

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES  
FLORIDA BOARD OF GOVERNORS**

**NOTICE OF PROPOSED AMENDMENT TO REGULATION**

**REGULATION NO.:** FIU-2501

**REGULATION TITLE:** Student Code of Conduct

**SUMMARY:** This amendment to the Regulation is to clarify when Florida International University may impose sanctions against a student who possesses weapons or firearms. This amendment will be brought before the FIU Board of Trustees at its March 27, 2014 meeting.

**TEXT OF REGULATION:** The full text of the Proposed Regulation can be viewed below and on the website of The Florida International University Board of Trustees, <http://regulations.fiu.edu>. If you would like a copy of the Proposed Regulation, please contact Eli Deville, Chief of Staff, Office of the General Counsel at (305) 348-2103.

**AUTHORITY:** Florida Board of Governors Regulation 6.0105 Student Conduct and Discipline; Florida Board of Governors Regulation 6.010 Student Affairs Administration; Florida Board of Governors Regulation 1.001(4)(a)(10); and Section 7(d), Article IX, Florida Constitution.

**NAME OF PERSON INITIATING PROPOSED REGULATION:** Dr. Larry Lunsford, Vice President for Student Affairs.

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED REGULATION MUST SUBMIT COMMENTS IN WRITING TO THE CONTACT PERSON LISTED BELOW. ALL WRITTEN COMMENTS MUST BE RECEIVED BY THE CONTACT PERSON WITHIN 14 CALENDAR DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE.

**CONTACT PERSON REGARDING THE PROPOSED REGULATION:** Eli Deville, Chief of Staff, Office of the General Counsel, Florida International University, 11200 SW 8<sup>th</sup> Street, PC 511, Miami, FL 33199. Email: [devillee@fiu.edu](mailto:devillee@fiu.edu) Fax: (305) 348-3272. Phone: 305-348-2103.

**DATE OF PUBLICATION:** December 26, 2013

**THE FULL TEXT OF THE REGULATION IS PROVIDED BELOW:**

## **FIU-2501 Student Code of Conduct**

The policies, regulations and requirements contained in this Student Code of Conduct may be revised in order to serve the needs of the University Students, faculty and staff, and to respond to changes in the law. The University or the Florida International University Board of Trustees may make changes in policies, regulations and other requirements. The ultimate responsibility for knowing University requirements and regulations rests with the Student. For the latest Student Code of Conduct, please refer to the website of the Office of Student Conduct & Conflict Resolution (SCCR) at <http://www2.fiu.edu/~sccr/>.

### **STANDARDS OF STUDENT CONDUCT**

#### **(1) Student Code of Standards**

A University is a learning community following a tradition more than 1,000 years old. Florida International University (the University) is a community dedicated to generating and imparting knowledge through excellent teaching and research, the rigorous and respectful exchange of ideas, and community service.

The University Student Code of Standards and the Statement of Philosophy were developed to embody the values that we hope our students, faculty, staff, administration and alumni will demonstrate. At the same time, the University is strongly committed to freedom of expression. Consequently, the Student Code of Standards and the Statement of Philosophy do not constitute University policy and are not intended to interfere in any way with an individual's academic or personal freedoms. We hope, however, that individuals will respect these common principles thereby contributing to the traditions and scholarly heritage left by those who preceded them making Florida International University a better place for those who follow.

As a member of the University community, we would hope that you would:

- Respect the tradition of academic inquiry, the University's rules of conduct, and its mission.
- Respect the opinions and differences of all members of the FIU community.
- Practice civility and demonstrate conduct that reflects the values of the institution.
- Respect the rights and property of the University and its members.
- Be diligent and honest in your personal and academic endeavors.

#### **(2) STUDENT CODE OF CONDUCT**

##### **Statement of Philosophy**

As an academic community, Florida International University fosters the intellectual exchange of ideas, knowledge, and experience. It is the responsibility of the University to provide a stimulating environment in which scholarship and personal growth may occur. The desired effect is that Students will take advantage of this environment to develop intellectually as well as participate as responsible, contributing citizens of our community.

##### **Statement of Rights and Freedom**

Florida International University recognizes the basic rights and freedoms of Students. They are inherent to the educational process and to the intellectual growth of Students. The following rights and freedoms are recognized as basic to the educational process:

**Freedom of Expression and Assembly**

Students are guaranteed freedom of expression. Students and Student groups may discuss, pass resolutions, write or distribute literature and leaflets, circulate petitions, sponsor speakers and public forums, and take other orderly actions which do not disrupt the essential function of the University and which are consistent with the University's Regulation 110-Demonstrations and Regulation 114 Commercial Solicitation and Advertising.

**Freedom of Association**

Students are free to form and join University organizations.

**Freedom in the Classroom**

Students are responsible for learning the content of courses of study, but have the right to take reasoned exception to the data or views offered in the classroom. Students have the right to expect that course descriptions will reflect actual course content, to receive a written syllabus for each course, to be informed of the standards on which evaluation in each course will be based, and to be fairly and justly evaluated based only on performance in the course. Students also have the right to consult with faculty during announced office hours.

**Freedom from Improper Disclosure**

In accordance with the federal Family Educational Rights and Privacy Act (FERPA) and the Florida Student Records statute, Students shall have access to records maintained on them and be protected from improper disclosures to third parties without their consent. Academic and Student Conduct records will be maintained separately. The procedures for access will be explicitly stated.

**Freedom from Discrimination**

Students shall not be discriminated against on the basis of race, color, creed, age, sex, sexual orientation, marital status, disability, religion, national origin, or any other legally protected status. Freedom from discrimination includes eligibility to Student Organizations, University activities, academic programs, employment, use of facilities, and housing.

**Freedom from Sexual Harassment**

Students are entitled to work and study in an atmosphere free from sexual harassment. Harassment constitutes, in the aggregate, the incidents that are sufficiently pervasive or 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. Sex-based cyber harassment and sexual violence are forms of sexual harassment. Sexual violence is defined as physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol or where a victim is unable to give consent due to an intellectual or other disability.

**Right to Due Process**

Students have the right to due process as appropriate for Student Conduct situations. This includes Written Notice of hearing, information concerning the charges and allegations against them, the opportunity to present information on their own behalf, and written notice of the decision.

**Statement of Student Rights and Responsibilities**

All Students regardless of institutional or program affiliation are expected to know and adhere to the regulations of the University as well as applicable laws. Those charged with and found responsible for violations of the Student Code of Standards and/or the Student Code of Conduct (see below) will be subject to Student Conduct action as provided for below.

### **Principles of Group Responsibility**

Any Student Organization can be held responsible for its actions or the actions of a collection of its members acting together. It is recognized that occasional misconduct on the part of individual members will not be attributed to and/or be cause to penalize the organization. However, misconduct on the part of the organization may be addressed when one or more of the following circumstances occur:

- a. Members of the organization act together to violate University Policy.
- b. A violation arises out of an organization-sponsored, financed, or otherwise supported activity.
- c. The organization's leadership has knowledge of the incident, behavior, etc., and fails to take corrective or prohibitive action or fails to stop such incident, behavior, etc., while it is occurring.
- d. A violation occurs on premises and/or transportation owned, operated, or rented exclusively by the organization.
- e. A pattern of individual violations has occurred and/or continues to occur without adequate control, response, or sanction on the part of the organization or its leaders.
- f. The organization or related activities provided the context for the violation.
- g. The organization chooses to protect from official action one or more individual offenders who are members, former members, or guests of the organization.

It is the responsibility of the Student Organization's President or designee to represent the organization through the conduct process.

### **(3) DEFINITIONS**

(a) **Advisor**—Any person chosen by the Charged Student or the alleged Complainant to assist him/her throughout the Student Conduct process.

(b) **Business Day**—The day when the University is open for regular business operations (excluding legal holidays).

(c) **Complainant**—Any person who submits a charge alleging that a Student violated the Student Code. When a Student believes that s/he has been a victim of another Student's misconduct, that Student will have the same rights under this Student Code as are provided to the Complainant, even if another member of the University Community submitted the charge itself.

(d) **Charged Student**—Any Student who has been formally charged with an alleged violation of the Student Code of Conduct.

(e) **Final Agency Action**—The written decision resulting from the Student Conduct process which finally determines the rights or obligations of the Charged Student.

(f) **Greek Organization**—A social organization recognized by Campus Life/Office of Sorority & Fraternity Life which is affiliated with a regional, national, or international organization. Additionally, each chapter must be recognized by one of the following: the Interfraternity Council (IFC), Multicultural Greek Council (MGC), National Pan-Hellenic Council (NPHC), or the Panhellenic Council (PC).

