

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

**NOTICE OF PROPOSED AMENDMENT TO REGULATION**

**REGULATION TITLE:** Sexual Misconduct (Title IX)

**REGULATION NO.:** FIU-105

**SUMMARY:** Regulation FIU-105 Sexual Misconduct (Title IX) is substantially revised to comply with new U.S. Department of Education Office of Civil Rights (OCR) regulations on Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination based on sex at federally funded institutions. OCR has indicated that colleges and universities must be in compliance by August 14, 2020.

**TEXT OF REGULATION:** The full text of the Proposed Amendment to 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, Departmental Administrator, Office of the General Counsel, [devillee@fiu.edu](mailto:devillee@fiu.edu) (305) 348-2103.

**AUTHORITY:** Board of Governors Regulation 1.001(5)(a).

**NAME OF PERSON INITIATING PROPOSED REGULATION:** Dr. Elizabeth Bejar, Senior Vice President for Academic & Student Affairs.

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED AMENDMENT TO 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.

THE CONTACT PERSON REGARDING THIS REGULATION IS:  
Eli Deville, Departmental Administrator, 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) | Phone: 305.348.2103 | Fax: 305.348.3272

**DATE OF PUBLICATION:** September 25, 2020

THE FULL TEXT OF THE PROPOSED REGULATION IS PROVIDED BELOW:

**FIU-105 Sexual Harassment (Title IX) and Sexual Misconduct ~~(Title IX)~~**

**Responsible University Officer:** ~~Director of the Equal Opportunity Programs and Diversity/Title IX Coordinator~~

**Responsible Office:** ~~Equal Opportunity Programs and Diversity (EOPD)~~

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**I. POLICY STATEMENT**

Florida International University (the University) is committed to encouraging and sustaining a learning and living environment that is free from ~~harassment, violence, and prohibited~~ discrimination based on sex including ~~gender, gender expression, gender identity, and~~ sexual orientation. Discrimination based on sex encompasses ~~Sexual Misconduct, Sexual Harassment, Gender-Based Harassment, Domestic Violence, and Dating Partner Violence, and/or Stalking.~~ The University has developed this regulation applicable to the entire University Community (i.e., students, student organizations, faculty, staff, affiliated third parties, and visitors) prohibiting discrimination based on sex ~~In that regard and~~ consistent with This policy is in compliance with applicable legal requirements including Title IX of the Education Amendments of 1972 (Title IX), relevant provisions of the Violence against Women Reauthorization Act of 2013 (VAWA), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), along with all applicable implementing regulations, and other applicable federal and state laws.

The University has identified two areas that are under the purview of this Regulation: Sexual Harassment as defined by Title IX and Sexual Misconduct. Sexual Harassment applies to alleged harassment, violence, and/or prohibited discrimination that occurs in an University education program or activity in the United States. This refers to locations, events, or circumstances over which the University had substantial control over both the Respondent and the context in which such incidents occurred, and also includes buildings owned by or controlled by a student organization that is officially recognized by the University. Sexual Misconduct applies to alleged harassment, violence, and/or prohibited discrimination that occurs in or outside an University education program or activity regardless of location. SH ~~federal law addressing these areas (e.g., Title IX of the Education Amendments of 1972 and the Violence against Women Act (VAWA), that portion of the Title VII of the Civil Rights Act addressing sexual misconduct), the University has developed this regulation applicable to~~

~~members of the University Community (i.e., students, faculty, staff, affiliated third parties, and visitors). Nothing in this Regulation shall be construed as preventing the University President from taking any action which may be deemed necessary to meet the goals of this Regulation. The President may change the outcome and/or sanctions for any matter under the jurisdiction of this Regulation as outlined in Section XV.~~

~~Members of the University community have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, Domestic Dating Partner Violence, and stalking. All members of the University community are expected to conduct themselves in a manner that does not infringe upon the rights of others and is consistent with this regulation. The University believes in zero tolerance for sexual misconduct. Zero tolerance means that, when an allegation of misconduct is brought to an appropriate administrator's attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including but not limited to serious sanctions when a Respondent is found to have violated this regulation. Moreover, This Regulation has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated.~~

