

FIU-105 REGULATION ON PROHIBITED DISCRIMINATION, HARASSMENT AND RELATED MISCONDUCT INCLUDING SEXUAL AND GENDER-BASED HARASSMENT, SEXUAL VIOLENCE, DATING VIOLENCE, DOMESTIC VIOLENCE AND STALKING

Responsible University Officer: Title IX Coordinator

Responsible Office: Equal Opportunity Programs and Diversity

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I. POLICY STATEMENT

Florida International University (FIU or the University) affirms its commitment to ensure that each member of the University community shall be permitted to work or study in an environment free from any form of illegal discrimination based on race, color, religion, age, disability, sex (including sexual misconduct), sexual orientation, gender identity or expression, national origin, marital status, veteran status, and/or any other legally protected status (collectively referred to as Protected Status¹). The University recognizes its obligation to work towards a community in which diversity is valued and opportunity is equalized.

The University recognizes that discrimination and/or harassment based on a Protected Status undermines the integrity of the academic and work environment. All members of the University community should be able to work and/or learn in an atmosphere free from discrimination and/or harassment; and the University is committed to addressing conduct that violates these standards. The University encourages all community members to take reasonable and prudent actions to prevent or stop Prohibited Conduct. Taking action may include direct intervention when safe to do so, enlisting the assistance of friends, contacting law enforcement, or seeking assistance from a person in authority. Community members who chose to exercise this responsibility will be supported by the University and protected from Retaliation. It is the particular responsibility of those members of the University community who hold positions of authority over others to avoid actions that are, or can be considered, a violation of this Regulation or as unprofessional.

This Regulation prohibits all forms of Discrimination and Harassment based on Protected Status. It expressly, therefore, prohibits Sexual Violence and Sexual Exploitation, which by definition involves conduct of a sexual nature and is prohibited form of Sexual or Gender-Based Harassment. This Regulation further prohibits Dating Violence, Domestic Violence and/or Stalking, which does

¹ Any word or phrase that is capitalized is a defined term and is contained in the Section III Definitions.

not need to be based on an individual's Protected Status to be prohibited under this Regulation. Finally, this Regulation prohibits Complicity for knowingly assisting in an act that violates this Regulation and Retaliation against an individual because of his or her good-faith participation in the reporting, investigation, or adjudication of violations of this Regulation. University students and employees who violate this Regulation may face discipline up to and including expulsion or termination.

To foster a climate that encourages prevention and reporting of Discrimination, Harassment, and related misconduct, the University will actively promote prevention efforts, educate the community, respond to all reports promptly, provide Interim Protective Measures to address safety and emotional well-being, and act in a manner that recognizes the inherent dignity of the individuals involved.

The University is committed to the principles of free inquiry and expression. Vigorous discussion and debate are fundamental to this commitment, and this Regulation is not intended to restrict teaching methods or freedom of expression, nor will it be permitted to do so. Offensiveness of conduct, standing alone, is not sufficient for the conduct to constitute prohibited Harassment. The conduct must be sufficiently severe to interfere with an individual's ability to participate in employment or educational program and activities from both a subjective and objective perspective. Prohibited Conduct under this Regulation is not a proper exercise of academic freedom and may not be legally protected expression. On the contrary, Prohibited Conduct compromises the University's integrity as well as its tradition of intellectual freedom.

II. SCOPE AND APPLICABILITY

This Regulation applies to the conduct of University students and employees, including faculty and staff. The non-discrimination provisions also apply to contractors and other third parties under circumstances within the University's control. The Regulation provides for the prompt and equitable resolution of reports of Discrimination, Harassment, and related misconduct.

This Regulation applies to all Prohibited Conduct that occurs on campus. It also applies to Prohibited Conduct that occurs off campus, including online or electronic conduct, if: the conduct occurred in the context of an employment or education program or activity of the University, had continuing adverse effects on campus, or had continuing adverse effects in an off-campus employment or education program or activity. Examples of covered off-campus conduct include athletic competitions, University-sponsored study abroad, research, or internship programs. In determining whether the University has jurisdiction over off campus conduct that is not part of an educational program or activity of the University, the Title IX Coordinator/Director of the Equal Opportunity Programs/Diversity Office will consider the seriousness of the alleged conduct, the risk of harm involved, whether both parties are members of the campus community, and/or whether the off campus conduct is part of a series of actions that occurred both on and off campus.

Regardless of where the conduct occurred and with whom, the University will offer resources and assistance to community members who are subject to Prohibited Conduct. The University will also assist the Reporting Party in identifying and contacting external law enforcement agencies and community resources, as desired.

III. DEFINITIONS

- A. **Reporting Party** is defined as any individual who may have been the subject of any Prohibited Conduct by an individual or organization covered under the Regulation regardless of whether the Reporting Party makes a report or seeks action under the Regulation.
- B. **Responding Party** is defined as any individual who has been accused of violating the Regulation.
- C. **Protected Statuses** is defined as certain characteristics possessed by an individual that have been afforded protection by law, such as age, color, creed, disability, gender, gender expression, gender identity, genetic information, national origin, race, religion, sex, sexual orientation, or veteran status.
- D. **Age** is defined as the number of years from the date of a person's birth. With respect to employment, individuals who are forty (40) years of age or older are protected from Discrimination and Harassment. There is no age threshold for students or other participants in educational programs or activities.
- E. **Color** is defined as an individual's skin pigmentation, complexion, shade, or tone.
- F. **Creed** is defined as a well-formed and thought-out set of beliefs held by more than one individual, which may not necessarily involve belief in a supreme being. The University will accommodate an individual's observances and practices required by their creed unless it is unable to reasonably accommodate an individual's creed-required observance or practice without undue hardship.
- G. **Disability** is defined as any person who has a physical or mental impairment that substantially limits one or more major life activities; or has a record of such impairment; or is regarded as having such impairment. A qualified person with a disability must be able to perform the essential functions of the employment or the academic, athletic, or extra-curricular program, with or without reasonable accommodation.
- H. **Gender** is defined as an individual's socially constructed status based on the behavioral, cultural, or psychological traits typically associated with societal attribution of masculinity and femininity, typically related to one's assigned sex at birth.
- I. **Gender Expression** is defined as how someone expresses gender through appearance, behavior, or mannerisms. A person's Gender Expression may or may not be the same as the Gender Identity or Gender.
- J. **Gender Identity** is defined as the Gender with which an individual identifies psychologically regardless of what Gender was assigned at birth.
- K. **Genetic Information** is defined as the information about (i) an individual's genetic tests, (ii) the genetic tests of family members of such individual, and (iii) the manifestation of a disease or disorder in family members of such individual. Genetic Information includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services by such individual or any family member of such individual.
- L. **National Origin** is defined as an individual's actual or perceived country or ethnicity of

origin.

