

	Policy Number: 802	
	Policy Category: <i>Ethical and Responsible Conduct Policies</i>	
	<i>Sexual Misconduct Policy</i>	
	Policy Summary: <i>This policy outlines sexual misconduct definitions and rules.</i>	
	Approval Date: 9/11/23	Effective Date: 9/11/23
Policy Owner: <i>Dean, Student Affairs</i>	Scheduled for Review: <i>Fall 2028</i>	

Scope

Prescott College has two policies in order to address incidents of sexual misconduct. This policy is referred to as the Prescott College Sexual Misconduct Policy and the second is referred to as the Title IX Sexual Harassment Policy. These policies are interrelated and best if read together. If the allegations forming the basis of a formal complaint (defined below), if substantiated, would constitute prohibited conduct under both policies, then the grievance process set forth in the Title IX Sexual Harassment policy will be applied in the investigation and determination of all of the allegations.

The Prescott College Sexual Misconduct policy applies only to conduct, as defined under this policy including sexual exploitation, improper conduct related to sex and sexual harassment that does not fall under the scope of the Title IX Sexual Harassment policy. The Prescott College Sexual Misconduct policy also applies to certain conduct that would otherwise be prohibited under the Title IX Sexual Harassment policy (e.g., Sexual Assault, Domestic Violence, Dating Violence, and Stalking under the Title IX Sexual Harassment policy), but which must be dismissed under the Title IX Sexual Harassment policy because they do not meet the jurisdictional requirements.

It is not the responsibility of those filing reports to determine under which policy the alleged violations may fall. The Title IX Coordinators or their designees will make that determination.

Responsibility for the Prescott College Sexual Misconduct Policy

The Title IX Coordinators oversee responsibilities that fall under this policy as well as incidents falling under the Title IX Sexual Harassment policy.

Title IX Coordinators, when informed about or upon receipt of incident reports of alleged violations, will act based on the appropriate policy. The Title IX Coordinator's responsibilities include (but are not limited to):

- Communicating with all members of the college community regarding sexual misconduct and sexual harassment;
- Explaining processes, options and available resources to the involved party and/or parties,

- Monitoring the college's administration of its own applicable policies, including this policy and the Title IX Sexual Harassment Policy and all related record keeping, timeframes, and other procedural requirements;
- Conducting training regarding Title IX, VAWA, and prohibited conduct defined in this policy and related policies;
- Determining if complaints received fall under either the Prescott College Sexual Misconduct policy or the Title IX Sexual Harassment policy, or another area of the college; and
- Overseeing the processes for the alleged misconduct that meets the criteria of either policy.
- The Title IX Coordinators may delegate certain responsibilities under this policy to Title IX Investigators or other designated administrators.

Contact Information

1. Title IX Coordinators

Susan Krause, Deputy Title IX Coordinator, 928-350-4402, susan.krause@prescott.edu Susan Krause

Information a party shares with Confidential Resources will not be shared with the Title IX Office or any other individual without the individual's express written permission. Exceptions are made if there is an imminent threat of serious harm to the individual or to others, or a legal obligation to reveal such information (e.g., if there is suspected abuse or neglect of a minor).

2. Prescott College Confidential Resource

Tony Himes- 928-848-1111

3. Disability Resources

Lisa Whittaker- accommodations@prescott.edu

4. External Inquiries

Inquiries may be made externally to:

Office for Civil Rights (OCR)

U.S. Department of Education 400 Maryland Avenue, SW Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

For complaints involving employees:

Equal Employment Opportunity Commission (EEOC) Miami District Office (Florida)

Phoenix District Office (Arizona)

3300 North Central Avenue Suite 690

Phoenix, AZ 85012-2504

Phone: (800) 669-4000

Fax: (602) 640-5071

TTY: (800) 669-6820

ASL Video Phone: (844) 234-5122

*EEOC has jurisdiction over Title IX employment claims. Please consult:
<http://www.eeoc.gov/field/index.cfm> to locate your local office's contact info*

To raise any concern involving possible bias, conflict of interest, misconduct or discrimination by the Title IX Coordinator, contact the President Dr. Barbara Jean Morris 928-778-2090

Concerns of possible bias, conflict of interest, misconduct, or discrimination by any other Title IX Team member should be raised with the Title IX Coordinator.

Definitions

Advisor refers to a person selected by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process.

Preponderance of Evidence "more likely than not" the burden of proof is met when the party with the burden convinces the fact finder that there is greater than 50% chance that the claim is true.

Clery Act requires that all colleges and universities disclose crimes that have occurred on their campus to the federal government.

Complaint refers to notification to the Title IX Office of sexual misconduct.

Complainant refers to the individual who is alleged to be the victim of conduct that could constitute sexual misconduct.

Confidential Resource means an employee/office who is exempt from notifying the Title IX Office of alleged violations of sexual misconduct. (Some exceptions may apply if person is a minor or for the physical safety of the person or campus community.)

Consent is an explicitly communicated, reversible mutual agreement in which all parties are capable of making a decision. Consent is informed, voluntary, and actively given. Consent exists when all parties exchange mutually understandable affirmative words or behavior indicating their agreement to participate voluntarily in sexual activity.

FERPA (Family Educational Rights and Privacy Act) is a Federal law that protects the privacy of student education records.

Finding is a conclusion by the clear and convincing standard that the conduct did or did not occur as alleged.