~~The Regulation is not meant to inhibit or prohibit educational content or discussions ~~inside or~~ outside of the classroom that include controversial or sensitive subject matters protected by academic freedom or the First Amendment, would the Fifth and Fourteenth Amendments, or any other rights guaranteed by the U. S. Constitution.~~

~~The University emphasizes the importance of treating Complainants and Respondents equitably upon receipt of a Formal Complaint. There is a presumption the Respondent is ~~Not~~ Responsible for the alleged conduct until Final Agency Action. This is to discuss all relevant matters in the classroom, to explore all avenues of scholarship, research, and creative expression, to speak freely on all matters of university governance, and to speak, write, or act as a public citizen without institutional discipline or restraint.~~

~~The University uses the preponderance of the evidence (also known as “more likely than not”) as a standard for proof of whether a violation of this Regulation occurred. In the University resolution proceedings, legal terms like “guilt,” “innocence” and “burden of proof” are not applicable, but the University never assumes a Respondent is in violation of a university Regulation. Resolution proceedings are conducted to take into account the totality of all evidence available from all relevant sources.~~

## **II. — PURPOSE & INTENT**

~~The University is committed to establishing and maintaining a safe learning, living, and working environment where healthy, respectful, and consensual conduct represents the campus cultural norm. This Regulation prohibits discrimination and harassment based on sex, gender, gender expression, gender identity, or sexual orientation, Sexual Misconduct, Domestic and Dating Partner Violence, and/or Stalking. It also prohibits Retaliation against an individual for making a report of conduct prohibited under this Regulation or for participating in an investigation of an alleged violation of this Regulation. It also defines prohibited relationships of a sexual or~~

~~intimate nature between individuals where one individual has power or authority over another. These prohibited forms of conduct undermine the character and purpose of the University and will not be tolerated.~~

~~This policy is in compliance with applicable legal requirements including Title IX of the Education Amendments of 1972; relevant provisions of the Violence against Women Reauthorization Act of 2013; Title VII of the Civil Rights Act of 1964; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act; and other applicable federal and Florida state laws.~~

### III. TITLE IX COORDINATORS

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 Complainant, the Reporting Party, the Respondent, or a third party about the University resources and those found within and outside of the University. Resources include, but are not limited to, health care options, counselling or support, and reporting;~~
- ~~available to provide assistance to any University employee regarding how to respond appropriately to a report of a possible violation of this Regulation; responsible for coordinating the effective implementation of Supportive Measures;~~
- responsible for responding to concerns raised by the Deputy Title IX Coordinator(s), University Police, or Responsible Employees;
- ~~\_\_\_\_\_~~
- responsible for ~~conducting and/or~~ overseeing investigations of alleged violations of this Regulation;
- responsible for ~~participating 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 periodic reviews of climate and culture; and
- responsible for maintaining all reports of possible violations of this Regulation and reviews such reports and complaints for systemic patterns that need to be addressed.

The University's Title IX Coordinator is:

**Shirlyon McWhorter**  
**Office of Inclusion, Diversity, Equity, & Access (IDEA)**

Office number: 305-348-2785

Email: shirlyon.mcwhorter@fiu.edu

Address: 11200 S.W. 8<sup>th</sup> Street, PC 511 321  
Miami, FL 33199

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The Title IX Coordinator has designated Deputy Title IX Coordinators to assist in fulfilling the Title IX Coordinator duties. The Deputy Title IX Coordinators are:

- Courtney McHenry, Assistant Director, Office of Inclusion, Diversity, Equity & Access (IDEA)  
Office number: 305-348-2785 email: [idea@fiu.edu](mailto:idea@fiu.edu) ~~[eopd@fiu.edu](mailto:eopd@fiu.edu)~~
- Michelle R. Horvath, ~~Deputy Title IX Coordinator and~~ Assistant Dean of ~~Students~~Director, Office of Student Conduct and ~~Conflict Resolution~~Academic Integrity  
Office number: 305-348-3939 email: [conduct@fiu.edu](mailto:conduct@fiu.edu)
- Julie Berg-McGraw, Sr. Associate Athletic Director, Athletics Department  
Office number: 305-348-2352 email: [julie.berg-mc\\_graw@fiu.edu](mailto:julie.berg-mc_graw@fiu.edu)
- Joann Cuesta-Gomez, Director, Office of Employee & Labor Relations  
Office number: 305-348-41866 email: [elr@fiu.edu](mailto:elr@fiu.edu)

The Title IX Coordinator, Deputy Title IX Coordinators, investigators, Hearing Officer(s), and the Hearing Body are properly trained based on their roles. Training includes what constitutes Sexual Misconduct and Sexual Harassment, the scope of the University’s education programs and activities, how this Regulation operates is implemented, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially including by avoiding pre-judgment of the facts at issue, conflicts of interest and bias, any technology to be used at a live hearing, issues of relevance of questions and evidence, including when questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant, and relevance to create an investigative report that fairly summarizes relevant evidence.

~~will select a trained investigator(s) to gather sufficient evidence to reach a fair, impartial determination as to whether the alleged violation has occurred based on the preponderance of the evidence. The investigator(s) will be trained to gather and document the available evidence to support reliable decisions, objectively evaluate the credibility of the parties and witnesses, synthesize all available evidence (including both supportive and non-supportive evidence), and take into account the unique and complex circumstances of each case. The Title IX Coordinator, investigators, and Hearing Officer(s), and Hearing Body will be select investigator(s) who are free of actual or reasonably perceived conflicts of interest and biases for or against any party.~~

Concerns about the University’s application of this Regulation may be addressed to the following offices below and/or to the Deputy Title IX Coordinators listed above.

**Title IX Coordinator**

<u>FIU Office of University Compliance and Integrity</u>	<u>U.S. Depart. of Education Office for Civil Rights</u>	<u>Equal Opportunity Commission</u>
(305) 348-2216	(800) 421-3481	(800) 669-4000

Email: [compliance@fiu.edu](mailto:compliance@fiu.edu)

~~U.S. Depart. of Education Equal Opportunity  
Shirlyon McWhorter Office for Civil Rights Commission  
305 348 2785(800) 421 3481 (800) 669 4000  
Email: [shirlyon.mewhorter@fiu.edu](mailto:shirlyon.mewhorter@fiu.edu) Email: ~~forforforfor~~~~

**III.V. DEFINITIONS**

Actual knowledge – Verbal or written notice of Sexual Harassment or Sexual Misconduct or allegations of Sexual Harassment or Sexual Misconduct to the Title IX Coordinator or

Responsible Employee.

**Advisor** - Any person chosen by the Complainant or Respondent to assist throughout the Sexual Harassment or Sexual Misconduct process (e.g. faculty, staff, parent/guardian, attorney, friend, alumni, or any other person who is not a Witness in the process).

**Appellate Officer** - The Senior Vice President for Academic and Student Affairs or designee for student Respondents or the Vice President for Human Resources or designee for non-student Respondents.

**Business Day:** A day when the University is open for regular business operations from 8:30 am to 5:00 pm Eastern Time. For emailed correspondence, the day of delivery is not included in a designated time period. In computing any time period specified in this Regulation-Code, the day of the event, act, or default that initiates the period shall be excluded.