- M. **Race** is defined as an individual's actual or perceived racial or ethnic ancestry or physical characteristics associated with a person's race, such as a person's color, hair, facial features, height, and weight.
- N. **Religion** is defined as all aspects of religious observance and practice as well as belief.
- O. **Sex** is defined as an individual's biological status of male or female, including pregnancy. Conduct of a sexual nature is by definition based on Sex as a Protected Status.
- P. **Sexual Orientation** is defined as the inclination or capacity to develop intimate emotional, spiritual, physical, and/or sexual relationships with people of the same Sex or Gender, a different Sex or Gender, or irrespective of Sex or Gender.
- Q. **Veteran's Status** is defined as disabled veterans, special disabled veterans, Veterans of the Vietnam era, and other protected Veterans as defined by federal and state law.
- R. **Prohibited Conduct** is defined as misconduct based on any form of Discrimination and Harassment based on a Protected Status and Domestic Violence, Dating Violence, Stalking, Complicity, and Retaliation.
- S. **Sexual or Gender-Based Harassment** is defined as those incidents that are sufficiently pervasive, persistent, or severe that a reasonable person would be adversely affected to a degree that interferes with his/her ability to participate in or to realize the intended benefits of a University activity, employment, or resources.
Sexual or Gender-Based Harassment includes
 - (1) unwelcome sexual advances, requests for sexual favors and other verbal, physical, or electronic conduct of a sexual nature that creates a hostile, intimidating, or abusive environment;
 - (2) verbal, physical, or electronic conduct based on Sex, Gender, Sexual Orientation, or sex-stereotyping that creates a hostile, intimidating, or abusive environment, even if those acts do not involve conduct of a sexual nature; or
 - (3) exhibiting what is perceived as a stereotypical characteristic for one's Sex or for failing to conform to stereotypical notions of masculinity and femininity, regardless of the actual or perceived Sex, Gender, Sexual Orientation, Gender Identity, or Gender Expression of the individuals involved.
- T. **Sexual Assault² or Sexual Violence** is defined as forms of Sexual or Gender-Based Harassment that involve having or attempting to have Sexual Contact with another individual without Consent.
- U. **Sexual Exploitation** is defined as a form of Sexual or Gender-Based Harassment that involves one or more of the following behaviors committed for any purpose, including sexual arousal or gratification, financial gain, and/or other personal benefit:
 - (1) taking sexual advantage of another person without Consent;
 - (2) taking advantage of another's sexuality; or
 - (3) extending the bounds of consensual Sexual Contact without the knowledge of the other

² The following terms included in this definitional section also have corresponding Florida statutory definitions because the behavior may constitute a crime: [sexual assault](#), [sexual exploitation](#), [dating violence](#), [domestic violence](#), [stalking](#), and [aggravated stalking](#). Some Florida criminal statutes overlap with the definitions contained in the Regulation and some may provide greater protection.

individual.

Examples of Sexual Exploitation include, but are not limited to:

- threatening to disclose an individual's Sexual Orientation, Gender Identity, or Gender Expression;
- observing another individual's nudity or Sexual Contact, or allowing another to observe the same, without the knowledge and Consent of all parties involved;
- non-consensual streaming of images, photography, video, or audio recording of Sexual Contact or nudity, or distribution of such without the knowledge and/or Consent of all parties involved;
- prostituting another individual;
- knowingly exposing another individual to a sexually transmitted infection, without the individual's knowledge and/or Consent;
- knowingly failing to use contraception without the other party's knowledge and/or Consent; and
- inducing Incapacitation for the purpose of taking sexual advantage of another person.

V. **Sexual Contact** is defined as the intentional touching or penetration of another person's clothed or unclothed body, including but not limited to the mouth, neck, buttocks, anus, genitalia, or breast, by another with any part of the body or any object in a sexual manner. Sexual Contact also includes causing another person to touch their own or another's body in the manner described above.

W. **Consent** is defined as an affirmative act or statement by each person that is informed, freely given and mutually understood.

- It is the responsibility of each person involved in any sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity.
- Consent must be ongoing throughout a sexual activity and can be revoked at any time.
 - Within each sexual encounter, there may be separate individual sexual acts involved, and consent to one act by itself does not constitute consent to another act.
- Lack of protest or resistance does not mean consent, nor does silence mean consent has been granted.
- The existence of a dating relationship between the persons involved, or the fact of past sexual relations, should never by itself be assumed to be an indicator of consent for any current or future sexual encounter.
- If Coercion or Force is used, there is no consent.
- If a person is mentally or physically incapacitated so that the person cannot understand the fact, nature or extent of the sexual situation, there is no consent; this includes but is not limited to conditions due to age, alcohol or drug consumption.
 - Someone under 16 years of age cannot consent to sexual activity regardless of the age of the other person. Someone who is at least 16 years of age but less than 18 years of age cannot consent to sexual activity if the other person is 24 years of age

or older.

- Whether one has taken advantage of a position of influence over another may be a factor in determining consent.

X. **Coercion or Force** is defined to include conduct, intimidation, and/or express or implied threats of physical, emotional, or financial harm that would reasonably place an individual in fear of immediate or future harm and that is employed to persuade or compel someone to engage in Sexual Contact.