Formal complaint refers to a form or document filed by a complainant, that contains the complainant's physical or digital signature, alleging Sexual Misconduct against a respondent and requesting that Prescott College investigate the allegations. There may be situations in which a complainant does not wish the college to move forward in investigating a situation. However, the Title IX Coordinator determines if it is in the best interest of the college to do so with or without the complainant's participation.

Formal Grievance Process is a method of formal resolution designated by the College to address conduct that falls under the scope of the Prescott College Sexual Misconduct policy or the Title IX Sexual Harassment policy.

Grievance means a notification to the College regarding possible allegations of the College's Sexual Misconduct Policy.

Informal Resolution may encompass a broad range of conflict resolution strategies, including but not limited to, meetings between the parties and Title IX or other designees.

Investigator means the person or persons charged by the College with gathering facts about an alleged violation of this policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.

Party or parties refer to the complainant(s) and respondent(s), collectively.

Privacy means that information related to a complaint will be shared with a limited number of Prescott College employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report.

Recipient refers to a postsecondary institution that is a recipient of federal funding (i.e. Prescott College)

Remedial refers to steps taken to address alleged offenses when a complainant may not want to move forward with an investigation or an informal meeting with the respondent, however wants the Title IX Office to converse with the respondent for situational awareness.¹

Remedies refer to actions made post-determination and designed to restore or preserve equal access to Prescott College's education program or activity. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

Respondent refers to an individual alleged to be the perpetrator of conduct that could constitute Sexual Misconduct per this policy or the Title IX Sexual Harassment policy.

Resolution refers to the determination or an agreement of an informal or formal grievance process.

Responsible Employee (mandated reporter) is an employee of the College who may share knowledge, notice, and/or reports of sexual harassment with the permission of the complainant to the Title IX Coordinator.⁸

Sanction refers to a consequence imposed by the Title IX Coordinator based on a finding of responsibility or based on the outcome of an informal resolution. The Title IX Coordinator determines appropriate sanctions based on the College's sanctioning rubric.

Sex (i.e. "Because of sex"); there is no regulatory definition. Anyone may experience sexual misconduct or harassment, irrespective of gender identity or sexual orientation.

Sexual Misconduct encompasses all of the prohibited conduct described below that occurs on the basis of sex that does not fall within the definitional or jurisdictional requirements of the federal regulations underlying the Title IX Sexual Harassment policy.

Supportive Measures refer to non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Third party refers to any individual who is not a College student, a faculty member, or a staff member (e.g., vendors, alumni/ae, campus visitors or local residents).

Title IX Coordinator refers to an official designated by Prescott College to ensure compliance with Prescott College Title IX and College Policies

Title IX Investigator is primarily responsible for conducting a non-biased, fair, impartial, prompt and thorough investigation of alleged violations of the College's Sexual Misconduct Policy and the Title IX Sexual Harassment Policy.

Witness refers to any individual who shares information relating to an allegation of prohibited conduct under this policy.

1 The Title IX Office may have a conversation with the respondent; recommend counseling, anger management, or other actions.

Policy Statement

1. Prohibited Conduct

This policy addresses Prescott College Sexual Misconduct, which encompasses all of the prohibited conduct described below that occurs on the basis of sex that does not fall within the definition or jurisdictional requirements of the federal regulations underlying the Title IX Sexual Harassment Policy.

Examples of prohibited conduct under this College Sexual Misconduct Policy may include:

- Conduct that occurs in the local vicinity (e.g., an off-campus apartment) but outside of a college program or activity; or
- Conduct that occurs outside of the United States when the conduct is associated with a college-sponsored program or activity, such as travel, research, or internship programs; or
- Conduct that involves the use of the college's computing and network resources including but not limited to accessing email accounts.

In determining whether alleged conduct violates this policy, the College will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged conduct and the context in which it occurred. Individuals of any gender can commit any of the prohibited conduct defined in this policy, and it can occur between individuals of the same gender or different genders. It can occur between strangers or acquaintances, as well as people involved in intimate or sexual relationships.

The prohibited behaviors listed below are serious offenses and will result in discipline. Prohibited conduct involving force, duress, or inducement of incapacitation, or where the respondent has deliberately taken advantage of another individual's state of incapacitation, will be deemed especially egregious and may result in suspension, dismissal/expulsion, or termination of employment. The respondent's consumption of alcohol or the use of illegal substances does not constitute a mitigating circumstance when it contributes to a violation under this policy.

The following prohibited behaviors fall under the Prescott College Sexual Misconduct policy only if they fall outside the jurisdictional requirements of the Title IX Sexual Harassment policy (as described in section III of the Title IX Sexual Harassment policy):

Prohibited behaviors are:

Quid Pro Quo Sexual Harassment: An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;

Title IX Sexual Harassment: Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the College's education program or activity.

Sexual Assault: Any sexual act directed against another person, without the consent of the individual, including instances where the person is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders. This includes the following:

- **Rape:** The carnal knowledge of a person, without the consent of the individual, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the individual, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the individual, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the individual, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent in the state that the incident occurred.