~~**Coercion**—Conduct, intimidation, and/or express or implied threats of physical, emotional, financial, or any other type of harm that would reasonably place an individual in fear of immediate or future harm and that is employed to force or compel someone to engage in sexual contact or any other type of involuntary conduct, especially conduct which would endanger or be detrimental to the Complainant. Examples of Coercion include:~~

- ~~• Causing the deliberate incapacitation of another person;~~
- ~~• Conditioning an academic benefit or employment advantage;~~
- ~~• 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 or sensitive information if the other party does not engage in the sexual contact or takes actions involuntarily.~~

~~**Complainant** - Any individual who may have been the subject of any Sexual Misconduct, Dating or Domestic Partner Violence, and/or Stalking by the Respondent regardless of whether the individual makes a report.~~ is alleged to be a victim of conduct that could constitute behavior prohibited by this Regulation.

**Consent** - A clear, knowing, and voluntary agreement to engage in specific sexual activity at the time of the activity. Consent can be communicated by words or actions as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity. Consent must be ongoing throughout the sexual activity and can be withdrawn at any time. Sexual contact must cease immediately once withdrawal of consent is clearly communicated.

- Consent must be active, not passive.
- Lack of protest or resistance does not mean consent has been granted, nor does silence mean consent has been granted.
- Within each sexual encounter, there may be separate individual sexual acts involved, and consent to one act and/or person(s) by itself does not constitute consent to another act and/or person(s).
- 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 even in the context of a relationship, there must be mutual consent.
- If coercion or force is used, there is no consent.

- If a person is incapacitated so that the person cannot understand the fact, nature or extent of the sexual situation, there is no consent. This may be affected by conditions due to age, alcohol or drug consumption, unconsciousness, being asleep, physical or developmental disabilities.
- Whether one has taken advantage of a position of influence over another can be a factor in determining whether there was consent.
- In order to give consent, one must be of legal age.
- The question of what the Respondent should have known as to whether the Complainant was incapacitated is objectively based on what a reasonable person, sober and/or exercising good judgment, would have known about the condition of the Complainant.

~~**Dating or Domestic Violence**—Any instance of violence or abuse (verbal, physical, or psychological) that occurs between those who are in, or have been in, an intimate relationship with each other.~~

~~• **Physical Violence or Abuse:**~~

- ~~i. Occurs when one intentionally or recklessly (1) causes bodily harm to another person; (2) attempts to cause bodily harm to another person; or (3) puts another in fear of imminent bodily harm. No Respondent may knowingly or recklessly touch any other person without that person’s consent. Punching, slapping, scratching, or otherwise striking any person, including a Dating or Domestic Partner, with any part of one’s body or with any object constitutes physical violence.~~
- ~~ii. Occurs when there is a pattern of engaging in physical violence or abuse as described above.~~

~~• **Psychological Abuse:**~~

- ~~i. Occurs when a Respondent intimidates, dominates, terrorizes, humiliates, or isolates any other person, especially a Dating or Domestic Partner.~~
- ~~ii. Occurs when there is a pattern of engaging in psychological abuse as described above.~~

~~• **Verbal Abuse:**~~

- ~~i. Occurs when a Respondent uses extreme or excessive language that is in the form of insults, name-calling, or criticism, designed to mock, shame, or humiliate another person, especially a Dating or Domestic Partner. Verbal behavior must be: (1) objectively endangering and (2) sufficiently severe, persistent, or pervasive to constitute verbal abuse. Singular statements and isolated incidents may fall short of this sufficiency standard.~~

~~Occurs when there is a pattern of engaging in verbal abuse as described above~~

- ~~ii. \_\_\_\_\_~~

~~**Deputy Title IX Coordinator** – The Deputy Title IX Coordinator is an individual(s) designated by the Title IX Coordinator to support the Title IX Coordinator with respect to the University’s efforts to comply with this Regulation.~~

~~**Final Agency Action** - Notice that the University has made a final determination has occurred and, as such, may be appealed to an external judicial forum.~~

~~**Formal Complaint**– A document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment or Sexual Misconduct against a Respondent and requesting an~~

investigation of alleged Sexual Harassment or Sexual Misconduct.

- A document filed by a Complainant means a document or electronic submission that contains the Complainant's physical or electronic signature or otherwise indicates the Complainant is the person filing the complaint.