Examples of Coercion or Force include

- causing the deliberate Incapacitation of another person;
- conditioning an academic benefit or employment advantage on submission to the Sexual Contact;
- threatening to harm oneself if the other party does not engage in Sexual Contact; or
- threatening to disclose an individual's Sexual Orientation, Gender Identity, Gender Expression, or other personal sensitive information if the other party does not engage in the Sexual Contact.

Y. **Incapacitation** is defined as a temporary or permanent state in which a person cannot make informed, rational judgments because the person lacks the physical or mental capacity to understand the nature or consequences of his or her words and/or conduct and/or the person is unable to physically or verbally communicate consent.

Z. **Dating Violence** is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Reporting Party. The existence of such a relationship shall be determined based on the Reporting Party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purpose of this definition—

- (1) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- (2) Dating violence does not include acts covered under the definition of domestic violence.

Z. **Domestic violence** is defined as (1) A felony or misdemeanor crime of violence committed—

- (1) By a current or former spouse or intimate partner of the Reporting Party;
- (2) By a person with whom the Reporting Party shares a child in common;
- (3) By a person who is cohabitating with, or has cohabitated with, the Reporting Party as a spouse or intimate partner;
- (4) By a person similarly situated to a spouse of the Reporting Party under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
- (5) By any other person against an adult or youth Reporting Party who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

AA. **Stalking** is defined as (i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress. (ii) For the purposes of this definition--(A) Course of conduct means two or more acts, including, but not limited to, acts in which the

stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Reporting Party.

BB. **Complicity** is defined as any act that knowingly aids, facilitates, promotes, and/or encourages the commission of Prohibited Conduct by another person.

CC. **Retaliation** is defined as acts or words taken against an individual because of the individual's participation in a protected activity that would discourage a reasonable person from engaging in protected activity. Protected activity includes an individual's good faith: (i) participation in the reporting, investigation, and/or resolution of an alleged violation of this Regulation; (ii) opposition to policies, practices, and/or actions that the individual reasonably believes are in violation of the Regulation; or (iii) requests for accommodations on the basis of religion or disability. Retaliation may include intimidation, threats, Coercion, physical harm, or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated. Retaliation may be committed by the Responding Party, the Reporting Party, or any other individual or group of individuals.

DD. **Title IX Coordinator** is defined as the individual who oversees FIU's response to reports and complaints that involve sexual violence, dating violence, domestic violence, and/or stalking, who monitors the outcomes, identifies and addresses any patterns, and assesses the effects on the campus climate so the University can address such issues that affect the wider school community.

EE. **Interim Protective Measures** is defined as those temporary actions taken by the University to ensure equal access to its education programs and activities and to foster a more stable and safe environment during the process of reporting, investigating, and/or disciplining, if appropriate, a violation of this Regulation.

FF. **Responsible Employee** is defined as any employee who has the authority to take action to redress sexual violence, domestic violence, dating violence and/or stalking; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or who has been designated as Campus Security Authority.

GG. **Campus Security Authorities** is defined as those University employees who have a duty of reporting incidents of behavior that may constitute a Clery Crime to the Clery Coordinator (e.g., members of the University Police Department and those officials with significant responsibility for student and campus activities). An official with significant responsibility for student and campus activities is defined as any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.

Examples of Campus Security Authorities include:

- the Dean of Students
- the Director of Campus Life
- any Residential Life professionals (e.g., Resident Advisor)
- staff at the Office of Student Conduct and Conflict Resolution who oversee the student conduct process
- the athletic coaches
- a faculty advisor to a student organization

HH. **Clery Crimes** are defined as:

- (i) Primary crimes include

- (A) Criminal homicide (i.e., murder, non-negligent manslaughter, negligent manslaughter)
- (B) Sex offenses (i.e., rape, fondling, incest, statutory rape)
- (C) Robbery
- (D) Aggravated assault
- (E) Burglary
- (F) Motor vehicle theft, and
- (G) Arson

(ii) Arrests and referrals for disciplinary actions, including (A) arrests for liquor law violations, drug law violations, and illegal weapons possession. (B) Persons not included (ii)(A) above but were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

(iii) Hate crimes including

- (1) Larceny-theft
- (2) Simple assault
- (3) Intimidation, and
- (4) Destruction/damage/vandalism of property.

To constitute a hate crime, it must appear that the Reporting Party was intentionally selected because of the perpetrator's bias against the Reporting Party. Bias includes the Reporting Party's actual or perceived Race, Religion, Gender, Gender Identity, Sexual Orientation, Ethnicity, National Origin, and Disability, and

(iv) Dating violence, domestic violence, and stalking

II. **Response Team** is defined as a group of designated individuals who respond to a report of sexual misconduct, dating violence, domestic violence, and/or stalking.

JJ. **Minor** is defined as a person who is under the age of 18 years old.

KK. **Preponderance of the Evidence** is defined as when the information that is presented supports a finding that it is more likely than not that a violation occurred.

IV. PROHIBITED CONDUCT

A. Discrimination and Harassment Based on All Protected Statuses Prohibited

This Regulation prohibits all forms of Discrimination and Harassment based on an individual's Protected Status, including, Age, Color, Creed, Disability, Gender, Gender Expression, Gender Identity, Genetic Information, National Origin, Race, Religion, Sex, Sexual Orientation, Veteran's Status and/or any other legally protected status. In addition, this Regulation prohibits related misconduct, including Domestic Violence, Dating Violence, Stalking, Complicity, and/or Retaliation.

This Regulation prohibits Discrimination, meaning any unlawful distinction, preference, or detriment to an individual as compared to others that is based on an individual's Protected Status and that is sufficiently serious to unreasonably interfere with or limit:

- An employee's or applicant for employment's access to employment or conditions and benefits of employment (e.g., hiring, advancement, assignment); or
- A student's or admission applicant's ability to participate in, access, or benefit from educational programs, services, or activities (e.g., admission, academic standing, grades, assignment, campus housing).

Discrimination includes failing to provide reasonable accommodations, consistent with state and federal law, to a qualified person with a disability.