Domestic Violence: A felony or misdemeanor crime of violence committed:

- by a current or former spouse or intimate partner of the complainant;
- by an individual with whom the individual shares a child in common;

- by an individual who is cohabitating with, or has cohabitated with, the individual as a spouse or intimate partner;
- by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred;
- by any other individual against an adult or youth complainant who is protected from that individual's acts under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred. For purposes of this policy, an intimate partner is defined as an individual with whom one has or had a short- or long- term relationship that provides romantic and/or physical intimacy or emotional dependence. Intimate relationships can occur between individuals of the same gender or different genders and may include (but are not limited to) marriages, civil unions, dating relationships, "hook-up" relationships, relationships in which partners are characterized as "girlfriends" or "boyfriends," and relationships between individuals with a child in common.

Dating Violence: Violence committed by an individual who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the reporting individual's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the individuals involved in the relationship. This 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.

Stalking: Engaging in a course of conduct directed at a specific individual that would cause a reasonable person to:

- fear for the individual's safety or the safety of others; or
- suffer substantial emotional distress. For the purposes of the Stalking definition:
 - Course of conduct means two or more acts, including 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 an individual, or interferes with an individual's property.
 - Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.
 - Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

2. Retaliation

The College expressly prohibits any form of retaliatory action against any member of the College community who in good faith: (1) files a report, complaint or grievance under this policy (or with an external entity); (2) opposes in a reasonable manner an action or policy believed to constitute a violation of this policy; or (3) participates in College investigations, compliance reviews, or discipline proceedings under this policy.

- Depending on the circumstances referenced above, retaliatory acts may include (but are not limited to): Adverse employment action;
- Adverse action relating to participation in an educational or working program;
- Unreasonably interfering with the academic or professional career of another individual;
- Engaging in conduct which constitutes stalking, harassment, or assault; and

- Engaging in efforts to have others engage in retaliatory behavior on one's behalf.

The College retains the right to charge an individual for making a materially false statement in bad faith during the course of an investigation. The College will not conclude that any individual has made a materially false statement in bad faith based solely on the determination regarding responsibility.

Complaints alleging retaliation under this policy will be addressed promptly and equitably. Where the individual allegedly retaliating is not affiliated with the College and not otherwise, subject to its policies, the College will have limited ability, if any, to act against that person.

Notwithstanding the above, the exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this policy. Charging an individual with a College violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

The following prohibited behaviors fall under the Prescott College Sexual Misconduct policy and not the Title IX Sexual Harassment policy regardless of where or under what circumstances they occur:

Sexual Harassment: Unwelcome verbal or physical behavior which is directed at an individual based on sex, when these behaviors are sufficiently severe or pervasive to have the effect of unreasonably interfering with an individual's educational experience, working conditions, or living conditions by creating an intimidating, hostile, or offensive environment. Examples of conduct that can constitute sexual harassment if based on an individual's sex include but are not limited to:

- Unwelcome jokes or comments (e.g., sexist jokes);
- Disparaging remarks about sex, gender identity, or gender expression (e.g., negative or offensive remarks or jokes about an individual's self-presentation);
- Displaying negative or offensive posters or pictures about sex; or
- Electronic communications, such as e-mail, text messaging, and Internet use, that violate this policy.

Sexual Exploitation. Any act whereby one individual violates the sexual privacy of another or takes unjust or abusive sexual advantage of another who has not provided consent, and that does not constitute non-consensual sexual penetration or non-consensual sexual contact. Examples may include: recording, photographing, transmitting, viewing, or distributing intimate or sexual images or sexual information without the knowledge and consent of all parties involved; voyeurism (i.e., spying on others who are in intimate or sexual situations).

Improper Conduct Related to Sex. Unprofessional or inappropriate conduct that is sexual in nature and has the effect of unreasonably interfering with an individual's educational experience, working conditions, or living conditions.

For purposes of this policy, consent is defined as follows:

Consent and Incapacitation. The College considers consent as a voluntary, informed, un-coerced agreement through words or actions freely given, which could be reasonably interpreted as a willingness to participate in mutually agreed-upon sexual acts. Consensual sexual activity happens when each partner willingly and affirmatively chooses to participate.

Indications that consent is not present include but are not limited to:

- when physical force is used or there is a reasonable belief of the threat of physical force;
- when duress is present; when one individual overcomes the physical limitations of another individual; or
- when an individual is incapable of making an intentional decision to participate in a sexual act, which could include instances in which the individual is in a state of incapacitation.

Important points regarding consent include:

- Consent to one act does not constitute consent to another act;
- Consent on a prior occasion does not constitute consent on a subsequent occasion;
- The existence of a prior or current relationship does not, in of itself, constitute consent;
- Consent can be withdrawn or modified at any time;
- Consent is not implicit in an individual's manner of dress;
- Accepting a meal, a gift, or an invitation for a date does not imply or constitute consent.
- Silence, passivity, or lack of resistance does not necessarily constitute consent; or
- Initiation by someone who a reasonable person knows or should have known to be deemed incapacitated is not consent.

For purposes of this policy, incapacitation (or incapacity) is the state in which an individual's perception or judgment is so impaired that the individual lacks the cognitive capacity to make or act on conscious decisions. The use of drugs or alcohol can cause incapacitation. An individual who is incapacitated is unable to consent to a sexual activity. Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where an individual knows or ought reasonably have understood that the individual is incapacitated, constitutes College Sexual Misconduct as defined by this policy.

3. Confidentiality, Privacy, and Related Responsibilities

Issues of privacy and confidentiality play important roles in this policy, and may affect individuals differently. Privacy and confidentiality are related but distinct terms that are defined below.