~~Harassment~~ is a type of conduct 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.

Hearing Body – Members of the University community responsible for determining the merits and sanctions of alleged conduct violating this Regulation. The Hearing Body for Sexual Harassment and Sexual Misconduct shall consist of an University Official or panel of University Officials except, if requested by a student Respondent and no objection is raised by the Complainant, a Hearing Body may be comprised of ~~comprised~~ at least one-half of students.

Hearing Officer – The University official responsible for chairing the Hearing Body. ~~&~~The Hearing Officer will not be the same person as the Title IX Coordinator or investigator.

Impact Statement- An oral or written statement that describes how the Complainant or Respondent is impacted by the alleged conduct.

Incapacitation – Incapacitation is the inability, temporarily or permanently, to give Consent because the individual is mentally and/or physically helpless, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring.

Interim Suspension or Administrative Leave – An immediate separation or leave from the University.

~~Member of the University Community~~—Any person who is a student, faculty or staff, any other person currently employed by the University, or working on University ~~P~~remises or within ~~O~~n ~~C~~ampus ~~H~~ousing, or any participant in a University sponsored program or activity regardless of the location of the program or activity.

Responsible Employee - Any employee with authority to institute corrective ~~measures~~ measures; who has been given the duty of reporting incidents of Sexual Harassment or Sexual Misconduct or any other misconduct by students or employees to the Title IX Coordinator or other appropriate University designee; or an individual who a student or employee could reasonably believe has this authority or responsibility.

Student employees are only –Responsible Employees if they are employed in the following positions:

- Graduate Teaching Assistants and Graduate Research Assistants;
- The Athletics Department; or
- Housing and Residential Life.

The ~~This~~ definition of Responsible Employee does not absolve -anyone with the knowledge of or reason to suspect child abuse, abandonment, or neglect of the responsibility to report such



relevant information to the Department of Children and Families in accordance with FIU Policy # 140.130 Mandatory Reporting of Child Abuse, Abandonment and Neglect Board of Governors Regulation 3.002.

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~~**Obstruction** — Any Any action, individually or working with others, which the Respondent knew or should have known would impede an investigation by the University into possible violations of this Regulation committed by the Respondent, including, but not limited to, failing to participate in a University investigation or grievance process if not the Respondent, making false statement or submitting false information during the grievance process, or destroying potentially relevant evidence.~~

~~**Preponderance of the Evidence** – Based on the evidence provided, it is more likely than not that the actions alleged occurred. Grievance proceedings are conducted to take into account the totality of all evidence available from all relevant sources. The burden of proof rests with the University.~~

~~**Reporting Party** - Any person (~~including~~~~excluding~~ the Complainant) who reports an alleged violation of the FIU 105 Regulation.~~

~~**Respondent** - Any individual or group, including student organization, who has been accused of violating this ~~policy~~Regulation.~~

~~—Any employee who has the authority to take action to redress Sexual Misconduct, Domestic and Dating Partner Violence and/or Stalking; who has been given the duty of reporting incidents of Sexual Misconduct or any other misconduct by students to the Title IX Coordinator or other appropriate school designee; or an individual who a student/employee could reasonably believe has this authority or responsibility.~~

~~**Retaliation** — 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 Code; and/or (ii) opposition to policies, practices, and/or actions that the individual reasonably believes are in violation of the Code. Retaliation may include intimidation, threats, Coercion, physical harm, and/or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated. Any words or behavior made to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this Regulation, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Regulation. Retaliation may be committed by the Respondent, the Complainant, the Reporting Party, or any other individual or group of individuals.~~

~~**Revenge Porn**—to publish a sexually explicit image of a person, including any depiction that contains or conveys the personal identification or information of the depicted person by any electronic, digital or other means, including to an internet website, by text, by email, and/or by or through social media without the depicted person's Consent.~~