(g) **Hearing Body**—Any person or persons authorized by the Vice President for Student Affairs, the SCCR Director, the Director of Residential Life or the Director of Campus Life to conduct hearings to determine whether a Charged Student has violated the Student Code and to impose sanctions.

(h) **Hearing Officer**—The SCCR Director, the Director of Residential Life, or the Director of Campus Life or each of their respective designee(s).

(i) **Interim Suspension**—An immediate temporary separation from the University.

(j) **Member of the University Community**—Any person who is a currently enrolled Student, faculty or staff, University Official, any other person currently employed by the University, or working on University Premises.

(k) **On-Campus or University Premises**—Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

any building or property that is within or reasonably contiguous to that previously described in this paragraph that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (e.g. a food or other retail vendor).

(l) **Policy**—The written procedures, policies, or regulations of the University as found in, but not limited to, the Student Code of Conduct, the Undergraduate/Graduate Catalogs, the Student Handbook, the University Housing Resident Handbook, and the Campus Life policies.

(m) **Preponderance of the Evidence**—When the information that is presented supports a finding that it is more likely than not that a violation occurred.

(n) **Receipt of Written Notice**—When Written Notice (see below for definition) has been sent electronically to the official University email address.

(o) **SCCR Director**—The Director of the Office of Student Conduct and Conflict Resolution (SCCR) or designee.

(p) **Student**—Any person who participates in any course or program of the University, either full-time or part-time, and whether degree-seeking or non-degree seeking. Persons who withdraw after allegedly violating the Student Code of Conduct, persons who are not officially enrolled at the University for a particular term but who have a continuing relationship with the University, persons who have been notified of being accepted for admission, and persons who are living in the residence halls but are not enrolled at the University are also considered Students. Student Organizations and Greek Organizations are also considered Students.

(q) **Student Organization**—A group of currently enrolled University students who unite to promote a common interest. Any group of Students organized for a specific purpose (e.g., social, professional, honorary) whose membership consists solely of University Students. Student Organizations includes Student clubs, University recognized Student Organizations, Student Organizations that have not been recognized by the University, and Student sports clubs.

(r) **University**—Florida International University.

(s) **University Official**—Any person employed by the University to perform assigned teaching, research, administrative, professional or other responsibilities (e.g., faculty, staff, administrators, residence hall staff, FIU Police, etc.).

(t) **Vice President**—The Vice President for Student Affairs or designee(s).

(u) **Written Notice**—A notification of the charges against the Charged Student sent via email to the Charged Student's official University email address. A notification to a Greek or Student Organization sent via email to the official University email address of the organization's President. This method of notification will constitute full and adequate notice under the Student Code of Conduct. The SCCR Director retains the discretion to send duplicate notices via letter by other means (e.g., overnight or hand delivery).

#### **(4) JURISDICTION**

(a) Jurisdiction under the Student Code of Conduct applies to the conduct of any Student, Greek Organization, or Student Organization that occurs on University Premises, at University-related activities, on all locations where a University course or program is being conducted, including foreign locations, such as study abroad programs, and/or off-campus conduct that adversely affects the University community and/or the pursuit of its objectives.

(b) Each Student shall be responsible for his/her conduct from the time that he/she has been notified of admission through the actual awarding of a degree even though the conduct may occur before classes begin or after classes end. Each non-degree seeking Student shall be responsible for his/her conduct from the time that he/she has been notified of admission and while enrolled in classes even if the conduct occurs before or after classes. Each Student (including non-degree seeking) is responsible for his/her conduct during the academic year and during periods between terms of actual enrollment. The Student Code shall apply to a Student's conduct even if the Student withdraws from the school while a Student Conduct matter is pending or if the conduct is not discovered until after a Student has withdrawn or a degree has been awarded.

(c) The University reserves the right to impose discipline based on off-campus conduct. For example, discipline may be imposed if:

(i) The off-campus conduct is specifically prohibited by law or the Student Code of Conduct;

(ii) The off-campus conduct demonstrates that the continued presence of the Student on campus presents a danger to the health, safety, or welfare of the University community, is disruptive to the orderly conduct, processes and functions of the University, or is intimidating or threatening to the University community or member of the University community; or

(iii) The off-campus conduct is of such a serious nature that it adversely affects the Student's suitability to remain a part of the University community.

(d) The action of the University with respect to off-campus conduct shall be taken independently of any off-campus authority or proceeding. The University Student Conduct proceeding is not a criminal or judicial proceeding and is designed to address Charged Student behavior; therefore, alleged violations of the University's Code of Conduct will be addressed independently of any criminal or judicial proceeding and regardless of whether the criminal charges have been dismissed or reduced.

## **(5) AUTHORITY**

(a) The Board of Trustees of Florida International University has been charged with the responsibility of, and authority for, providing a Student misconduct system. Authority for the Student misconduct system rests with the University President, who has delegated this authority to the Vice President.

(b) Hearing Bodies are authorized by the Vice President to conduct Student Conduct hearings.

(c) All Hearing Bodies have the authority to consult with other appropriate University Officials in order to effectively resolve a Student Conduct matter.

(d) Any specific procedures used by Hearing Bodies will comply with the requirements of this Student Code of Conduct.

(e) Decisions of all Hearing Bodies constitute Final Agency Action unless there is a timely appeal. If a decision is timely appealed, the decision of the appellate body constitutes Final Agency Action.

(f) The Hearing Bodies authorized to conduct Student Conduct hearings are as follows:

1. The SCCR Director may conduct both informal and formal hearings.
2. The University Student Conduct Committee may conduct formal hearings.
3. The Residential Life Hearing Officer may conduct both informal and formal hearings regarding cases arising in University Housing and Residential Life. If the alleged offense may result in a sanction of deferred suspension or greater, the Charged Student will be referred to the SCCR.
4. The Hearing Officer for the Student Government Association (SGA) and all other governing councils within Campus Life may conduct informal or formal hearings regarding cases of the Campus Life council's alleged violation of the SGA and/or individual council constitutions.

## **(6) OFFENSES**

The following offenses or any attempt to violate these offenses will be used in charging all Students, Student Organizations or Greek Organizations. Nothing in this section shall be interpreted to abridge the right of any member of the University community to freedom of expression protected by the First Amendment of the United States Constitution and any other applicable law.

### **(a) Alcohol**

Students who choose to drink will be held fully responsible for their behavior while under the influence of alcohol. Loss of control due to intoxication does not excuse or justify a violation of the state law, University Policy, or the rights of others.

1. Possession, use or consumption of alcohol when under the legal drinking age as provided by Florida Law.
2. Dispensing, selling or supplying alcoholic beverages to an individual who is under the legal drinking age as provided by Florida Law.
3. Any violations of Florida International University Policies governing alcohol usage. See, e.g., FIU-Regulation 2505 Alcoholic Beverages.
4. Use or possession of beer kegs and party balls or other common sources of alcohol in On-Campus housing facilities.
5. Possession of open containers of alcohol or consumption of alcoholic beverages in public areas, such as balconies, courtyards or hallways.
6. Public intoxication (i.e., appearing in a state of intoxication) and excessive drinking.
7. Violating any other University Policy while under the influence of alcohol.
8. Misrepresenting or misstating one's age; using altered identification in order to obtain alcohol when the Student is under the legal drinking age.
9. Use or possession of devices designed for the rapid or excessive consumption of alcohol, including but not limited to, funnels, and beer bongs.
10. Hosting a gathering where underage individuals are drinking alcohol.
11. Unlawfully manufacture, trade, or intent to sell alcohol.
12. Reporting to classes, work, or related assignments "under the influence" of alcohol.

The University recognizes that Students may need medical assistance due to excessive use of alcohol but may hesitate to seek assistance because they themselves or others who may have participated or witnessed the event may be charged with violations of this Code. The University does not want to discourage Students from seeking medical assistance. Therefore, Students involved in the event may not be charged with the possession or consumption of alcohol if one of them calls for assistance for themselves or others who have participated or witnessed the event. Other charges related to the incident (e.g., alcohol distribution, or other non-alcohol charges) may be pursued at the discretion of the SCCR Director.