In some circumstances, the reporting responsibilities of College employees, or the College's responsibility to investigate, may conflict with the preferences of the complainant and/or respondent with regard to privacy and confidentiality. Therefore, all individuals are encouraged to familiarize themselves with their options and responsibilities, and make use of confidential resources, if applicable, in determining their preferred course of action.

a. Confidentiality and Confidential Resources

The term "confidentiality" refers to the circumstances under which information will or will not be disclosed to others.

The College has one individual that confidential reports can be made to. Confidential Resources are not obligated to report information that is provided to them. This allows individuals to explore their options in a non- pressured environment while they make informed decisions. There may be exceptions in cases involving child abuse, imminent risk of serious harm, emergent hospitalization, or a court order. In addition, non- identifying information about

violations of the College's Title IX Sexual Harassment Policy will be submitted to Campus Safety and Security for purposes of the anonymous statistical reporting under the Clery Act.

An individual who is not prepared to make a report, or who may be unsure how to label what happened, but still seeks information and support, is strongly encouraged to contact a Confidential Resource or the Title IX Coordinators. Confidential Resources are listed in the Administrator's Contact Information section at the beginning of this policy.

b. Confidentiality Rights of Complainants and Respondents

While complainants, respondents, and witnesses involved in the grievance process under this policy are strongly encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation, complainants and respondents are not restricted from discussing the allegations under investigation.

Medical, psychological, and similar treatment records are privileged and confidential documents. Those records cannot be accessed or used for a grievance process under this policy without the relevant party's voluntary, written consent.

c. Release of Information

If the College becomes aware of a serious and continuing threat to the campus community, The Title IX Coordinator may issue a timely warning in accordance with federal regulation to protect the health or safety of the community. In addition, the College may also share non-identifying information, including data about outcomes and sanctions, in aggregate form. The College will not disclose the name or other personally identifiable information of the complainant unless it has received the express consent of the complainant or unless the release of such information is consistent with legal requirements or mandated by law.

4. Options for Complainants, Respondents, and Other Reporting Individuals

A complainant, respondent, or witness has many options, including counseling and support services. Information regarding contact information for local law enforcement and medical assistance is provided in Appendix B.

A complainant may:

- Request supportive measures from the Title IX Coordinator;
- File a report with the Title IX Coordinator;
- Contact the Title IX Coordinator for assistance in filing a police report and preserving physical evidence; and/or
- Contact local law enforcement to file a police report.

An individual may pursue some or all of these steps at the same time. When initiating any of the above, an individual does not need to know whether they wish to request any particular course of action, nor how to label what happened.

a. Anonymous Reporting

Any individual may make an anonymous report alleging violation of this policy using the online Sexual Misconduct form. However, there is very limited action if any the College can take without knowing the complainant making the allegation.

b. Timeliness of Report

Complainants and other reporting individuals are encouraged to report any violation of this policy as soon as possible in order to maximize the College's ability to respond promptly and effectively. Reports may be made at any time without regard to how much time has elapsed since the incident(s) in question. If the respondent is no longer a student or employee at the time of the report, the College may not be in a position to gather evidence sufficient to reach a determination as to the report and/or the College may not be able to take disciplinary action against the respondent. However, the College will still seek to provide support for the complainant and seek to take steps to end the prohibited behavior, prevent its recurrence, and address its effects.

c. Amnesty

In order to encourage reports of conduct that is prohibited under this policy, the College may offer leniency with respect to other violations, which may become known as a result of such reports, depending on the circumstances involved.

5. Supportive Measures for Complainants and Respondents

Upon receipt of a report or formal complaint of a violation of this policy, the College, through the Title IX Coordinator, will promptly:

- Contact the complainant to discuss the availability of supportive measures;
- Consider the complainant's wishes with respect to supportive measures; and
- Inform the complainant of the availability of supportive measures with or without the filing of a report;
- Consider supportive measures, as appropriate and reasonably available, for the respondent.

These supportive measures are designed to restore or preserve equal access to the College's educational and working programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties and the broader College community, or deter sexual misconduct. While a supportive measure may impose some restrictions on a party, it will not unreasonably burden them. The College may provide supportive measures to the complainant or respondent, as appropriate, as reasonably available, and will do so without fee or charge, regardless of whether the complainant seeks formal disciplinary action. Once supportive measures are approved, the parties or affected individuals will be notified in writing of the supportive measures. The College will maintain any supportive measures provided to the complainant or respondent as confidential to the extent possible.

Supportive measures may include:

- counseling;
- extensions of deadlines or other course-related adjustments;
- modifications of work or class schedules;
- campus escort services;
- mutual restrictions on contact between the parties;
- changes in work or housing locations;
- leaves of absence;
- increased security and monitoring of certain areas of the campus; and/or
- other measures that can be used to achieve the goals of this policy.

Requests for supportive measures may be made by or on behalf of the complainant or respondent to any College official, including the Title IX Coordinator. The Title IX Coordinator is responsible for ensuring the implementation of supportive measures and coordinating the College's response with the appropriate offices on campus.

All individuals are encouraged to report concerns about the failure of another to abide by any restrictions imposed by a supportive measure. The College will take immediate action to enforce a previously implemented measure and disciplinary sanctions can be imposed for failing to abide by a College-imposed measure.