~~**Sexual Harassment** – Conduct on the basis of sex which occurs in the United States in an University activity or program that satisfies one or more of the following:~~

- ~~• An employee, including faculty, staff, or contractor, conditioning the provision of aid, benefit, or service on an individual's participation in unwelcome sexual conduct; or~~

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity;
- Sexual Assault is defined as penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration (regardless of whether it includes penetration) by a sex organ of another person, without the consent of the Complainant. Attempts or assaults to commit Sexual Assault are also included; however, statutory Sexual Assault and incest are excluded;
- Dating Violence which means violence committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship;
- Domestic Violence is defined as violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim or by any other person against an adult or youth victim; or
- Stalking defined as a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

***Sexual Misconduct*** — Conduct, regardless of geographic location, that includes:~~involves failure to comply with this regulation and includes:~~

- Coercion - Conduct, intimidation, and/or express or implied threats of physical, emotional, financial, or any other type of harm that would reasonably place an individual in fear of immediate or future harm and that is employed to force or compel someone to engage in sexual contact or any other type of involuntary conduct, especially conduct which would endanger or be detrimental to the Complainant. Examples of Coercion include:
  - Causing the deliberate incapacitation of another person;
  - Conditioning an academic benefit or employment advantage;
  - 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 or sensitive information if the other party does not engage in the sexual contact or takes actions involuntarily.
- Domestic Violence - violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim or by any other person against an adult or youth victim

- Dating Violence - violence committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- Gender-based Harassment - harassment based on gender, sexual orientation, gender identity, or gender expression, including acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve contact of a sexual nature.
- *Non-Consensual Sexual Touching* – any sexual touching without Consent. Sexual touching is any intentional touching of a person’s body, including the breasts, buttocks, groin, genitals, or other intimate parts. Touching may be over or under clothing and may include the Respondent touching the Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant’s own body.
- *Obscene or Indecent Behavior*
  - i. Exposure of one’s sexual organs or the display of sexual behavior that would reasonably be obscene or indecent to others. Other forms of obscene or indecent behavior include sexual exhibitionism, engaging in prostitution, or the facilitation or solicitation of a prostitute.
  - ii. Observing another individual’s nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved.
  - iii. Recording, photographing, transmitting, showing, viewing, streaming, or distributing intimate or sexual images, audio recordings, or sexual information of another person in any form without the knowledge and Consent of all parties involved.
  - iv. Publishing a sexually explicit image of a person that contains or conveys the personal identification or information of the depicted person to an internet website, text, email, and/or social media without the depicted person’s Consent.
- Revenge Porn - to publish a sexually explicit image of a person, including any depiction that contains or conveys the personal identification or information of the depicted person by any electronic, digital or other means, including to an internet website, by text, by email, and/or by or through social media without the depicted person’s Consent.
- Sexual~~Sex-based Harassment~~ Harassment — any unwelcome sexual advance, request for sexual favors, and/or other verbal or physical conduct of a sexual nature:
  - i. Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person’s instruction, academic standing, or participation in any University program, activity, or benefit;
  - ii. Submission to, or rejection of, such conduct by an individual is used as a basis for academic or work evaluation;
  - iii. Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably

interferes with, limits, or deprives an individual from participating in or benefiting from the University's educational, and/or campus-residential experience when viewed both from a reasonable person in similar circumstances and the person in question.

- ~~Gender-based Harassment—harassment based on gender, sexual orientation, gender identity, or gender expression, including acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve contact of a sexual nature.~~
- ~~Sexual Coercion—the act of using pressure or force to have sexual contact with someone who has already refused.~~
- ~~Sexual Battery—any sexual intercourse by any person upon another without Consent. Sexual intercourse includes vaginal or anal penetration, however slight, by a person's penis, finger, other body part, or an object, or any oral-genital contact (regardless of whether it involves penetration).~~