**(b) Computer Misuse**

1. Unauthorized access, entry or use of a computer, computer system, network, software, password, account or data.
2. Unauthorized alteration or degradation of computer equipment, software, network, data or system performance.
3. Unauthorized copying or distribution of computer software or data.
4. Unauthorized use of University computer resources for commercial purposes or personal financial or other gain. This includes, but is not limited to, advertising a product or service on personal web pages, fund-raising or advertising on behalf of unsanctioned non-University organizations, publicizing of unsanctioned non-University activities, the reselling of University resources to any non-University individuals or organizations, and the unauthorized use of the University's name or logos. Use of the University's network for any of these purposes, even if the user is using his/her own personal computer, constitutes an offense.
5. Allowing another person to use one's FIU username and password.
6. Any other violation of the University computer use and web page policies. The complete policies are available at <http://security.fiu.edu/training/training3.htm>. (The website also contains the civil and criminal penalties for distributing, without authority, copyrighted materials (including unauthorized peer-to-peer file sharing) and the penalties for violating federal copyright law.
7. Unauthorized distribution of copyrighted materials, including but not limited to, unauthorized peer-to-peer file sharing. Unauthorized distribution is a violation whether the user is using his/her own personal computer or the University's information technology system for the unauthorized distributions.

**(c) Disruptive Conduct**

1. Behavior that substantially and materially disrupts, disturbs, impairs, interferes with or obstructs the orderly conduct, processes, and functions of the University or the rights of other Members of the University Community.
2. Behavior that substantially and materially disrupts, disturbs, impairs, interferes with or obstructs the orderly conduct, processes, and functions of the classroom or laboratory and/or immediate surrounding areas. This includes interfering with the academic mission of the University or individual classroom or interfering with a faculty member or instructor's role to carry out the normal academic or educational functions of his/her classroom laboratory and/or immediate surrounding areas.
3. Behavior that substantially and materially disrupts or interferes with the University Student Conduct process, including, but not limited to, harassment and/or intimidation of any member of the Student Conduct Committee, witness or University personnel before, during or after a proceeding, or attempting to coerce or influence any person(s) in order to discourage their participation in any Student Conduct proceeding.
4. Any behavior that substantially and materially disturbs the peace.

**(d) Drugs**

1. Possession, use, the manufacture, or the cultivation of illegal drugs or prescription drugs without a prescription. Inhaling or ingesting substances (e.g., nitrous oxide, glue, paint, etc.) that will alter a Student's mental state is also prohibited.
2. Distribution, dispensation, delivery, trade, sale, or intent to sell illegal drugs or prescription drugs.
3. Possession or use of drug paraphernalia (including, but not limited, to bongos, pipes, "hookahs," spoofs, rolling papers, blunts, small plastic baggies, etc.).
4. Misuse or abuse of prescription drugs.

The University recognizes that Students may need medical assistance due to excessive use of drugs but may hesitate to seek assistance because they themselves or others who may have participated or witnessed the event may be charged with violations of this Code. The University does not want to discourage Students from seeking medical assistance. Therefore, Students involved in the event may not be charged with the possession or use of drugs if one of them calls for assistance for themselves or others who may have participated or witnessed the event. Other charges related to the incident (e.g., drug distribution, or other non-alcohol charges) may be pursued at the discretion of the SCCR Director.

**(e) Endangerment**

1. Physical violence toward another person or group.
2. Action(s) that endanger the health, safety, or welfare of self or others.

**(f) Failure to Comply**

1. Failure to comply with a request or directive of a University Official or non-University law enforcement official in the performance of his/her duty.
2. Failure to comply with the final decision and sanctions rendered by a Student Conduct hearing or appellate body.
3. Failure to comply with a request by a University official to identify oneself and/or produce FIU identification.

**(g) Falsification/Fraud/False Testimony**

1. Withholding relevant information from any Hearing Body, University Officials, University and/or non-University law enforcement officers, faculty or staff.
2. Providing false or misleading information (whether oral or written) to any Hearing Body, University Officials, University and/or non-University law enforcement officers, faculty or staff.



3. Misuse, reproduction, alteration or forgery of any identification, documents, keys or property.
4. Permitting another person to use one's identification information.
5. Inappropriate use or possession of false identification information.
6. Purporting to act on behalf of another person, group or the University without authorization or prior consent.
7. Providing a worthless check, money order or using a fraudulent credit card or a credit card without authorization.
8. Any other acts of falsification/fraud/false testimony or misrepresentation.

**(h) Fire and Safety**

1. Inappropriate activation of any emergency warning equipment or the false reporting of any emergency.
2. Removing, damaging, interfering or tampering with fire safety or other emergency warning equipment, including smoke detectors, sprinklers, and fire alarms. Items may not be hung from or block sprinklers or smoke detectors.
3. Failure to evacuate a University building, facility or On-Campus housing facility/unit when a fire alarm is sounded.
4. Action(s) which cause or attempts to cause a fire or explosion.

**(i) Hazing**

1. Any group or individual action or activity that inflicts or intends to inflict physical or mental harm or discomfort or which may demean, disgrace, or degrade any person, regardless of location, intent, or consent of participant(s). Although hazing is typically related to a person's initiation or admission into, or affiliation with, a Student or Greek Organization, athletic team (intramural, club or intercollegiate), extracurricular activity, or any other University group or organization, it is not necessary to have direct proof that a person's initiation or continued membership is contingent upon participation in the activity for a charge of hazing to be upheld. The actions of either active or associate members (pledges) of an organization may be considered hazing. Hazing includes, but is not limited to:

- Interference with a Student's academic performance
- Forced consumption of any food, alcohol, controlled substances, drugs, or any other substance
- Forced physical activity
- Deprivation of food or sleep
- Kidnapping, including restricting a person to move about in free and lawful manner
- Physical abuse of any nature, including physical discomfort
- Performing personal chores or errands
- Verbal abuse or degradation, including yelling or demands
- Assigning or endorsing pranks (e.g., stealing, harassing other organizations, defacing property, etc.)
- Any action or threatened action that would subject the individual to embarrassment, humiliation or mental distress, including the use of demeaning names
- Any other acts or attempted acts which would constitute hazing pursuant to Section 1006.63 of the Florida Statutes.

**(j) Littering**

1. Dispersing litter in any form on University grounds or facilities, including, but is not limited to, cigarette butts, flyers, cans, bottles, etc.

**(k) Personal Abuse**

1. Verbal or written abuse, threats, intimidation, and/or coercion that objectively endangers the health, safety, or well-being of others. Fighting words and statements which reasonably endanger the health and safety of any person are not protected speech and may result in University action. This definition shall not be interpreted to abridge the right of any member of the University community to freedom of expression protected by the First Amendment of the United States Constitution and any other applicable law.

2. Conduct directed at any person, including a Member of the University Community, which is intended to cause fear, distress, or intimidation and would cause fear, distress, or intimidation to a reasonable person or would place a reasonable person in fear of injury or death.

3. Conduct that is sufficiently severe, pervasive, or persistent that a reasonable person would be adversely affected to a degree that interferes with or limits a his/her ability to participate in or benefit from the services, activities, or opportunities offered by the University school when such conduct is based on race, color, national origin, gender, disability, or any status protected by federal or Florida law.

4. Interference with the freedom of another person or group to move about in a lawful manner.

**(l) Motorcycles, Bicycles, Pocket Bikes, Rollerblades, or Skateboards**

1. The use or operation of motorcycles, bicycles, pocket bikes, rollerblades, skateboards, etc. inside of any On-Campus Premises such that they create safety hazards or are secured to non-authorized locations.

2. The use of pocket bikes on sidewalks or roadways such that they create safety hazards or are secured to non-authorized locations.

**(m) Promotions/Posting**

1. Solicitation (i.e., passing or handing out flyers/promotional material, etc.) On Campus, including On-Campus housing facilities, without prior approval from the appropriate University Officials. This includes, but is not limited to, the disbursement of any forms of promotional/informational material on University Premises or objects (e.g., motor vehicles) on University Premises.

2. Posting of flyers, posters, banners, cards or any promotional/informational material on On-Campus Premises, including, but not limited to, the exterior and interior of On-Campus housing facilities, buildings, trees, walls, sidewalks, vehicles, windows, stairwells, stairs, display cases, vending machines, doors, classrooms, departmental and unauthorized bulletin boards, railings, elevators, bathrooms, art/sculptures.

3. Use of chalk or powder-like substance on the sidewalks, grass, exterior or interior of any University facility, or any public area.

4. Use of "A" signs or free standing signs in public areas, sidewalks, grass, exterior of any University facility without prior approval from the appropriate University Officials.

**(n) Sexual Misconduct**

1. Non-consensual sexual contact which is any sexual touching with any object by any person upon another without consent. Sexual touching is contact of a sexual nature, however slight.