6. Emergency Removal

The College may summarily remove an individual from an education program or activity on an emergency basis after an individualized safety and risk analysis, where a determination is made that the individual poses an immediate threat to the physical health or safety of any student, other individual or themselves. In these situations, the Title IX Coordinator will provide the individual with notice and an opportunity to challenge the decision immediately following the removal.

7. Informal Resolution Process

Subject to the consent of the parties and the approval of the Title IX Coordinator, the College permits informal resolution processes in cases in which a report has been filed with the Title IX Coordinator. Subject to approval by the Title IX Coordinator, the informal resolution process is available in matters involving a student complainant and a student respondent as well as in matters involving a faculty/staff complainant and a faculty/staff respondent; the informal resolution process is not available in matters involving a student and an employee.

The informal resolution process is a voluntary, remedies-based process designed to provide parties with an option to resolve disputes with other students. The purpose of the informal resolution process is to address the conduct that has been reported by the complainant, and place the parties in a position to pursue their academic and non-academic interests in a safe, respectful, and productive educational and working environment.

Before the informal resolution process is used, both parties must provide voluntary, written consent to the informal resolution process and must receive written notice disclosing: the allegations, the requirements of the informal resolution process (including the circumstances under which it precludes the parties from resuming a non-informal resolution arising from the same allegations), and any outcomes resulting from participating in the informal resolution process (including the records that will be maintained or could be shared). At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Prescott College Sexual Misconduct grievance process.

The College will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and determination of reports of College Sexual Misconduct. Similarly, the College will not require, encourage, or discourage the parties from participating in the informal resolution process.

The College will not offer the informal resolution process unless a report is filed.

See Appendix C for additional information regarding the informal resolution process.

8. Grievance Procedures for Prescott College Sexual Misconduct

The College is committed to providing a prompt and impartial investigation and adjudication of all formal complaints alleging violations of this policy. During the grievance process, both parties (complainant and respondent) have equal rights to participate.

a. Conflict of Interest

All individuals who have responsibilities in administering the grievance process under this policy must be free of any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Any concerns should be addressed to the Title IX Coordinator.

b. Responsibility to Review Reports

In order to protect the safety of the campus community, the Title IX Coordinator may review reports of violations under this policy or under certain circumstances. In such a circumstance, the Title IX Coordinator will take into account the complainant's articulated concerns, the best interests of the College community, fair treatment of all individuals involved, and the College's obligations under this policy.

c. Presumption of Good Faith Reporting

The College presumes that reports of prohibited conduct are made in good faith. A finding that the alleged behavior does not constitute a violation of this policy or that there is insufficient evidence to establish that the alleged conduct occurred as reported does not mean that the report was made in bad faith.

d. Presumption of Non-Responsibility

The respondent is presumed not to be responsible for the alleged conduct unless and until a determination, regarding responsibility is made at the conclusion of the grievance process.

e. Honesty and Cooperation during Grievance Process

The College expects all members of the College community to be honest and cooperative in their official dealings with the College under this policy. In this regard, individuals are expected to acknowledge requests from College officials for information in a timely fashion and to make themselves available for meetings with College officials or any officials acting on behalf of the College. Any student or member of the faculty or staff who fails to do so may be subject to discipline.

f. Advisors

Throughout the grievance process, each party may have an advisor of their choice; parties may change their advisor at any time during the grievance process. An advisor is an individual chosen by a complainant or a respondent to provide support during the process. An advisor may be a member or non-member of the College community, and may be an attorney. If one party seeks to engage an attorney, the College will not provide an attorney for the other party.

The role of the advisor is narrow in scope: the advisor may attend any interview or meeting connected with the grievance process, but the advisor may not actively participate in interviews and may not serve as a proxy for the party.

Any individual who serves as an advisor is expected to make themselves available for meetings and interviews throughout the investigation process. The College (including any official acting on behalf of the College such as an investigator or a Title IX Coordinator) has the right at all times to determine what constitutes appropriate behavior on the part of an advisor and to take appropriate steps to ensure compliance with this policy.

g. **Prior Sexual Behavior**

The complainant's predisposition or prior sexual behavior are not relevant and will not be used during the grievance process. Exceptions may be considered as an attempt 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.

h. **Consolidation**

The Title IX Coordinator has the discretion to consolidate multiple complaints as to allegations of Sexual Misconduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations arise out of the same facts or circumstances.

i. **Investigation of Allegations Pertaining to Other College Policies**

i. **Violation of Other College Policies**

During an initial assessment or investigation, other possibly related violations by the same party(ies) may be identified. The Title IX Coordinator may direct the Title IX Investigator to investigate those possible violations of other College Policies, at the same time that they are investigating the allegations falling under this policy. Under those circumstances, the outcomes from the investigation of the non- College Sexual Misconduct matter will be provided to the office of responsibility as a matter of record.

9. Investigation and Determination

a. **Timing**

The College will seek to complete the investigation and make a determination within ninety (90) business days after the investigators' first interview of the complainant. Investigations will proceed according to the aforementioned timeframe during the summer and at other times when the College is not in session. Timeframes for all phases of the grievance process, including the investigation, apply equally to both parties.