This Regulation prohibits Harassment, which is a type of Discrimination that occurs when verbal, physical, electronic, or other conduct based on an individual's Protected Status interferes with that individual's (a) educational environment (e.g., admission, academic standing, grades, assignment); (b) work environment (e.g., hiring, advancement, assignment); (c) participation in a University program or activity (e.g., campus housing); and/or (d) receipt of legitimately requested services (e.g., disability or religious accommodations), thereby creating hostile environment harassment or quid pro quo harassment, as defined below.

Hostile environment harassment: Unwelcome conduct based on Protected Status that is so severe, persistent, or pervasive that it alters the conditions of education, employment, or participation in a University program or activity, thereby creating an environment that a reasonable person in similar circumstances and with a similar identity would find hostile, intimidating, or abusive. An isolated incident, unless sufficiently severe, does not amount to hostile environment harassment.

Quid pro quo harassment: Unwelcome conduct based on Protected Status where submission to or rejection of such conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's education, employment, or participation in a University program or activity.

Consistent with the definitions provided above, below are examples of conduct that constitutes Discrimination and Harassment:

- May be blatant and involve an overt action, threat, or reprisal; or may be subtle and indirect, with a coercive aspect that is unstated but implied.
- May or may not include intent to harm.
- May not always be directed at a specific target.
- May be committed by anyone, regardless of Protected Status, position, or authority. While there may be a power differential between the Reporting Party and the Responding Party (perhaps due to differences in age or educational, employment, or social status), Discrimination and Harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the Reporting Party has a current or previous relationship, including a romantic or sexual relationship.
- May be committed by or against an individual or by or against an organization or group.
- May occur in the classroom, in the workplace, in residential settings, or in any other setting.
- May be a pattern of behavior or, if sufficiently severe, a one-time event.
- May be committed in the presence of others when the Reporting Party and Responding Party are alone, or through remote communications, including email, text messages, or social media.
- May take the form of threats, assault, property damage, economic abuse, and violence or threats of violence.
- May include harassing or retaliatory behavior directed to a sexual or romantic partner, family member, friend, or pet of the Reporting Party.

The University strongly discourages amorous or sexual relations between employees (i.e., faculty

and staff) and students. Such relationships, even when consensual, may be exploitive, and imperil the integrity of the educational process or work environment. They may also lead to charges of Sexual Harassment.

However, when an individual evaluates (including academic evaluations) or directly supervises another individual with whom he or she has an amorous or sexual relationship, a conflict is created and that is Prohibited Conduct. The University will take action to resolve any conflict of interest created by these relationships.

Whenever a conflict of interest situation arises or is reasonably foreseen, the employee in a position of authority must resolve any potential conflict of interest by taking necessary steps, including, but not limited to, removing himself or herself from evaluative or academic decisions concerning the other individual. If he or she is unable to resolve personally the conflict of interest, he or she is required to inform the immediate supervisor promptly and seek advice and counsel in dealing with the conflict. The employee, along with the supervisor, is responsible for taking steps to ensure unbiased supervision or evaluation of the employee or student. Failure to resolve potential or actual conflict of interest situations as described in this Regulation may result in disciplinary action in accordance with University policies.

This Regulation does not preclude a division, college, or department from having a stronger policy against amorous or sexual relationship between employees or between faculty and/or staff with students provided that the policy is approved following the procedure set forth in University Policy 150.205 Developing University-Wide Policies.

B. SEXUAL ASSAULT, SEXUAL VIOLENCE, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING ARE PROHIBITED FORMS OF DISCRIMINATION

Just as the University's prohibition of discrimination based on Protected Status (including Sexual Assault as a form of Sexual Harassment) is grounded in federal law, so is its prohibition against Domestic Violence, Dating Violence, and Stalking. The University's response to Sexual Assault, Sexual Violence, Domestic Violence, Dating Violence, and Stalking is governed by the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) (the Clery Act) and Section 304 of the 2013 Amendments to the Violence Against Women Act. Such acts violate the essential dignity of our community member(s) and are contrary to our institutional values. The University is committed to taking all appropriate steps to eliminate Sexual Assault, Sexual Violence, Domestic Violence, Dating Violence and Stalking; prevent the recurrence of such acts; and address their effects, both for the Reporting Party and the broader community. The University recognizes that Sexual Assault, Sexual Violence, Domestic Violence, Dating Violence, and Stalking encompass a broad spectrum of conduct and will respond according to both the severity of the offense and the threat it poses to the campus community.

V. REPORTING OPTIONS

The University is committed to providing reporting options through multiple contact points across campus that are broadly accessible to all University community members. Any individual can make a report under this Regulation to the individuals or to the individuals/departments listed

below. The report may be made in person, by telephone, in writing, by e-mail, electronically, or anonymously. All reports will be shared with the Title IX Coordinator and University’s Response Team. If the report involves a Minor, the Florida Department of Children and Families will be contacted as required by Florida Statutes Sections 39.201 and 39.205 and the University Mandatory Reporting of Child Abuse, Abandonment, and Neglect policy (see <http://policies.fiu.edu/files/785.pdf>).

REPORTING OPTIONS

Below is a list of University employees to which someone could report.

Shirlyon McWhorter Title IX Coordinator Director, Equal Opportunity Programs and Diversity PC215 Phone: (305) 348-2785 E-Mail: eopd@fiu.edu	Kristen Kawczynski Deputy Title IX Coordinator Director, Student Conduct and Conflict Resolution GC311A Phone: (305) 348-3939 E-Mail: kristen.kawczynski@fiu.edu
Julie Berg Deputy Title IX Coordinator Senior Associate Athletic Director USCBA 202A Phone: (305) 348-2352 E-Mail: julie.berg-Mc_Graw@fiu.edu	Larry Lunsford Vice President of Student Affairs GC219K Phone: (305) 348-2797 E-Mail: Larry.Lunsford@fiu.edu
Cathy Akens Associate Vice President of Student Affairs Dean of Students GC219E Phone: (305) 348-6726 E-Mail: Catherine.Akens@fiu.edu	Karyn Boston University Compliance Officer Office of University Compliance and Integrity PC429 Phone: (305) 348-2216 E-Mail: karyn.boston@fiu.edu

Below is a list of web-based reporting options.