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*Sexual Assault* — Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration (regardless of whether it includes penetration) by a sex organ of another person, without the consent of the Complainant. Attempts or assaults to commit Sexual Assault are also included; however, statutory Sexual Assault and incest are excluded ~~the threat to commit sexual battery with the immediate capacity to do so.~~

- Sexual Coercion – the act of using pressure or force to have sexual contact with someone who has already refused.
- Sexual Exploitation - Knowingly or recklessly transmitting a sexually transmitted disease or sexually transmitted infection (such as HIV) to another individual without the knowledge and consent of the person exposed.
- Stalking - A course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.
- ~~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. 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 Complainant.~~

*Supportive Measures* – Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge, to the Complainant or Respondent. The Title IX Coordinator is responsible for coordinating effective implementation of Supportive Measures.

**Title IX** – refers to Title IX of the Educational Amendments of 1972, and applicable implementing regulations, -which protects people from sex and gender discrimination in educational programs and activities at institutions that receive federal financial assistance. Title IX covers more than athletics and sexual assault, it addresses concerns relating to discrimination on the basis of sex or gender in all aspects of the educational process, including in the areas of recruitment, admissions, and counseling; financial assistance; the needs of pregnant and parenting community members, discipline; and employment.

**Title IX Coordinator** –The individual University official with the primary responsibility for coordinating the University’s compliance with Title IX.

**University Community** - Any student, faculty, staff, other person currently employed by the University, or working on University premises, or any participant in a University program or activity regardless of the location of the program or activity.

**Deputy Title IX Coordinator**—The Deputy Title IX Coordinator is an individual(s) designated by the Title IX Coordinator to support the Title IX Coordinator with respect to the University’s efforts to comply with Title IX.

#### **IV. JURISDICTION**

Jurisdiction applies to University educational program or activities, including locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University. For Sexual Misconduct matters, jurisdiction applies to respondents who are members of the University community regardless of location.

~~Jurisdiction applies to the conduct of any employee (including faculty and/or staff) and/or student that occurs on University premises or on-campus housing, at University-related activities/events, on all locations where a University course or program is being conducted, including foreign locations, such as study abroad programs.~~

~~The University reserves the right to impose discipline based on off-campus conduct. Discipline for off-campus conduct may be pursued under the Regulation if:~~

- ~~• The off-campus conduct is specifically prohibited by law or the Regulation;~~
- ~~• The off-campus conduct demonstrates that the continued presence of the employee and/or 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, is contrary to the University’s mission, or is intimidating or threatening to the University community or member of the University community;~~
- ~~• The off-campus conduct is of such a serious nature that it adversely affects the employee’s and/or student’s suitability to remain a part of the University community; or~~
- ~~• The off-campus conduct has continuing effects on the campus.~~
- ~~• The University Regulation proceeding is not a criminal or judicial proceeding and is designed to address employee and/or student behavior, whether on or off-campus; therefore, alleged violations of the Regulation will be addressed independently of any criminal or judicial~~

~~proceeding and regardless of whether the criminal charges have been dismissed or reduced.~~

## **VI. OPTIONS FOR SEEKING CONFIDENTIAL ASSISTANCE AND/OR MAKING A REPORT OF A POTENTIAL VIOLATION**

The University is committed to providing options through multiple contact points across campus that are broadly accessible to all University community members to address a potential violation of ~~FIU-105~~this Regulation. Anyone may seek confidential assistance and/or make a report to the University on behalf of themselves or others. It is important to understand the differences between these two options. ~~The chart below provides a graphical representation of the differences between the options.~~

Seeking confidential assistance means talking about the alleged violation with a professional who cannot share the information with anyone else without the express permission from the person sharing the information unless there is a threat of serious harm to the person sharing the information (e.g., patient/client) and/or to others and/or there is a legal obligation to reveal such information (e.g., suspected abuse or neglect of a minor or vulnerable adult). Any individual may choose to seek support from confidential professionals on and/or off campus, including the staff at the University Victim Empowerment Program, the counselors at the University Counseling and Psychological Services Center, medical health providers, clergy, and/or rape crisis counselors (as noted in the chart below~~above~~). The confidential resource will provide help in addressing the incident to the extent possible and in accordance with the person's desires. Seeking confidential assistance does not prevent an individual from making a Formal Complaint~~report~~ at a later date. The chart below provides a graphical representation of the differences between the options.