There may be circumstances that require the extension of time frames for good cause. Time frames may be extended to ensure the integrity and completeness of the investigation or determination, comply with a request by external law enforcement, accommodate the absence of a party, advisor, or witness, or for other legitimate reasons, including the complexity of the investigation and the severity and extent of the alleged misconduct. The College will notify the parties in writing of any extension of the time frames for good cause, and the reason for the extension.

In accordance with College policy, the College will review requests for language assistance and accommodation of disabilities throughout the investigation and determination process.

Although cooperation with law enforcement may require the College to temporarily suspend the fact-finding aspect of an investigation, under such circumstances, the College will promptly resume its investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process. The College will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide supportive measures for the complainant or respondent. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this policy has occurred.

b. Investigation

If the Title IX Coordinator has determined, following an initial assessment, that an investigation is appropriate, the Title IX Coordinator will appoint a Title IX Investigator.

c. Notice of Investigation

Following the receipt and review of the formal complaint by the Title IX Coordinator, and it being determined that the matter properly falls under this College Sexual Misconduct policy, the parties will be informed in writing of the initiation of the investigation. The written information shall include:

- The identities of the parties, if known;
- A concise summary of the alleged conduct at issue (including when and where it occurred, if known);
- Notice of the allegations potentially constituting a violation of the College Sexual Misconduct policy;
- A statement that the respondent is presumed not responsible and that a determination regarding responsibility is made at the conclusion of the grievance process;
- A statement informing the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney;
- A statement informing the parties that they will have the opportunity to inspect, review evidence and provide final comments;
- A statement informing the parties that knowingly making false statements or knowingly submitting false information during the grievance process may constitute a violation of College policy; and
- Information regarding the applicable grievance procedures, including the informal resolution process.

If, during the investigation, additional information is disclosed that may also constitute prohibited conduct under this policy, the respondent and complainant will be informed in writing that such additional information will be included in the grievance process.

d. Gathering of Evidence

The investigator will gather information from each party. While the complainant and the respondent are not restricted from gathering and presenting relevant evidence, the investigator is responsible for gathering relevant evidence to the extent reasonably possible. Each party will be given an equal opportunity to suggest witnesses, provide other relevant information, such as medical, mental health, or law enforcement documentation, communications, photographs, and other evidence. Both parties may suggest questions to be posed to the other party or witnesses.

Parties and witnesses are expected to provide all available relevant evidence to the investigator during the investigation.

The Title IX Investigator will provide written notice no less than three (3) business days prior to the meeting with a Title IX Investigator. The written notice will include:

- Date
- Time
- Location and/or method
- Purpose
- Any other person(s) who will be attending the meeting A Title IX Investigator will interview parties and witnesses separately. On occasion, a Title IX Investigator may seek assistance from another Title IX Investigator for interviewing purposes. The Title IX Investigators will record all interviews or take notes of the interviews. Any other recording of interviews is prohibited, and violations may result in discipline.

In general, a party's medical and counseling records are confidential. The investigators will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the investigator obtain that party's voluntary, written consent to do so.

The investigators will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g., attorney-client, doctor- patient), unless the individual holding such privilege has waived the privilege.

i. Investigative Report

Following their review of the parties' responses (if any) to the case file, the investigator will create a written investigative report that summarizes all relevant evidence.

Both parties will have ten (10) business days form the date of the receipt of the report to review and provide any comments to the investigator.

e. Rendering a Decision

In most circumstances, the Title IX Coordinator or their designee will render the decision as to whether the respondent violated or dd not violate the College Sexual Misconduct Policy.

i. Standard of Proof

The standard of proof under this policy is Preponderance of Evidence. The Preponderance of Evidence standard means that it is more likely than not that the individual is responsible for violating a policy. Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true.

ii. Determination

The determination notification will contain:

- The allegations potentially constituting sexual misconduct;
- 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 (if any), methods used to gather other information and the hearing);
- Findings of fact supporting the determination;
- Conclusions regarding the application of this policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether a policy violation occurred); and

The parties and their advisors will be provided with the written determination and sanctions (if appropriate) via electronic format.

f. Disciplinary Sanctions

The Title IX Coordinators will determine appropriate sanctions and consult with other College administrators. In the event that the Title IX Coordinator is not available, the case will be provided to the other Title IX Coordinator who will serve as the substitute. Any sanctions will be included in the Notice of Determination.

The Title IX Coordinator in consultation with Human Resources will determine the sanctions for College employees (faculty, staff, agent, vendor, etc.) found responsible for violating the Sexual Misconduct policy.

See Appendix D for the range of sanctions under this policy.

g. Record Retention

The College will maintain for a period of at least seven years records of the following:

- Each Sexual Misconduct grievance process conducted under this policy, including any determination regarding responsibility, any audio or audiovisual recording or transcripts, and any disciplinary sanction imposed on the respondent;
- Any informal resolution and the result therefrom; and
- Records of any actions, including any supportive measures taken in response to a report of sexual misconduct. In each instance, the College will document the basis for its conclusion. If the College does not provide a complainant with supportive measures, then the College will document the reasons why.

h. Modification and Review of Policy

Prescott College reserves the right to modify this policy to consider applicable legal requirements or extraordinary circumstances.

At regular intervals, the College will review this policy to determine whether modifications should be made.

Reason for Policy

To outline operating procedures for handling complaints of sexual misconduct on campus and supporting students who have experienced sexual misconduct off campus.