Silent witness which provides confidential reporting to the FIU Police Department: http://police.fiu.edu/Silent_Witness.php	Maxient reporting which provides confidential reporting to Student Affairs: https://publicdocs.maxient.com/incidentreport.php?FloridaIntlUniv
FIU Ethical Panther line which provides confidential reporting to the University Compliance Office at www.convercent.com/report or by calling 1-844-312-5358.	

In determining to whom to report, it is important that the Reporting Person understand the consequences of making such a report.

A. University Employees Who Must Report Violations

The University employees who are obligated by law or by University designation to report potential violations of this Regulation are those who are Responsible Employees and Campus Security

Authorities. Examples of Responsible Employees include Deans, Directors, Department Chairs, Coaches, Student Affairs professionals (including Resident Advisors), and faculty who serve as advisors to student groups. Members of the University Police Department are also Responsible Employees. Responsible Employees will safeguard an individual's privacy, but are **required** by the University to immediately share all details about a report of Prohibited Conduct (including the known details of the incident (e.g., date, time, location), the names of the parties involved, a brief description of the incident and whether the incident has been previously reported) with the Title IX Coordinator in person, by telephone, electronically, or by email. Such reporting ensures timely support for all parties and enables an effective and consistent institutional response.

Campus Security Authorities must share all known details of an incident which may constitute a Clery Crime, consistent with the expectations for Responsible Employees with the Clery Act Coordinator and the Title IX Coordinator. The Clery Act Coordinator is responsible for maintaining the University's daily crime log and annual security report which contains information on certain crimes but no identifying information with respect to a Reporting Party.

B. Other Individual's Reporting Obligation (Except Confidential Resources)

All other employees (who are not designated as confidential resources) will safeguard an individual's privacy, but are **strongly encouraged** to share any information about such conduct with the Title IX Coordinator and/or a member of the Response Team in recognition of the understanding that centralized reporting is an important tool to address, end and prevent Prohibited Conduct.

Similarly, all **students** (who are not otherwise required to report as a Responsible Employee and/or Campus Security Authority) are **strongly encouraged** to report any information, including reports or partial reports, to the Title IX Coordinator and/or a member of the Response Team.

C. Confidential Resources

The trained professionals designated below can provide counseling, information, and support in a confidential setting. These confidential resources will not share information about an individual (including whether that individual has received services) without the individual's express permission unless there is a threat of serious harm to the patient/client or to others or there is a legal obligation to reveal such information (e.g., suspected abuse or neglect of a Minor). The on-campus professionals are also available to help an individual make a report to the University.

On Campus:

Victim Empowerment Program (VEP)

Counseling and Psychological Services (CAPS)

MMC | SHC 270

(305) 348-2277

BBC | WUC 320

(305) 919-5305

Office Employee Assistance

MMC | UHSC136

BBC | ACII 246B

(305) 348-2469

University Student Health Services

MMC | SHSC

(305) 348-3336

BBC | SHSC

(305) 919-5620

The following individuals serve as an ombudsperson to either the students or faculty. These individuals will protect the confidentiality of the student or faculty member to the extent permitted by law. However, they are considered both a Responsible Employee and Campus Security Authority.

Tony Delgado Office of the (Student) Ombudsperson

Assistant Dean of Students

GC219 Phone: (305) 348-2797

E-Mail: Tony.Delgado@fiu.edu

Barbara Bader

Faculty Ombudsperson

Office of the Provost

PC529 Phone: (305) 348-0296

The following are off-campus providers which provide confidential services. However, these providers have no obligation to report to the University.

JMH Rape Treatment Center

(305) 585-7273

Florida Council Against Sexual Violence Information Line

1-888-856-RAPE

For any report under this Regulation, every effort will be made to respect and safeguard the privacy interests and safety of all individuals involved in a manner consistent with the need for a careful assessment of the allegation and any necessary steps to eliminate the conduct, prevent its recurrence, and address its effects. Privacy and confidentiality have distinct meanings under this Regulation.

1. Privacy

Privacy generally means that information related to a report under this Regulation will only be shared with those University employees who “need to know” in order to assist in the active review, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process. If the decision is made to pursue an action against a Responding Party, information related to the report will be shared with the Reporting Party at the same time as it is shared with the Responding Party. Information regarding a report will not be shared with either party’s parents or guardians unless

the party is a Minor (and sharing is permissible under the Family Education Rights and Privacy Act (FERPA)); the party has signed a waiver that is compliant with FERPA; or there is an articulable threat to the health or safety of the party or other individuals.

2. Confidentiality

Confidentiality means that information shared with designated campus or community professionals will only be disclosed with the individual's express written permission unless there is a continuing threat of serious harm to the patient/client or to others or there is a legal obligation to reveal such information (e.g., where there is suspected abuse or neglect of a Minor). An individual can seek confidential assistance and support by speaking with specially designated Confidential Resources.

3. Records

The Equal Opportunity Programs/Diversity Office will maintain records of all reports under this Regulation and their outcomes in order to track patterns and systemic behaviors.

4. Release of Information

If a report of Prohibited Conduct discloses a serious and immediate threat to the campus community, FIU Police Department will issue a timely notification to protect the health or safety of the community as required by the Clery Act. The notification will not include identifying information about a Reporting Party.

Pursuant to the Clery Act and the 2013 Amendments to the Violence Against Women Act, anonymous statistical information regarding reported criminal incidents must be shared with FIU Police Department for inclusion in the daily crime log. This information will also be included in the University's annual security report.

All University proceedings are conducted in accordance with the requirements of Title IX, the Clery Act, the Violence Against Women Act, FERPA, state and local law, and University Regulation. No information, including the identity of the parties, will be released from such proceedings except as required or permitted by law or University Regulation.