2. Obscene or indecent behavior, which includes, but is not limited to, exposure of one's sexual organs or the display of sexual behavior that would reasonably be offensive to others. Other forms of obscene or indecent behavior include sexual exhibitionism, prostitution or the solicitation of a prostitute, peeping or other voyeurism (video or otherwise), and going beyond the boundaries of consent, e.g., by allowing others to view consensual sex or the nonconsensual video or audio taping of sexual activity.

3. Sexual harassment constitutes, in the aggregate, 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. Sex-based cyber harassment and sexual violence also constitutes sexual harassment. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the usage of drugs or alcohol or intellectual or other disability. Sexual violence includes rape, sexual assault, sexual battery, and sexual coercion. Sexual coercion is defined as the act of using pressure or force to have sexual contact with someone who has already refused. Sexual assault constitutes the non-consensual sexual intercourse which is any sexual intercourse by any person upon another without consent. It includes oral, anal and vaginal penetration, however slight, with any object.

Consent means informed, freely given agreement, communicated by clearly understandable words or actions, to participate in each form of sexual activity. Consent cannot be inferred from silence, passivity, or lack of active resistance. A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity. By definition, there is no consent when there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. A person who is the object of sexual aggression is not required to physically or otherwise resist the aggressor; the lack of informed, freely given consent to sexual contact constitutes sexual misconduct. Intoxication is not an excuse for failure to obtain consent. A person incapacitated by alcohol or drug consumption, or who is unconscious or asleep or otherwise physically impaired, is incapable of giving consent.

4. Retaliation against or harassment of someone alleging sexual misconduct or otherwise obstructing the reporting of sexual misconduct or the participation in proceedings relating to sexual misconduct.

The University recognizes that Students may be hesitant to report sexual misconduct because they themselves (or witnesses they identify) may be charged with violations of other provisions of the Code (e.g., alcohol or drugs). The University may not pursue a disciplinary action for an alcohol or drug violation against a Charged Student, the Complainant, or any Student(s) who may have witnessed the incident.

**(o) Smoking**

1. Failure to comply with FIU Regulation 113 Smoke and Tobacco-Free Campus by smoking in or on any University Premises.

**(p) Stalking**

1. Activities occurring on more than one occasion that collectively instill fear in an individual and/or threaten his/her safety, mental health, or physical health, including, but not limited to, the following:

- Nonconsensual communication, including face-to-face, telephone calls, voice messages, electronic communication media, written letters/notes, unwanted gifts, etc.
- Making threatening or obscene gestures to an individual
- Pursuing or following an individual Complainant
- Surveillance or other types of observation of an individual
- Trespassing
- Vandalism
- Nonconsensual touching
- Contacting a person after a sanction has been issued prohibiting contact with that person, including, but not limited to, verbal, written or third party communication, or physical contact
- Cyber-stalking which means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose

2. Other conduct considered stalking under the stalking laws as outlined in Section 784.048, Florida Statutes.

**(q) Theft**

1. Removal or use of the property or services of another person or of the University without prior written consent or authorization.

2. Possession or sale of property or services of another person or of the University without prior written consent or authorization.

**(r) Vandalism/Damage**

1. Damage, destruction or defacing of property of another person, group or the University.

**(s) Weapons, Firearms, Explosives**

1. Possession, storage or use of firearms (except as provided in (6)(s)(2)), explosives, ammunition or other weapons or dangerous articles or substances, including, but not limited to tasers, switchblade knives and non-lethal weapons such as fireworks, paintball guns, air guns, archery equipment, BB guns, any dangerous chemical or biological agents, corrosive agents, compressed gas, sling shots, Chinese stars, or any other item used as a weapon.

2. In accordance with Florida Statutes Section 790.115, students are prohibited from possessing firearms on University property (i.e., land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the University) except as provided by Florida Statutes Section 790.25(5). Driving or parking vehicles that contain or store firearms on University Premises. Possession of a concealed weapon or firearm on the University Premises even if the Student possesses a concealed weapon license. The University specifically waives the statutory exception provided in Section 790.115(2)(a)(3), Florida Statutes, which allows a person to have such a firearm in a vehicle.

3. Notwithstanding the foregoing, weapons, including non-functioning antique display weapons, may be used for classroom instructional purposes or other University sanctioned activities (e.g., firearms under the direct supervision of ROTC, a diver's knife for a scuba divers' class) but only with prior approval by the appropriate University Official ~~(e.g., firearms under the direct supervision of ROTC, a diver's knife for a scuba divers' class).~~

**(t) On-Campus Housing (University Housing and Greek Houses) Policies**

1. Violation(s) of any Department of Housing and Residential Life or Sorority and Fraternity Life/Campus Life Policies published in hard copy or available electronically via the Department of Housing and Residence Life website <http://www.housing.fiu.edu/> and/or Sorority and Fraternity Life/Campus Life website [campuslife.fiu.edu/greeks.fiu.edu](http://campuslife.fiu.edu/greeks.fiu.edu).

**(u) Student and Greek Organizations/Clubs Policies**

1. Violation(s) of any Campus Life/Sorority and Fraternity Life Policies published in hard copy or available electronically via the Campus Life/Sorority and Fraternity Life website. See [campuslife.fiu.edu/greeks.fiu.edu](http://campuslife.fiu.edu/greeks.fiu.edu).

**(v) Gambling**

1. Soliciting, placing or accepting a bet on any high school, intercollegiate or professional athletic contest on University Premises or at a University or Student or Greek Organization-sponsored activity or event. Soliciting, facilitating or participating in any illegal gambling, bookmaking or illegal betting whether through a bookmaker, a parlay card, a pool or any other method of organized gambling on University Premises or at a University or Student or Greek Organization-sponsored activity or event.

**(w) Trespassing/Unauthorized Use**

1. Unauthorized presence in or unauthorized use of University Premises, facilities, or restricted areas.

Format

**(x) Other Violations**

1. Attempt or intent to commit any violation outlined in the Student Code of Conduct of Conduct.
2. Involvement in any violation outlined in the Student Code of Conduct. This includes encouraging others to commit acts prohibited by this Code and/or the failure to remove oneself from the area/incident where the offense is being committed or attempted.
3. Aids or abets another in any violation of federal law, state law, local ordinance, or University Policy.
4. Violation of federal, state law, local ordinance, or Florida International University Policies.

**(y) Bribery**

1. An offer, gift, receipt, or solicitation of a bribe of money, materials, goods, services or anything of value for the Student or others for the purpose of procuring or providing an advantage to which he/she is not otherwise legally entitled.

**(7) PRE-HEARING PROCEDURES**

**(a) Initiating Charges:** Any person or entity (including University departments, offices, officials, community members, etc.) may submit information regarding an alleged violation(s) of the Student Conduct Code for review by the SCCR in the following ways:

1. Filing a police report with the University Police Department or requesting that a report from another law enforcement agency be sent to the University Police Department.

2. Providing a signed SCCR incident report (see <http://www2.fiu.edu/~sccr/> for report) with accompanying supporting witness(es) statements and/or documentation to the office listed below based on the stated factors:

- a) If the incident occurred in any of the University's residential housing, submit the incident report to the Office of Residential Life.

- b) If the incident involved a member of a Greek Organization and/or occurred in one of the On-Campus Greek houses, submit the incident report to Sorority and Fraternity Life.

- c) If the incident occurs elsewhere and does not fall within the categories of (a) or (b) above, submit the incident report to the SCCR.

3. The SCCR Director will determine, in his/her discretion, whether further fact finding is needed and whether there is enough information to file charges and which Hearing Body is appropriate to handle the matter. When two or more Charged Students are charged in the same incident, the appropriate Hearing Officer, in his/her discretion, may hold a separate hearing for each Charged Student or may hold a joint hearing.

4. When a police or incident report relates to a charge of sexual misconduct, the SCCR Director will inform the University's Title IX Coordinator for the purpose of compliance with federal regulations. The SCCR will advise the Complainant of the referral. The SCCR Director will advise the Title IX Coordinator of the results of the fact finding that SCCR conducts.

**(b) Filing Time:** Anyone may file an incident report of an alleged Code violation with the applicable office designated in (a)(2) of this section within ninety (90) calendar days of the incident or obtaining knowledge about the incident, whichever is later. However, the SCCR Director may extend this filing time in certain cases, including but not limited to, stalking, sexual misconduct, domestic violence, endangerment, or where the delay may be related to issues of victimization or beyond the control of the University.

