of consent varies with the degrees of assault, the age of the actor, and the relationship of the actor to the other party. For specific information, please refer to Arkansas statutes (e.g., Arkansas Code Annotated § 5-14-125, Sexual Assault in the Second Degree).

Sexual activity with someone known to be mentally or physically incapacitated, or based on the circumstances, or someone who could reasonably be known to be mentally or physically incapacitated, constitutes a violation of this Policy.

This Policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another person is a violation of this Policy. More information on these drugs can be found at <http://www.911rape.org/>

Use of alcohol or other drugs will never function as a defense to a violation of this Policy. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts.

Dating violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the alleged victim. It includes any unwelcome physical violence such as hitting, pulling, shoving, kicking, biting, or throwing things; and sexual assault, sexual exploitation, and sexual harassment.

Discrimination (general definition): Conduct that is based upon an individual's race, color, religion, national origin, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, pregnancy, physical or mental disability, or genetic information that excludes an individual from participation, denies the individual benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in a PCCUA program or activity. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.

Discriminatory Harassment: Detrimental action based on an individual's race, color, religion, national origin, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, pregnancy, physical or mental disability, or genetic information. Harassing conduct may take various forms, including name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target or involve repeated incidents. Gender-based harassment includes sexual harassment.

Domestic Violence: Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or any sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state. Family or household members means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, any children residing in the household, persons who presently or in the past have resided or cohabitated together, persons who have or have had a child in common, and persons who are presently or in the past have been in a dating relationship together. See also, Arkansas Code Annotated § 9-15-103 – "Domestic Abuse").

Hostile Environment: A hostile environment exists when there is harassing conduct based on race, color, religion, national origin, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, pregnancy, physical or mental disability, or genetic information that is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive to deny or limit a person's ability to participate in or benefit from PCCUA's programs, services, opportunities or activities; or when such conduct has the purpose or effect of unreasonably interfering with an

individual's employment. Harassment that creates a hostile environment ("hostile environment harassment") violates this Policy.

Non-Consensual Sexual Contact: Any intentional sexual touching, however slight, with any object by a male or female upon a male or female that is without consent and/or by force. Sexual Contact includes intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.

Non-Consensual Sexual Intercourse: Any sexual intercourse however slight, by a male or female upon a male or a female that is without consent and/or by force. Intercourse includes vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

Respondent: The person(s) against whom a Complaint has been made.

Retaliation: Action taken by an accused individual or by a third party against any person because that person has opposed any practices forbidden under this Policy or because that person has filed a Complaint, testified, assisted or participated in any manner in an investigation or proceeding under this Policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's Complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this Policy.

Sexual Assault: An actual or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to, involvement in any sexual contact when the victim is unable to consent; intentional and unwelcome touching of, or coercing, forcing, or attempting to coerce or force another to touch a person's intimate parts (defined as genital area, groin, inner thigh, buttocks, or breast); and sexual intercourse without consent, including acts commonly referred to as "rape."

Sexual Exploitation: Occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise

constitute one of other sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include, but are not limited to:

- Invading sexual privacy;
- Prostituting another person;
- Non-consensual video or audio-taping of sexual activity;
- Going beyond the boundaries of consent (e.g., allowing others to watch consensual sex without that party's knowledge or consent);
- Engaging in voyeurism;
- Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
- Knowingly transmitting an STI, such as HIV, to another without disclosing your STI status;
- Exposing one's genitals in non-consensual circumstances or inducing another to expose his or her genitals; or
- Possessing, distributing, viewing or forcing others to view illegal pornography.

Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

Sexual Harassment: Unwelcome, gender-based spoken, written or symbolic action or physical conduct that is sufficiently severe, persistent or pervasive that it has the effect of unreasonably interfering with, limiting, or denying someone the ability to participate in or benefit from PCCUA's educational programs. The unwelcome behavior may be based on power differentials, the creation of a hostile environment or retaliation.

For the purpose of this Policy, sexual harassment includes stalking or repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death. Sexual harassment also includes quid pro quo sexual harassment which exists when there are unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature and submission to or rejection of such conduct results in adverse educational or employment action.

Not all workplace or educational conduct that may be described as "harassment" affects the terms, conditions or privileges of employment or education. For example, a mere utterance of an ethnic, gender-based or racial epithet which creates offensive feelings in an employee or student would not normally affect the terms and conditions of their

employment or limits a student's ability to participate in or benefit from PCCUA's educational programs or activities.

Sexual Misconduct: Includes sexual assault, inducing incapacitation for sexual purposes, sexual exploitation and dating and domestic violence.

Status: A full-time employee of PCCUA will be considered an "employee" for the purposes of this Policy, regardless of whether he/she is also enrolled as a student. Any student who is a part-time employee will be considered a "student" for the purposes of this Policy unless the incident under consideration occurred in connection with his/her employment.

(EXHIBIT A)
PCCUA DISCRIMINATION, RETALIATION AND SEXUAL MISCONDUCT
POLICY AND PROCEDURES
COMPLAINT FORM

Today's date: _____

INFORMATION REGARDING THE COMPLAINANT:

Name of the Complainant: _____

Complainant's Phone Number: _____

The Complainant is (please check one):

a faculty member a student a staff member not affiliated with PCCUA

For faculty, staff and students, indicate whether: current or former

INFORMATION REGARDING THE VICTIM (IF HE OR SHE IS NOT THE COMPLAINANT):

Name of the victim: _____

The victim is (please check one):

a faculty member a student a staff member not affiliated with PCCUA

For faculty, staff and students, indicate whether: current or former

INFORMATION REGARDING THE RESPONDENT:

Name of the Respondent: _____

The Respondent is (please check one):

a faculty member a student a staff member not affiliated with PCCUA

For faculty, staff and students, indicate whether: current or former

INFORMATION REGARDING THE ALLEGED POLICY VIOLATION:

Alleged policy violation(s):

- discrimination harassment retaliation sexual misconduct

If discrimination/harassment, please check all that apply:

- race color religion national origin military service/veteran status
- sex age pregnancy disability gender identity genetic information

If retaliation, please state the activity you engaged in that resulted in the alleged retaliation:

Time and date of each alleged policy violation:

Location of alleged policy violations:

on campus: _____
off campus: _____

Witnesses or third parties who may have information regarding the alleged policy violation(s):

Please provide a brief description of the alleged policy violation(s):

You may wish to consider including, among other things, some or all the following information in your description: the gender of the parties, the relationship between the parties, whether one or more of the parties were under the influence of alcohol or drugs at the time of the alleged policy violation, whether the Respondent used pressure or force (physical or otherwise) in the course of any alleged sexual misconduct, and the frequency (if applicable) of the alleged policy violation.