5. Understanding the Difference Between Making a Report to the University and Seeking Confidential Assistance Through a Confidential Resource

There is a distinction between making a report to the University such as to a Responsible Employee, Campus Security Authority, or the University Police and seeking confidential assistance through confidential resources. Making a report to the University by contacting one of the groups listed above means that the report will be shared with the Title IX Coordinator and/or members of the University's Response Team. The Title IX Coordinator and/or a University Response Team member will communicate with the Reporting Party regarding resources, support and to identify the appropriate action to respond to the report as outlined in this Regulation. There are many options for resolution of a report, and a Reporting Party is encouraged to make a report even if he or she does not want the University to take action against a Responding Party. The University will make every effort to respect a Reporting Party's autonomy if that is the Reporting Party's desire. Support and resources are always available to a Reporting Party regardless of the chosen course of action. Notwithstanding the Reporting Party's decision, the University will assess

whether it is necessary to take some action to continue to provide a safe and non-discriminatory environment. The University will advise the Reporting Party as necessary.

By contrast, information shared with a Confidential Resource will not be disclosed to anyone else, including the University, except under very limited circumstances. Any individual may choose to seek support from confidential professionals on and off campus, including the staff at the Victim Empowerment Program, the counselors at the University Counseling and Psychological Services Center, medical health providers, clergy, and rape crisis counselors.

D. Mandatory Reporting of Abuse, Abandonment, and Neglect Policy of a Minor

This policy applies to all Florida International University (FIU) faculty, staff, students and volunteers. This policy implements the mandatory reporting obligations in Florida law regarding child abuse, abandonment and neglect. In the State of Florida, any person who knows, or has reasonable cause to suspect, that a Minor is abused, abandoned or neglected must immediately report this information to the Florida Department of Children and Families (DCF) in order that no harm comes to the Minor.

In the course of their employment, research, service and/or academic endeavors, all FIU faculty, staff, students and volunteers are expected to report instances of abuse, abandonment and neglect of a Minor which they know of or have reasonable cause to suspect. FIU strives to create an environment where anyone who knows of, or has reasonable cause to suspect, abuse, abandonment or neglect of a Minor feels empowered to report it without any fear of retaliation. Additionally, any person who knows, or has reasonable cause to suspect, that a Minor is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender must immediately report the information to the DCF. The means to contact DCF are set forth below in the Procedures section outline in the University policy which can be found online at: <http://policies.fiu.edu/files/785.pdf>.

E. The Effect of Making a Report

Making a report to the University means telling a Responsible Employee or Campus Security Authority what happened, in person, by telephone, in writing, by e-mail, electronically, or anonymously. The University encourages a Reporting Party or someone on the Reporting Party's behalf to make a report directly to a Responsible Employee or Campus Security Authority. In turn, these University employees will, as quickly as possible, refer the report to the Title IX Coordinator and/or the Response Team to assure consistent application of this Regulation.

Upon receipt of a report, the Title IX Coordinator and/or the Response Team will conduct an initial assessment of the incident or behavior at issue which includes evaluating the risk of harm to the parties, any other individuals, or the broader campus community; the Reporting Party's desired course of action; and the necessity for any Interim Protective Measures to protect the safety of the Reporting Party, any other individuals, and/or the community. A member of the Response Team will offer appropriate resources to support the Reporting Party and at the conclusion of the initial assessment, determine the appropriate manner of resolution.

The University recognizes that deciding whether to make a report and choosing how to proceed

are personal decisions. A Reporting Party does not have to decide whether to request any particular course of action. Choosing to make a report and deciding how to proceed after making a report is a process that unfolds over time. The University will make every effort to respect a Reporting Party's choice, including the desire for autonomy, in making the determination as to how to proceed. Resources are always available to support a Reporting Party regardless of the course of action chosen. All individuals are encouraged to make a report regardless of when or where the incident occurred, and to seek any necessary help from campus or community resources. Notwithstanding the Reporting Party's decision, the University will assess whether it is necessary to take action to continue to provide a safe and non-discriminatory environment. The University will advise the Reporting Party as necessary.

VI. INTERIM PROTECTIVE MEASURES AVAILABLE THROUGH THE UNIVERSITY

When a report is received, the Title IX Coordinator or designee, in consultation with other appropriate administrators, will make an assessment of any risk of harm to the parties, any other individuals, or to the broader campus community and may impose reasonable and appropriate Interim Protective Measures when necessary to protect the safety of the parties or witnesses involved and/or to provide academic or other appropriate support. Interim Protective Measures are temporary actions taken by the University to ensure equal access to its education programs and activities and to foster a more stable and safe environment during the process of reporting, investigating, and/or disciplining, if appropriate, a violation of this Regulation. Because they are temporary in nature, interim protective measures may be amended or withdrawn as additional information is gathered. The Title IX Coordinator or designee, in consultation with other administrators, will maintain consistent contact with the parties so that all safety, emotional, and physical well-being concerns can be reasonably addressed.

Interim Protective Measures may be applied to the Reporting Party, the Responding Party, and/or other involved individuals as appropriate to ensure their safety and well-being. Interim Protective Measures may be requested by the parties or the University at any time, regardless of whether any particular course of action is sought by the Reporting Party. The range of Interim Protective Measures may include:

- Access to counseling services and assistance in setting up initial appointments
- Imposition of a "No-Contact Order" for all or part of any University property
- Rescheduling of exams and assignments
- Providing alternative course completion options
- Change in class schedule, including the ability to drop a course without penalty or to transfer sections
- Change in work schedule or job assignment
- Change in campus housing assignment
- Assistance from University support staff in completing housing relocation, if feasible
- Limiting access to certain University facilities or activities pending resolution of the matter
- Voluntary leave of absence from work in accordance with University policies
- Providing an escort to assure safe movement between classes and activities
- Arranging for medical services
- Providing academic support services, such as tutoring

- University-imposed leave, suspension, or separation for the Responding Party
- Any other feasible measure(s) which can be tailored to the involved individuals to achieve the goals of this Regulation.

All individuals are encouraged to report concerns about the adequacy of the Interim Protective Measures or failure of another individual to abide by any Interim Protective Measure to the Title IX Coordinator. Violations of Interim Protective Measures will be addressed in accordance with this Regulation. The Title IX Coordinator will take appropriate, responsive, and prompt action to enforce Interim Protective Measures and/or to respond to Retaliation by another party or witness.