Responsibilities	
For following policy:	All students and employees
For enforcement of policy:	Title IX Coordinator, Deputy Title IX Coordinator
For oversight of policy:	Dean, Student Affairs
For procedures implementing the policy:	Title IX Coordinator, Deputy Title IX Coordinator
For notification:	Policy Librarian

Cross Referenced Policies
Student Grievance Policy - 815
Title IX Sexual Harassment Policy - 813
Non-Discrimination / Anti-Harassment Policy - 801

Revision History

Title IX Sexual Harassment and Sexual Misconduct Policy specific appendices

Appendix A: The Violence Against Women's Act (VAWA)

(<https://www.federalregister.gov/documents/2014/10/20/2014-24284/violence-against-women-act>)

The Violence Against Women Reauthorization Act of 2013 (VAWA) (Pub. L. 113-4), which, among other provisions, amended section 485(f) of the HEA, otherwise known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). The Clery Act requires institutions of higher education to comply with certain Campus Safety and Security related requirements as a condition of their participation in the Title IV, HEA programs. Notably, VAWA amended the Clery Act to require institutions to compile statistics for incidents of dating violence, domestic violence, sexual assault, and stalking and to include certain policies, procedures, and programs pertaining to these incidents in their annual security reports.

VAWA

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668.46 of title 34 of the Code of Federal Regulations (CFR) was amended to implement these statutory changes. The entire act is available at ([34 CFR 668.46](#)).

VAWA provides the following requirements:

- Require institutions to maintain statistics about the number of incidents of dating violence, domestic violence, sexual assault, and stalking that meet the definitions of those terms;
- Clarify the very limited circumstances in which an institution may remove reports of crimes that have been “unfounded” and require institutions to report to the Department and disclose in the annual security report the number of “unfounded” crime reports;
- Revise the definition of “rape” to reflect the Federal Bureau of Investigation's (FBI) updated definition in the UCR Summary Reporting System, which encompasses the categories of rape, sodomy, and sexual assault with an object that are used in the UCR National Incident-Based Reporting System;
- Revise the categories of bias for the purposes of Clery Act hate crime reporting to add gender identity and to separate ethnicity and national origin into separate categories;
- Require institutions to provide to incoming students and new employees and describe in their annual security reports primary prevention and awareness programs. These programs must include: a statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking, as those terms are defined in these final regulations; the definitions of these terms in the applicable jurisdiction; the definition of “consent,” in reference to sexual activity, in the applicable jurisdiction; a description of safe and positive options for bystander intervention; information on risk reduction; and information on the institution's policies and procedures after a sex offense occurs;
- Require institutions to provide, and describe in their annual security reports, ongoing prevention and awareness campaigns for students and employees. These campaigns must include the same information as the institution's primary prevention and awareness program;
- Define the terms “awareness programs,” “bystander intervention,” “ongoing prevention and awareness campaigns,” “primary prevention programs,” and “risk reduction;”
- Require institutions to describe each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; how to file a disciplinary complaint; and how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking;
- Require institutions to list all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceedings for an allegation of dating violence, domestic violence, sexual assault, or stalking;
- Require institutions to describe the range of protective measures that the institution may offer following an allegation of dating violence, domestic violence, sexual assault, or stalking;
- Require institutions to provide for a prompt, fair, and impartial disciplinary proceeding in which:

- Officials are appropriately trained and do not have a conflict of interest or bias for or against the accuser or the accused.
- The accuser and the accused have equal opportunities to have others present, including an advisor of their choice.
- The accuser and the accused receive simultaneous notification, in writing, of the result of the proceeding and any available appeal procedures if applicable.
- The proceeding is completed in a reasonably prompt timeframe.
- The accuser and accused are given timely notice of meetings at which one or the other or both may be present.
- The accuser, the accused, and appropriate officials are given timely and equal access to information that will be used during informal and formal disciplinary meetings and hearings if applicable.
- Define the terms “proceeding” and “result”.
- Specify that compliance with these provisions does not constitute a violation of section 444 of the General Education Provisions Act ([20 U.S.C. 1232g](#)), commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA).

Appendix B: Emergency Resources

1. Law Enforcement

Many incidents of sexual misconduct are also violations of the law. Individuals who wish to report a crime to law enforcement officials can contact the local agencies directly by dialing 9-1-1. They can also request assistance contacting the proper agency through the Title IX Coordinator or confidential reporter. *If the Reporting Party is under 18 years of age, the College has an obligation to contact law enforcement.*

2. Medical Assistance

Emergency medical assistance is available both on campus (during business hours) and off campus (24/7). Individuals are encouraged (but not required) to contact law enforcement and seek medical treatment as soon as possible following an incident that poses a threat to safety or physical well-being or following a potential criminal offense. For more information about seeking assistance for a sexual harassment (sexual assault, rape, sodomy, domestic/dating violence, stalking) incident:

Yavapai Family Advocacy Center
(YFAC) Prescott Valley, AZ 86312

Because YFAC is a safe place for victims, the physical address is not published

Phone: (928) 775-0669

Yavapai Regional Medical Center
East 700 Florentine Rd
Prescott Valley, AZ
86314 Phone: (928)
445-2700

Yavapai Regional Medical Center
West 1003 Willow Creek Rd
Prescott, AZ 86301
Phone: (928) 445-2700

Appendix C: Informal Resolution Process

The purpose of the informal resolution process is to eliminate the conduct which has been reported by the complainant (and prevent its recurrence), and place both individuals in a position to pursue their academic, working, and non-academic interests in a safe, respectful, and productive educational and working environment.