**(c) Written Notice (Charge Letter):** The Charged Student, Student Organization, or Greek Organization will be given a Written Notice of the Charges no less than five (5) Business Days prior to the hearing, unless waived by the student, or shortened in the case of an Interim Suspension. The Written Notice will include the following:

1. Notice of the charge(s), including specific code section(s) which constitutes the alleged violation(s) of the Student Conduct Code, and any other detail in order to prepare for a Student Conduct proceeding; and

2. An opportunity to attend an information session.

**(d) Information Session:** An information session is designed to provide the Charged Student, Student Organization, or Greek Organization with information about the hearing process and his/her or its rights as well as giving access to the documents supporting the charge available at that time.

1. The Charged Student, Student Organization, or Greek Organization will have an opportunity to review all information in the Student Conduct file at the information session with his/her or its Advisor (if any), including the names of witnesses to be called and the information to be used in the Student Conduct matter.

a) Subsequent to the information session, the SCCR Director or Hearing Officer may conduct any further fact finding regarding the incident that is subject to the charge. This information will be communicated to the Charged Student prior to the hearing.

2. The Charged Student, Student Organization, or Greek Organization will also receive information regarding the resources available for preparing for the hearing.

3. If a Charged Student, Student Organization, or Greek Organization fails to respond to a request to schedule an information session and/or fails to attend a scheduled information session, the Charged Student, Student Organization, or Greek Organization will be deemed to have waived his/her right to an information session. Under those circumstances, a hearing may be scheduled in the Charged Student's absence. Failure to attend to an information session will result in the SCCR Director determining the type of hearing. The hearing type will be determined based on the severity of the possible sanctions (e.g., suspension/expulsion cases will be referred to the Student Conduct Committee).

4. If the Charged Student fails to attend the information session, the SCCR Director may place a hold/service indicator on the Charged Student's record until the conclusion of the hearing. If sanctions are imposed as a result of the hearing, the hold/service indicator will be retained until the Charged Student fulfills all of the sanctions.

**(e) Right to Review Information to be used at a Hearing.** The Charged Student, Student Organization, or Greek Organization and Advisor, if any, have the right to inspect all of the information that will be presented against the Charged Student, Student Organization, or Greek Organization at least three (3) Business Days before the Student Conduct proceeding. The University has the right to review any information the Charged Student, Student Organization, or Greek Organization intends to use at a hearing at least three (3) Business Days before the Student Conduct proceeding.

## **(8) TYPES OF HEARINGS**

Two (2) types of hearings are provided by the Student Code of Conduct: formal and informal.

### **(a) Informal Hearing:**

1. An informal hearing is only available when the Charged Student, Student Organization, or Greek Organization waives the right to a formal hearing and requests that the Hearing Officer conducting the information session determine the findings and sanctions if applicable. The Hearing Officer reserves the right to conduct fact finding to make an informed decision. When the possible sanctions include suspension or expulsion, or there is a Complainant with rights defined in the Complainant's Rights section, an informal hearing is not an option.

2. If a Charged Student, Student Organization, or Greek Organization waives the right to a formal hearing conducted, he/she or it must indicate the waiver on a form provided by the SCCR during information session.

3. The following apply to an informal hearing:

a) The meeting(s) will not be recorded.

c) The written decision will serve as the official record of informal

hearings.

d) The written decision will be sent to the Charged Student within fourteen (14) Business Days from the conclusion of the Hearing Officer's deliberation.

4. If the Student does not choose the summary resolution (or the option is unavailable), the Student may indicate his/her preference for one of the two (2) types of formal hearings.

**(b) Formal Hearings.** The formal hearings are: 1) an Administrative hearing, or 2) the Student Conduct Committee hearing. All procedures described in the Hearing Procedures section apply to these types of hearing.

1. An Administrative hearing is conducted by a Hearing Officer who serves as the Hearing Body.

2. A Student Conduct Committee hearing is conducted by a committee which serves as the Hearing Body. The committee is comprised of two (2) Students and one (1) faculty or staff member. A Hearing Officer will moderate the hearing.

**(c)** The SCCR Director retains the discretion to ultimately determine which hearing forum is appropriate.

**(d)** All hearing(s) will be conducted in private.

## **(9) HEARING NOTIFICATION**

**(a) Scheduling.** Hearings may be scheduled during class periods. Every effort will be made to avoid a class conflict; however, due to availability of persons involved in the hearing and a room, it may not be possible.

**(b) Hearing Notice.** The notice of a hearing including date, time, and location will be sent to the official University email address of the Charged Student, or to the official University email address of the President of the Student Organization or Greek Organization at least five (5) Business Days prior to the hearing. The Hearing Officer has the discretion to provide notice through additional means. The receipt of the hearing notice through the official University email will constitute full and adequate notice under the Student Code of Conduct. The Charged Student, Student Organization, or Greek Organization may waive the notice period by indicating the waiver in writing.

1. The notice will include the names of witnesses to be called and information to be used in his/her or its matter.

2. The hearing notice will indicate whether the Hearing Officer received any additional information to be used in the hearing after the information session was conducted and will indicate when the additional information may be viewed.

3. The notice will also indicate the name(s) of the Hearing Body member(s).

### **(c) Challenging a Member of the Hearing Body/Change of a Hearing Body Member.**

1. The Charged Student, Student Organization, or Greek Organization has the right to challenge the inclusion of any member at least three (3) Business Days prior to the scheduled hearing. The challenge must be in writing and must show actual bias (such as a conflict of interest, animosity, pressure, or influence) that would preclude a fair and impartial hearing. The Hearing Officer will determine whether to grant such challenge in his/her discretion, and such decision is final.

2. If a Hearing Body member is unable to serve due to an emergency or unforeseeable occurrence, the Hearing Officer may appoint a new Hearing Body member prior to the scheduled hearing. The Charged Student, Student Organization, or Greek Organization may challenge the inclusion of this member at the time of hearing. The challenge must be on the basis outlined above.

**(d) Request for a Postponement.** Any request to postpone a hearing must be submitted in writing or by email and must be received by the SCCR Director at least 24 hours prior to the hearing and must state the reason(s) for the request. The granting of such requests shall be at the discretion of the SCCR Director. The University is not required to postpone a Student Conduct proceeding pending the outcome of a criminal prosecution.

**(10) ADVISOR FOR THE CHARGED STUDENT, STUDENT ORGANIZATION, OR GREEK ORGANIZATION**

(a) The Charged Student, Student Organization, or Greek Organization may be accompanied by an Advisor of his/her or its choosing and at his/her or its expense.

1)

If the Charged Student, Student Organization, or Greek Organization is the subject of a pending criminal matter arising from the same incident, the Charged Student, Student Organization, or Greek Organization may have an attorney as an Advisor provided that the attorney complies with the same restrictions imposed on any other Advisor.

2) It is the responsibility of the Charged Student, Student Organization, or Greek Organization to make appropriate arrangements for the Advisor to attend the proceeding. The proceedings shall not be delayed due to scheduling conflicts of the chosen Advisor.

3) The Charged Student, Student Organization, or Greek Organization is responsible for presenting in person his/her own information, and therefore, Advisors are **not** permitted to speak or to participate directly in any Student Conduct process.

4) Although Charged Student, Student Organization, or Greek Organization may consult with his/her or its Advisor during the hearing, this consultation must take place in a manner that does not disrupt the proceedings.

5) The Advisor chosen by the Charged Student, Student Organization, or Greek Organization cannot be a witness in the matter.

6) The SCCR will provide the Charged Student, Student Organization or Greek Organization with a list of Advisors who could provide assistance to in preparing the response to the reported Code violation.

**(11) THE RIGHTS OF THE CHARGED STUDENT, STUDENT ORGANIZATION OR GREEK ORGANIZATION**

Below is a summary of the rights of Students, Student Organizations, and/or Greek Organizations who have been charged with a potential violation of the Student Code of Conduct. These rights are as describe in the Code.

The Charged Student, Student Organization, or Greek Organization has the right to:

(a) Reasonable, written notice of the Student Code of Conduct charge and the allegations upon which the charge is based.

(b) A fair and impartial hearing.

(c) An opportunity to review all information with his/her or its Advisor (if any) to be used in his/her Student Conduct matter before a hearing.

(d) Present witnesses at the hearing.

(e) Question witnesses in accordance with the Formal Hearing Procedures.

(f) Be accompanied by an Advisor of his/her or its choosing and at his/her or its expense.

(g) Not to provide self-incriminating testimony. (This right does not apply to Student Organizations or Greek Organizations.)

(h) Notification of the decision of the Hearing Body in writing.

(i) Appeal the decision, in writing.