VII. INVESTIGATION OF A REPORT OF A POTENTIAL VIOLATION OF THIS REGULATION AND RESOLUTION OF AN INVESTIGATION

If, after an initial assessment of a report of a Prohibited Conduct, the Title IX Coordinator determines that an investigation is necessary, the Title IX Coordinator will oversee the investigation. If Reporting Party and the Responding Party are students, the Director of Student Conduct and Conflict Resolution/Deputy Title IX Coordinator will work with the Title IX Coordinator regarding the investigation. All investigations will be conducted in a prompt fashion to determine what occurred and whether steps must be taken to resolve the situation. The investigation phase will be completed within 60 calendar days from the filing of a report or when the University becomes aware of behavior that may be a violation of this Regulation. The parties will be advised of any extension of time as needed to complete the investigation phase.

There may be instances in which a Reporting Party is unable or unwilling to pursue a report of Discrimination, but where the University administration is aware of the behavior. In such instances, the Title IX Coordinator may choose to pursue an investigation of the alleged offense. The decision of whether or not to take further action on a report will be based on an assessment of safety and the maintenance of a non-discriminatory environment.

The investigation may include, but shall not be limited to, interviewing the Reporting Party and the Responding Party regarding the allegations, interviewing other persons who may have information relevant to the allegations, preparing witness statements for all persons interviewed, and reviewing of any relevant documents. Upon completion of the investigation, a report shall be prepared which includes a summary of the complaint, a description of the investigation, and the findings of fact.

A. Resolution of the Investigation When Both Parties are Employees or if the Responding Party is an Employee and the Reporting Party is a Student

If the Reporting Party and Responding Party are employees or if the Responding Party is an employee and the Reporting Party is a student, the investigation report shall be given to the following people at the same time: the Vice President for Human Resources or designee, the Reporting Party, the Responding Party, the immediate supervisor of the Responding Party, and the appropriate vice president or department head for additional action as necessary.

Either party may seek review of the investigation report to the Vice President for Human Resources or a designee by filing an appeal within three (3) calendar days of receipt of the

investigation report. The appeal shall be based on one or more of the following: relevant evidence was not reviewed and/or new evidence is available, or the factual evidence was insufficient to support the findings. The appeal shall be in writing and shall set forth the issues to be considered in the appeal. Copies of the appeal shall be provided to the other party. The other party may file a response to the appeal to the Vice President for Human Resources or designee within three (3) days of receipt of the appeal. The Vice President for Human Resources or designee shall issue a written finding within three (3) calendar days after receipt of the appeal, or of a response to the appeal, whichever is later, and will give the report to all parties at the same time. These deadlines may be extended provided all parties mutually agree in writing to the extension.

Upon final acceptance by the Vice President for Human Resources or designee of a written finding that there was a Preponderance of Evidence that an employee violated this Regulation, the Director of Employee Labor and Relations Department, the immediate supervisor of the Responding Party, and the Title IX Coordinator will determine the disciplinary action to be taken against the Responding Party. The resolution of the complaint will be communicated to the Reporting Party and the Responding Party at the same time. Disciplinary action shall be taken in accordance with the Regulations and policies affecting the class of employee and the terms of any applicable collective bargaining agreement.

B. Resolution of the Investigation When Both Parties are Students or the Reporting Party is an Employee and the Responding Party is a Student

If the Reporting Party and Responding Party are students or if the Reporting Party is an employee and the Responding Party is a student, the investigation report shall be given to the Reporting Party, the Responding Party, and the Director of Student Conduct and Conflict Resolution/Deputy Title IX Coordinator at the same time. The Director of Student Conduct and Conflict Resolution/Deputy Title IX Coordinator will determine whether the Responding Party should be charged with a violation of the Student Code of Conduct and will advise the Title IX Coordinator accordingly. If such determination is made, the Student Code of Conduct will govern the process. See FIU Regulation 2501 at <http://regulations.fiu.edu/regulation>.

VIII. ADDITIONAL RESOURCES

A. Equal Opportunity Programs and Diversity Office

The Equal Opportunity Programs and Diversity Office has primary responsibility for administering this Regulation and oversees the investigation, response to, and resolution of all reports of Prohibited Conduct; however, questions, concerns, and/or reports may also be addressed to any member of the Response Team.

Title IX Coordinator

The University has designated the Director of the Equal Opportunity Programs and Diversity as the Title IX Coordinator. The Title IX Coordinator oversees the University's investigation, response to, and resolution of all reports of Prohibited Conduct based on sex (including Sexual or Gender-Based Harassment and Sexual Violence), Domestic Violence, Dating Violence, and Stalking, and of related Complicity and Retaliation involving students, faculty, and staff. The Title

IX Coordinator is:

- Knowledgeable and trained in University policies and procedures and relevant state and federal laws;
- Available to advise any individual, including a Reporting Party, a Responding Party, or a third party about University and community resources and reporting options;
- Available to provide assistance to any University employee regarding how to respond appropriately to a report of Title IX-related Prohibited Conduct, Domestic Violence, Dating Violence, Stalking, and/or related Retaliation;
- Participates in ensuring the effective implementation of this Regulation, including monitoring compliance with all procedural requirements, recordkeeping, and timeframes;
- Responsible for overseeing training, prevention, and education efforts and annual reviews of climate and culture; and
- Maintains all discrimination reports.

Inquiries or concerns about Title IX may be referred to the University's Title IX Coordinator. Concerns about the University's application of Title IX under this Regulation may be addressed to the United States Department of Education, Office for Civil Rights:

Title IX Coordinator

Shirlyon McWhorter
(305) 349-2785 | shirlyon.mcwhorter@fiu.edu

Office for Civil Rights

(800) 421-3481
Email: OCR@ed.gov

B. Response Team

A report of Prohibited Conduct may be made to any designated person or by any method included in the Reporting Option section above. Members of the Response Team can help any University community member understand the Regulation and the options for resolving concerns raised under this Regulation in academic or work settings at the University. The Response Team will attempt to protect and safeguard the privacy of all individuals involved in a manner consistent with the need for a careful assessment of and response to the report.