The informal resolution process is a voluntary, remedies-based process designed to provide members of the Prescott College community with an option to resolve certain disputes with other members of the College community. Subject to approval by the Title IX Coordinator (see below), the Informal Resolution Process is available in matters involving a student complainant and a student respondent as well as in matters involving a faculty/staff complainant and a faculty/staff respondent.

The Informal Resolution Process is not available in matters involving a student and an employee.

Prior to participating in the informal resolution process, parties will be notified in writing of the information contained in this Appendix C.

The following are features of the informal resolution process:

- Participation in the informal resolution process is voluntary.
 - No party will be required to participate in the informal resolution process and the College will not require, encourage, or discourage the parties from participating in the informal resolution process; and
 - All parties must consent in writing to participation in the informal resolution process.
- The College may offer the informal resolution process only under the following circumstances:
 - A report has been filed by the complainant;
 - The Title IX Coordinator has determined, through an initial assessment, that the alleged conduct, if substantiated, would constitute College Sexual Misconduct; and
 - The Title IX Coordinator has determined that the informal resolution process is appropriate for this matter.
- All parties will be provided with a written notice disclosing the allegations, the requirements of the informal resolution process, and any outcomes resulting from participating in the informal resolution process.
- At any time prior to signing an informal resolution agreement, any party has the right to withdraw from the informal resolution process and resume the non-informal resolution process.
- Parties may be accompanied by an individual of their choosing who will serve as an advisor/support person to any meeting related to the informal resolution process. However, the support person may not actively participate in meetings and may not serve as a proxy for the party. Any individual who serves as a support person is expected to make themselves available for meetings as scheduled by the College. The College (including any official acting on behalf of the College) has the right at all times to determine what constitutes appropriate behavior on the part of a support person and to take appropriate steps to ensure compliance with this policy.
- Any agreements reached as part of the informal resolution process must be approved by the Title IX Coordinator.
- If the Title IX Coordinator determines at any time prior to the signing of the informal resolution agreement that the informal resolution process is no longer appropriate, the Title IX Coordinator may terminate the process.
- Upon signing the informal resolution agreement, the parties are bound by its terms and cannot opt for a non-informal grievance process based on the conduct alleged in the report.
- Failure to comply with the signed agreement may result in disciplinary action for either party.
- If the parties' circumstances change significantly, they may request a supplemental agreement.

Retaliation

The protections against Retaliation apply to individuals participating in a resolution process within this policy. Disciplinary consequences may result for those found responsible for Retaliation.

Appendix D: Range of Sanctions under this Policy

Members of the College community may be subject to disciplinary sanctions for violating this policy.

Sanctions Applicable to Students

The sanctions for students are listed below.

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Prescott College policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either College-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of College policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their enrollment as a student at Prescott College.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Prescott College-sponsored events.
- *Withholding Diploma*: Prescott College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: Prescott College reserves the right to revoke a degree previously awarded from the College for fraud, misrepresentation, and/or other violation of Prescott College policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including Prescott College registration as a recognized organization) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, Prescott College may assign any other sanctions as deemed appropriate.

The following may accompany the preceding sanctions, as appropriate:

- **College Housing**. When appropriate to the infraction, particularly in instances involving antisocial behavior having a serious impact on the residential community, removal from College housing or relocation within College housing may be added to any of the other sanctions listed above, except warning and reprimand.
- **Restriction of Access to Space, Resources, and Activities**. When appropriate in cases involving behavioral misconduct between members of the community, restrictions may be placed on access to space and/or resources or on participation in activities so as to limit opportunities for contact among the parties.
- **Educational Refresher Programs**. In addition to any of the sanctions listed above, a student may be required to participate in educational refresher programs appropriate to the infraction.

- **Restitution.** The sanction for willful or reckless damage or vandalism will ordinarily include restitution for replacement or repair.

Sanctions Applicable to Faculty and Staff Members

For violations of this policy by faculty or staff members, disciplinary sanctions may include (in accordance with the employment policies governing the employee in question) counseling or training, written warning, financial penalty, unpaid leave of absence, suspension (or recommendation for suspension), demotion, termination (or recommendation for termination) in accordance with applicable policies. The College may place a faculty or staff member on administrative leave during the pendency of a grievance process, provided that such action shall not modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

Sanctions Applicable to Non-Members of the College Community

For violations of this policy by non-members of the College community, including alumni, disciplinary sanctions may include being temporarily or permanently barred from the College or subject to other restrictions.

Informal Resolution Outcomes

Depending on the nature and circumstances of the particular situation, parties may agree to outcomes such as:

- Mutual No Contact Orders;
- Imposition of a one-party No Contact Order, placing the burden on the respondent to limit the respondent's physical proximity to the complainant;
- Restrictions on the respondent from participation in particular organizations or events;
- Changes to on-campus housing, subject to availability;
- Conversation between the parties facilitated by the Title IX Coordinator or a trained individual appointed by the Title IX Coordinator; and/or
- Other measures deemed appropriate by the Title IX Coordinator.

Failure to Comply with the Informal Resolution Agreement

Failure to comply with the signed agreement may result in disciplinary action for either party, consistent with the disciplinary procedures described in other College policies.