**(12) HEARING PROCEDURES**

(a) During the hearing, the Hearing Officer presides over the Student Conduct hearing.

(b) The burden of proof in a hearing rests with the University. The burden of proof is a Preponderance of the Evidence (i.e., the evidence is more likely or not). The determination of “responsible” or “not responsible” will be based solely on the information and/or testimony presented.

(c) Formal rules of process, procedure, and/or technical rules of evidence applicable in the criminal or civil court are not used in Student Conduct proceedings.



(d) The hearing will be recorded. The recording will serve as the only official record of the proceedings. No other recordings are permitted.

(e) If the Charged Student, Student Organization, or Greek Organization fails to appear at the scheduled hearing, the hearing will be held and a decision will be rendered in the absence of the Charged Student, Student Organization, or Greek Organization.

(f) The Charged Student, Student Organization, or Greek Organization may arrange for witness(es) to voluntarily present relevant information on her/his or its behalf. 1.

Witness(es) must be able to speak to the incident in question only. 2.

Character witness(es) or witness(es) to other incidents outside the specific incident in question will not be allowed to testify at a hearing. The Charged Student, Student Organization, or Greek Organization may provide the Hearing Body with a written statement from these witness(es).

3. The Charged Student, Student Organization, or Greek Organization must provide the Hearing Officer with the names of all witness(es) in writing at least three (3) Business Days prior to the hearing.

4. The Charged Student, Student Organization, or Greek Organization is responsible for contacting and notifying the witness(es) he/she or it wishes to call for the hearing.

5. The proceedings shall not be delayed due to scheduling conflicts of the witness(es). Failure of any witness to appear shall not require a delay or affect the validity of the proceedings. If called witness(es) do not appear, their written statements, if they exist, will be considered by the Hearing Body.

6. The Charged Student may choose not to provide self-incriminating testimony which will not constitute an admission of responsibility. The protection from self-incrimination does not extend to Student or Greek Organizations.

7. The Hearing Officer has the discretion to limit the number of witnesses whose testimony may be duplicative.

(g) Pertinent records, exhibits, and written statements may be accepted by the Hearing Body at the discretion of the Hearing Officer.

(h) The Hearing Officer may place limits on the amount of information accepted and the length of testimony and also may advise that the tone of questioning be changed.

(i) All procedural questions are subject to the final decision of the Hearing Officer.

(j) The following order of presentation will be followed in formal hearings. Exceptions may be made by the Hearing Officer due to extenuating circumstances.

1. Introductory statement by Hearing Officer including a reading of the allegations and charge(s) and introduction of information that is the basis for the charges.

2. Statement by the Charged Student, Student Organization, or Greek Organization and submission of any pertinent written information (e.g., records, exhibits, written statements) except for witness statements (see below) for consideration by the Hearing Body.

3. Questions directed to the Charged Student, Student Organization, or Greek Organization by the Hearing Body and/or Hearing Officer.

4. Presentation of witnesses and any results of fact finding conducted prior to the hearing.

5. Questioning of witness(es) by the Hearing Body or Hearing Officer. The Charged Student, Student Organization, or Greek Organization may pose questions directly to the witness except in situation where the witness feels uncomfortable or is the Complainant. In these situations, the questions will be presented in writing to the Hearing Body or Hearing Officer who will then ask the witness the question.

6. Submission of written statements (if any) of witnesses who are not present by the Charged Student, Student Organization, or Greek Organization.

7. Follow-up questions (if any) directed to the Charged Student, Student Organization, or Greek Organization by the Hearing Body and/or Hearing Officer.

- 8. Final statement by Charged Student, Student Organization, or the Greek Organization.
- 9. Hearing Officer brings hearing to closure.
  - (k) Deliberation by the Hearing Body is not part of the hearing.
  - (l) Prior Student Conduct records, character statements, and/or Complainant impact statements are considered only in determining the appropriate sanction(s).
  - (m) The Student Conduct Committee will make a recommendation of the decision and sanctions to the Hearing Officer. The Hearing Officer may take one of these actions with respect to the recommendation:
    - 1. Adopt;
    - 2. Modify;
    - 3. Reject the decision and sanctions; or
    - 4. Remand for a rehearing.

The Hearing Officer will include the reasons for any differences between the recommendations of the Committee and the Hearing Officer's final decision as part of the decision letter.

(n) A formal decision letter will be sent to the Charged Student, Student Organization, or Greek Organization within fourteen (14) Business Days from the conclusion of the Hearing Body's deliberation. The hearing decision will include the decision, sanctions imposed (if applicable), and the right to appeal.

### **(13) COMPLAINANTS' RIGHTS**

- (a) These rights apply to the following types of cases:
  - 1. Sexual Misconduct
  - 2. Endangerment
  - 3. Personal Abuse
  - 4. Stalking
  - 5. Hazing
  - 6. A crime of violence under Section 16 of Title 18 of the United States Code (i.e., arson, assault offenses, burglary, criminal homicide—manslaughter by negligence, criminal homicide—murder and non-negligent manslaughter, destruction/damage/vandalism of property, kidnapping/abduction, robbery, forcible sex offenses) or a non-forcible sex offense (i.e., statutory rape, incest).
- (b) Rights
  - 1. Have the same rights afforded to the Charged Student, Student Organization, or Greek Organization as described above. The Complainant must adhere to the same responsibilities required of the Charged Student, Student Organization, or Greek Organizations as set forth above.
  - 2. Have unrelated past behavior excluded from the hearing. The Hearing Officer will decide if such information is unrelated. Unless there was a prior relationship between the parties, past relationships of the Charged Student or Complainant will not be considered in the hearing.
  - 3. To be present throughout the entire hearing or any portions thereof. If the Complainant does not want to be present in the same room as the Charged Student, the Hearing Officer will make alternative arrangements, if possible.
  - 4. Testify in limited privacy. In lieu of testifying in person or via telephone, the Complainant may submit a written or recorded statement. The determination of whether the testimony will be given in limited privacy is made at the discretion of the SCCR Director in consultation with the University Victim Advocate.
  - 5. Submit a written impact statement to the Hearing Body. This information will be used only in the sanctioning phase of deliberations if the Charged Student is found responsible for the charge(s).
  - 6. Be notified of the final determination to the extent permitted by law. Be notified of the final determination in cases involving alleged sexual misconduct. If the alleged Complainant is

deceased as a result of a crime of violence or non-forcible sex offense, the University will provide the results of the disciplinary hearing to the Complainant's next of kin, if so requested.

7. A Complainant of sexual misconduct is entitled to a review by the Title IX Coordinator to determine whether the Complainant is also entitled to a remedy under Title IX which is not available under the Student Conduct Code. The SCCR Director will forward the Title IX Coordinator a copy of the decision letter on the same day that the Charged Party and Complainant receive the letter.

8. Appeal the decision using the process described in Appeals Section.

(c) Support and Assistance Programs. The University provides support and assistance programs for Complainants through its Victim Advocacy Center (see website <http://vac.fiu.edu>).

#### **(14) SANCTIONS**

(a) In light of the facts and circumstances of each case, the following sanctions or combination of sanctions (with or without appropriate modifications) will be imposed upon any Charged Student and/or Student/ Greek Organizations found to have violated the Student Code of Conduct. Sanctions will be commensurate with the offense with consideration given to any aggravating and mitigating circumstances, including but not limited to the Charged Student's conduct record.

1. Written Reprimand—the University takes official notice that such actions are inappropriate and not in accordance with our community standards.

2. Service Hours—assignment to complete task(s) or service(s) under the supervision of a University department or outside agency.

3. Educational Activities—attendance at educational program(s), interview(s) with appropriate officials, written research assignments, planning and implementing educational program(s), or other educational activities.

4. Restrictions/No Contact Order—the requirement that the Charged Student and/or friends have no contact with the Complainant. This restriction can be imposed at any time during the Student Conduct process.

5. Counseling Consultation—referral for consultation with the University Counseling and Psychological Services (or a licensed psychologist/psychiatrist if the Charged Student is no longer enrolled when sanctioned or is seeking readmission) for alcohol/drug dependence, general mental health or other counseling issues. Charged Student must follow through with recommendations made by the University Counseling and Psychological Services or licensed psychologist/psychiatrist, as applicable. The Charged Student must permit the consulting professional to provide official documentation on letterhead verifying attendance and to share the recommendations with the SCCR.