The Response Team consists of a small “need to know” number of individuals. Depending on the roles (e.g., student, faculty, and staff) of the Reporting Party and the Responding Party, the Response Team includes the following:

- Title IX Coordinator
- Student Conduct and Dispute Resolution Director/Deputy Title IX Coordinator
- Dean of Students
- Director of Victim Empowerment Program
- Director of Residential Life
- Assistant Chief of Police of the University Police Department
- Vice President for Academic Affairs
- Senior Associate Athletic Director/Deputy Title IX Coordinator
- Other administrators as needed depending on the facts and circumstances of the case.

C. How to Get Help In the Event of an Emergency

Anyone who has experienced Sexual Violence, Domestic Violence, Dating Violence, and/or Stalking is urged to immediately seek help. In life threatening situations, dial 911. Other help includes seeking medical assistance, seeking confidential counseling or crisis response, filing a report with law enforcement, and making a report to the University. FIU Police Department will help any individual get to a safe place, provide transportation to the hospital, contact another law enforcement agency, and offer information about the University’s resources and processes. Information about the difference between Reporting Options and confidential resources is listed above.

<u>Emergency Response</u>	<u>Medical Treatment</u>	<u>Confidential Counseling & Crisis Response</u>
<p>Call 911</p> <p>FIU MMC Police (305) 348-5911</p> <p>FIU BBC Police (305) 919-5911</p> <p><i><u>Other Agencies Not Affiliated with FIU that can be Contacted for Emergency Assistance</u></i></p> <p>Sweetwater Police Department (305) 552-9900</p> <p>Miami-Dade Police Department (305) 476-5423</p>	<p>FIU Student Health Services MMC SHSC (305) 348-2401</p> <p>BBC SHS (305) 919-5307</p> <p><i><u>Other Agencies Not Affiliated with FIU that can be Contacted for Medical Treatment</u></i> Rape Treatment Center (305) 585-5185</p>	<p>FIU Counseling and Psychological Services (CAPS) counselingservices.fiu.edu MMC SHC 270 (305) 348-2277 BBC WUC 320 (305) 919-5305</p> <p>Victim Empowerment Program (VEP)vep.fiu.edu 24 Hour Hotline (305) 348-3000</p> <p>FIU Office of Employee Assistance MMC UHSC136 BBC ACII 246B (305) 348-2469</p>

IX. RETALIATION PROHIBITED

Retaliation is expressly prohibited by this Regulation, and the University will take immediate and responsive action to any report of Retaliation or any violation of Interim Protective Measures. During the investigation and resolution of violations of this Regulation that are alleged in good faith, reasonable steps will be taken to protect the Reporting Party, the Responding Party, and other participants in the reporting, investigation, and resolution process from Retaliation. Any individual who engages in Retaliation will be subject to prompt and appropriate disciplinary action. Individuals who have a concern about potential or actual Retaliation should contact the Title IX Coordinator for assistance in addressing the concern. If the concern about Retaliation involves the Equal Opportunity Programs/Diversity Office or Title IX Coordinator, an individual may contact the Vice President of Human Resources.

X. EDUCATION AND PREVENTION PROGRAMS

The University is committed to offering educational programs to promote awareness and prevention of Prohibited Conduct. Educational programs include an overview of the University’s policies and procedures; relevant definitions, including prohibited conduct, discussion of the impact of alcohol and illegal drug use; Consent; safe and positive options for bystander intervention; review of resources and reporting options available for students, faculty, and staff; and information about risk reduction. Incoming first year students and new employees will be offered primary prevention and awareness programming as part of their orientation. Returning

students and employees will also have ongoing opportunities for training and education. The Title IX Coordinator maintains an education and prevention calendar and tailor programming to campus needs and climate. Online training programs can be accessed through the Division of Human Resources Talent Management and Development's website at http://hr.fiu.edu/index.php?name=professional_development.

As part of the University's commitment to provide an educational and work environment free from Prohibited Conduct, this Regulation will be disseminated widely to the University community through email communication, publications, websites, new employee orientations, student orientations, and other appropriate channels of communication.

XI. ANNUAL REVIEW

This Regulation is maintained by the Equal Opportunity Programs and Diversity office. The Equal Opportunity Programs and Diversity Office and Title IX Coordinator will review this Regulation on at least an annual basis, with the assistance of an advisory group consisting of student, faculty, staff, and community representatives selected by senior leadership of that office. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the resolution process (including the fairness of the process, the time needed to complete the process, and the sanctions and remedies imposed). The review will include the opportunity for individuals affected by the Regulation to provide feedback and will incorporate an aggregate view of reports, resolution, and climate. The Title IX Coordinator will prepare an annual report, publicly available, which will include recommendations and steps taken to improve the delivery of services and the effectiveness of the Regulation and procedures.

XII. CONTACTS

Questions about this Regulation should be directed to Shirlyon McWhorter, the Title IX Coordinator and Director of the Equal Opportunity Programs and Diversity office at Florida International University Modesto A. Maidique Campus PC 321 11200 S.W. 8th Street Miami Florida. The telephone number for the Equal Opportunity Programs and Diversity office is 305.348.2785. The fax number is 305.348.3459. The Title IX Coordinator's email address is shirlyon.mcwhorter@fiu.edu.

The Title IX Coordinator has appointed the following people as Deputy Title IX Coordinators:

- Dr. Kristen Kawczynski, Director of the Student Conduct and Conflict Resolution Department. Her contact information is: (305) 348-3939. Her email address is kristen.kawczynski@fiu.edu.
- Julie Berg, Senior Associate Athletic Director. Her contact information is: (305) 348-2352. Her email address is: Julie.berg-Mc_Graw@fiu.edu.

Specific Authority: Board of Governors Regulation 1.001 (5)(a). History-- Formerly FIU-104 (repealed) and FIU-103 (repealed). New April 15, 2015.