6. Psychological Evaluation—referral for an evaluation and recommendation by a licensed psychologist or psychiatrist which may include the University Counseling and Psychological Services Center. The Charged Student must follow through with any recommendations made by the psychologist or psychiatrist. The Charged Student must permit the professional to provide official documentation on letterhead verifying attendance and share the recommendations with the SCCR.

7. Restitution—requirement to reimburse the University or person for damage to or misappropriation of property owned or in possession of the University or other persons. Any such payment on restitution will be limited to actual cost of repair or replacement.

8. Fees—requirement to pay all fees associated with any sanction delivered (e.g., counseling consultation, psychological evaluation, educational seminars/ programs, etc.).

9. Residence Hall Reassignment—required change in University residence hall assignment. The Charged Student will be responsible for any additional charges for the new Housing assignment.

10. On-Campus Housing Exclusion—exclusion from University residence halls or Greek houses for a specified length of time. A Charged Student that is excluded from the residence halls is not eligible for fee reimbursement of pre-paid fees.

11. Restrictions/Loss of Privileges—restrictions or loss of privileges which may be imposed upon a Charged Student for a specified amount of time, including but not limited to,

participation in Student activities, University or Student events, representation of the University on athletic teams, or in other leadership positions, presence at University residence halls or other areas of campus, contact with specified person(s), participation as a peer advisor, resident assistant, or elected/appointed Student leadership in Student government; and/or participation in study abroad or alternative break programs. Additional restrictions on University privileges and/or activities may be imposed on the Charged Student based on his/her current or potential future activities.

12. Restrictions/Loss of Privileges (Student/Greek Organization Only)- For an organization, restrictions or loss of privileges including, but not limited to, participation in Student activities, social events, intramural activities, alcohol functions, or facilities. This does not affect an individual's status with the University or attendance at classes unless the individual has been charged and sanctioned independently of the Student/Greek Organization.

13. Conduct Probation—a temporary interruption of the Student's status with the University. A Charged Student that is on conduct probation is considered not in good standing with the University, resulting in applicable restrictions on privileges and/or activities including, but not limited, to prohibited from participating in study abroad or alternative spring break, as a peer advisor, resident assistant, or elected/appointed to a Student government or other organizational leadership position. Additional restrictions on University privileges and/or activities may be imposed on the Charged Student based on his/her current or potential future activities. The conduct probation period is a time for the Charged Student to reflect on his/her behavior and demonstrate that he/she can once again be a responsible Member of the University Community. While on conduct probation, further violations of the Student Code of Conduct or other University Policies may result in suspension or expulsion.

14. Conduct Probation (Student/Greek Organization Only)— temporary interruption of the organization's status with the University. An organization that is on conduct probation is considered not in good standing with the University, resulting in applicable restrictions on privileges and/or activities including, but not limited to, participation in or exclusion from Student activities, social events, intramural activities, alcohol functions, or facilities. Further violations of IFC, PC, NPHC, or MGC Policies, Student Code of Conduct or other University Policies may result in suspension or expulsion of the Charged Student/Greek Organization from the University. This does not affect an individual's status with the University or attendance at classes unless the individual has been charged and sanctioned independently of the Charged Student/Greek Organization.

15. Deferred Suspension—period of time in which suspension is temporarily withheld or withheld pending completion of other sanctions by a specified deadline date. A Charged Student on deferred suspension is considered not in good standing with the University, resulting in applicable restrictions or privileges including, but not limited, to prohibited from participating in study abroad or alternative spring break, as a peer advisor, resident assistant, or elected/appointed to a Student government or other organizational leadership position. Additional restrictions on University privileges and/or activities may be imposed on the Charged Student based on his/her current or potential future activities. If the Charged Student fails to fulfill the sanctions described in the decision letter (including failure to timely fulfill the sanction), the Charged Student will no longer be considered on deferred suspension but will be automatically suspended with no further appeal. If a Charged Student commits another violation of the Student Conduct Code while on deferred suspension, the Charged Student will be taken through the conduct process for that additional violation.

16. Deferred Suspension (Student/Greek Organization Only)—period of time in which the organization's suspension is temporarily withheld or withheld pending completion of other sanctions by a specified deadline date. An organization on deferred suspension is considered not in good standing with the University, resulting in applicable restrictions or privileges and/or activities including, but not limited to, participation in or exclusion from Student activities, social events, intramural activities, alcohol functions, or facilities. If the organization fails to fulfill the sanctions described in the decision letter (including failure to timely fulfill the sanction), the organization will no longer be considered on deferred suspension but will be automatically suspended with no further appeal. If the organization commits another violation of the Student Conduct Code while on deferred suspension, the organization

will be taken through the conduct process for that additional violation. This does not affect an individual's status with the University or attendance at classes unless the individual has been charged and sanctioned independent of the Student/Greek Organization.

17. Suspension—separation from the University for a specified period of time. A Charged Student is considered not in good standing with the University while suspended. The Charged Student may not attend classes and is banned from being on or in any On-Campus Premises. The suspended Charged Student is also banned from participation in any FIU sponsored/related event or activity. This sanction is recorded on the Charged Student's academic transcript during the period of suspension. A Charged Student that is suspended from the University is not eligible for tuition and or registration fee reimbursement except as provided by University Policies. The Charged Student will be administratively withdrawn from courses and will lose respective credit hours.

18. Suspension (Student/Greek Organization only)—separation from the University for a specified period of time. An organization while suspended is considered not in good standing with the University. A suspended Organization may not participate in any University activities or events and is not recognized as a University organization during the suspension period. This does not affect an individual Student's status with the University, academic area or attendance at classes unless the individual Student has been charged and sanctioned independently of the Student/Greek Organization.

19. Expulsion—permanent separation from the University with no possibility of readmission. This sanction is recorded on the Charged Student's academic transcript permanently. A Charged Student is considered not in good standing with the University after being expelled. The Charged Student may not attend classes and is banned from being on or in any On-Campus Premises. The expelled Charged Student is also banned from participation in any FIU sponsored/related event or activity. A Charged Student that is expelled from the University is not eligible for tuition and/or registration fee reimbursement except as provided by University Policies. The Charged Student will be administratively withdrawn from courses and will lose respective credit hours.

20. Expulsion (Student/Greek Organization Only)—Permanent separation from the University with no possibility of re-chartering or re-registering. An organization that has been expelled is considered not in good standing with the University. An expelled organization may not participate in any University activities or events and is not recognized as a University organization. This does not affect an individual Student's status with the University, academic area or attendance at classes unless the individual Student has been charged and sanctioned independently of the Student/Greek Organization.

(b) Violations of the Student Code of Conduct that are motivated by prejudice toward a person or group because of such factors such as race, religion, ethnicity, disability, national origin, age, marital status, gender, sexual orientation or any group/class protected by state or federal law may result in stronger sanctions.

(c) Sanctions take effect immediately unless appealed.

(d) Proof of the completion of the sanction(s) should be provided as directed in the decision letter. It is the responsibility of the Charged Student or Student/Greek Organization to ensure that proof of completion is provided by the specified time. Failure of the Charged Student or Student/Greek Organization to provide proof by the specified date may result in a charge of failure to comply, will result in the placement of a Student Conduct hold on the Student's academic records, and will result in suspension if the Charged Student or Student/Greek Organization had been on deferred suspension.

## (15) APPEALS

(a) **Appellate Officer.** The appellate officer for all appeals is the Vice President.

(b) **Appeal Form/Basis for Appeals.** The Charged Student, Student/Greek Organization, or a Complainant of sexual misconduct, endangerment, personal abuse, stalking, hazing, a crime of violence, or non-forcible sex offense (if any) wishing to appeal must complete the appeal form in full, indicating the basis for the appeal, explain in detail the reasons for the appeal, and attached supporting relevant documentation. The burden of proof rests with the person appealing to clearly demonstrate the reason for

appeal as set forth below. Appeals are not a re-hearing of the Student Conduct matter but only a file and/or document review. The reason for the appeal must be at least one of the following:

1. Violations of the appealing party's rights or other failure to follow the Student Conduct procedures that substantially affected the outcome of the initial hearing. Appeals based on this reason will be limited solely to a review of the record of the hearing.
2. New information, which was not available at the time of the hearing and would not have been presented. In addition, the appealing party must show that the new information could have substantially affected the outcome.
3. The severity of the sanction is disproportionate to the nature of the offense.

**(c) Appeal Requests.** All appeals must be written and submitted using the appeal form available from the SCCR or via the following website: [http://www2.fiu.edu/~sccr/appeal\\_process.html](http://www2.fiu.edu/~sccr/appeal_process.html).

1. The person wishing to appeal must complete the appeals form in full and send it to the Appellate Officer within seven (7) Business Days of the receipt of the hearing decision. If the appeal form is submitted and/or signed by any other individual than the appealing party, it will not be accepted.

2. The SCCR will notify the Complainant of sexual misconduct, endangerment, personal abuse, stalking, hazing, a crime of violence, or non-forcible sex offense of a sexual misconduct, a crime of violence, or non-forcible sex offense (if any) if the Charged Student appeals, and vice versa. Both parties may submit a written statement.

**(d)** If a hearing decision is not appealed within the timeframe, the original decision becomes Final Agency Action.

**(e) The Charged Student's Status Pending Appeal,** Once an appeal is requested, the sanctions will be stayed and will not take effect until the appeal process has been completed. If no appeal is requested, the sanctions will take effect immediately. A Charged Student shall remain eligible to attend classes and University activities pending the appeal. If a Charged Student's privileges are temporarily revoked and the Charged Student is subsequently found not responsible for the violation, the University must to the extent possible:

1. Correct any record of the change in enrollment status in the Charged Student's permanent records and reports in a manner compliant with state and federal laws; and
2. Refund to the Charged Student a pro rata portion of any charges for tuition, and out-of-state fees, as appropriate, relating to the temporary revocation or suspension which affected the Charged Student's ability to attend classes for more than ten (10) Business Days.

**(f) Appellate Review/Decision:**

1. No person may hear or decide an appeal if he/she conducted or participated in the Student Conduct proceeding being reviewed on appeal.

2. The Appellate Officer shall first determine if sufficient grounds for the appeal exists and then, if so, may either deny the appeal, thus sustaining the initial decision and sanction(s), or do one of the following:

i. If the basis of the appeal is that the severity of the sanction was disproportionate to the nature of the offense and the Appellate Officer finds the appealing party proved his/her allegation, the Appellate Officer may modify the sanction.

ii. If the basis of the appeal is that there was a violation of the appealing party's rights or other failure to follow the Student Conduct procedures that substantially affected the outcome or that there was new information which was not available at the time of the hearing and could not have been presented, which would have substantially affected the outcome and the Appellate Officer finds that the appealing party proved his/her allegation, the Appellate Officer will order a new hearing.

**(g) Written Decision on Appeal.** The appellate decision is issued in writing to the Charged Student, Student/Greek Organization and the Complainant of sexual misconduct, endangerment, personal abuse, stalking, hazing, a crime of violence, or non-forcible sex offense (if any) within twenty-one (21) Business Days of receipt of the written request for appeal unless notification is given that additional time is necessary for consideration of the record on appeal.

**(h) Effect of the Final Appellate Decision.** The decision of the Appellate Officer constitutes Final Agency Action. In the case of a suspension or expulsion of a Charged Student, the decision of the Appellate Officer will include notice to the Charged Student of the Charged Student's right to appeal to an external judicial forum.

**(16) INTERIM SUSPENSION**

In situations where the Vice President determines that an emergency exists which affects the health, safety, or welfare of the Charged Student, Student Organization, Greek Organization or University community, an interim (temporary) suspension will be imposed. This includes, but not limited to, sexual misconduct, physical assault, hazing, possession of a firearm or explosives, illegal drug possession, and other acts of a similar nature. A Charged Student, Student Organization, or Greek Organization under Interim Suspension is considered not in good standing with the University, resulting in applicable restrictions on privileges and/or activities. The Charged Student may not attend classes. The Charged Student, Student Organization, or Greek Organization is also banned from being on or in any On-Campus Premises and from participation in any FIU sponsored/related event or activity. A Complainant of sexual misconduct, endangerment, personal abuse, stalking, hazing, a crime of violence, or non-forcible sex offense (if any) will be notified of the Interim Suspension of the Charged Student and will have the same rights as the Charged Student to participate in the subsequent Student Conduct Committee Hearing described in this section.

(a) The Charged Student under Interim Suspension shall not be allowed on Campus except with the permission of the University Police Chief or designee.

(b) Once an Interim Suspension is imposed, a formal Student Conduct Committee Hearing must be held within a reasonable time. The Interim Suspension does not replace the regular process, which shall proceed on the normal schedule, up to and through a Student Conduct Committee Hearing, if required.

**(17) RECORDS**

(a) Decision letters (e.g., hearing outcome, sanctions and appeals) of all Student Conduct matters, including Housing/Residential Life and Sorority and Fraternity Life, will be maintained in the SCCR.

(b) Complete Student Conduct records regarding cases heard by Housing/Residential Life will be maintained by the Director of University Housing/Residential Life. Complete Student Conduct records regarding cases heard by IFC, NPHC, PC, and/or MGC will be maintained in the Office of Sorority and Fraternity Life.

(c) Complete Student Conduct records of Student Organizations or clubs will be maintained in the SCCR.

(d) The release of Student Conduct records will be governed by applicable federal and state laws regarding the privacy of education records.

(e) The SCCR may place a Student Conduct hold on the records and registration of any Student who has a pending Student Conduct matter, including any outstanding sanctions. Charged Students may not be allowed to graduate, receive grades or have transcripts released until pending Student Conduct matter(s), including any outstanding sanctions, are resolved.

(f) The official University email address on file with the University's Registrar's Office will be used for all Student Conduct notices sent to the Charged Student. For Student/Greek Organizations, the official University email address on file with the University Registrar's office for the organization's respective President will be used. The Hearing Officer may, in his/her discretion, decide to send the notices via additional means (e.g., overnight delivery, etc.).

(g) Expulsion will be noted permanently on a Student's academic transcript. Suspension will be noted on the Student's transcript during the period of suspension.

(h) Student Conduct files are kept for seven (7) years from the date of the last incident(s) that the Charged Student or Student/Greek Organization was involved in that resulted in charges of the

Student Conduct Code. However, in the case of expulsion or suspension the files shall be permanently retained.

(i) Students may have access to the information in their Student Conduct file by submitting a written request to the SCCR Director. The access will be provided in accordance with federal and state laws regarding the privacy of education records and University regulation (see Florida International University Regulation 108).

#### **(18) AUXILIARY AIDS AND SERVICES**

Students with disabilities as defined by the Americans with Disabilities Act requiring special accommodations should notify the SCCR and the Office of Disability Services for Students in writing at least three (3) Business Days prior to the hearing.

#### **(19) MEDIATION**

(a) All matters processed through SCCR are not required to go through formal or informal hearings. An overall goal of the SCCR is to provide a learning process which entails understanding and respecting the rights of others. An avenue utilized by the SCCR to foster mutual respect and understanding when differences arise is mediation. Mediation through SCCR is an informal and confidential process.

(b) Mediation is utilized where the incident in question is minor in nature, and the parties involved chose not to proceed with formal charges through the University Student Conduct system. The SCCR reserves the right to determine if formal charges will be filed or whether mediation is the appropriate venue in each matter.

(c) Mediation cases handled through SCCR will not be identified or filed as a Student Conduct matter. Mediation records will be maintained separate from Student Conduct files and will not be recorded or reported as part of a Charged Student's record. All mediation files are confidential and will not be released without written consent except in cases where the conduct or behavior is a repeat offense. In repeat cases, this information is only released to the Hearing Officer or committee conducting a formal hearing and only used if the Charged Student is found responsible for a violation of the Student Code of Conduct.

(d) Mediation files are kept for seven (7) years from the date of the mediation.

(e) Incident(s) considered serious in nature and, consequently not suitable for mediation, include, but are not limited to: sexual misconduct, endangerment, personal abuse, stalking, hazing, a crime of violence, or non-forcible sex offense illegal drugs, alcohol, weapons, or other violations of federal, state and local ordinances.

#### **(20) Interpretation and Revision**

(a) Any question of interpretation or application of the Student Code of Conduct shall be referred to the Vice President for final determination.

(b) The Student Code of Conduct shall be reviewed periodically by a committee which shall include Student representation under the direction of the SCCR Director.

Contact: Director, Office of Student Conduct and Conflict Resolution

Location: GC 311

Phone: 305-348-3939

Fax: 305-348-6477

Web Page: [www.fiu.edu/~sccr](http://www.fiu.edu/~sccr)

*Authority: Florida Board of Governors Regulation 6.0105 Student Conduct and Discipline; Florida Board of Governors Regulation 6.010 Student Affairs Administration; Florida Board of Governors Regulation 1.001(4)(a)(10); and Section 7(d), Article IX, Florida Constitution. History—New June 19, 2012, Amended September 17, 2012, \_\_\_\_\_.*