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THERE IS A DIFFERENCE BETWEEN “SEEKING CONFIDENTIAL ASSISTANCE” AND “MAKING A REPORT TO THE UNIVERSITY.” IT IS IMPORTANT TO UNDERSTAND WHAT WILL HAPPEN DEPENDING UPON WHICH ACTION YOU CHOOSE.



**CONFIDENTIAL ASSISTANCE\***  
Means talking about the situation with a professional who cannot share the information with anyone else, getting help figuring out what can be done according to your wishes, and helping with the options you choose, including if you decide to make a report to the University.  
\*There are certain legal limitations to confidentiality which will be explained to you at the beginning of any contact.

**MAKING A REPORT TO THE UNIVERSITY**  
Means University Officials must take appropriate action



**CONTACT:**



**On-campus professionals who can provide Confidential Assistance:**  
**Victim Empowerment Program**  
24 hour crisis: 305-348-2277  
MMC: SHC 270  
vep.fiu.edu  
**Counseling & Psychological Services (CAPS)**  
MMC: SHC 270, 305-348-2277  
BBC: WUC 320, 305-919-5305  
caps.fiu.edu  
**Student Health Services**  
MMC: SHC, 305-348-3336  
BBC: SHC, 305-919-5620  
**Office of Employee Assistance**  
MMC: 305-348-2469 • BBC: ACII 246B



**CONTACT:**



**Title IX Coordinator**  
**Deputy Title IX Coordinators**  
**Mandatory Reporters**  
**Campus Security Authorities**  
**Dean of Students**  
**Student Conduct and Academic Integrity (SCAI) Staff**  
**Faculty**  
**Police**





**Off-campus professionals  
who can provide Confidential Assistance:**

**Roxcy Bolton Rape Treatment Center at  
Jackson Memorial Hospital**

305-585-5185

1611 N.W. 12th Avenue, Miami, FL 33136

<http://www.jacksonhealth.org/services-rape-treatment.asp>

**Florida Council Against Sexual Violence  
Information Line**

1-888-956-RAPE

**Florida Domestic Violence Hotline**

1-800-500-1119; Florida Relay 711

**Florida Victim Assistance**

1-800-266-6667

**Miami Coordinated Victim Assistance  
Center (CVAC)**

305-285-5900

Any licensed mental health professional can  
provide **Confidential Assistance**

**University Officials to contact for Making a  
Report to the University**

**Shirlyon McWhorter**

Title IX Coordinator

Director, Office of Inclusion, Diversity, Equity &  
Access

PC 321

Phone: 305-348-2785

Email: [idea@fiu.edu](mailto:idea@fiu.edu)

**Michelle Horvath**

Director, Student Conduct and Academic Integrity  
(SCAI)

GC 311A

Phone: 305-348-3939

Email: [conduct@fiu.edu](mailto:conduct@fiu.edu)

**Courtney McHenry**

Assistant Director, Office of Inclusion, Diversity,  
Equity & Access

PC 321

Phone: 305-348-2356

Email: [courtney.mchenry@fiu.edu](mailto:courtney.mchenry@fiu.edu)

**Julie Berg-McGraw**

Deputy Title IX Coordinator

Senior Associate Athletic Director

OBCC 202A | Phone: 305-348-2352

Email: [julie.berg-Mc\\_Graw@fiu.edu](mailto:julie.berg-Mc_Graw@fiu.edu)



**OR FILE ONLINE:**



**Silent Witness Form** provides a method to  
report on an anonymous basis to the FIU  
Police Department:  
[http://police.fiu.edu/Silent\\_Witness.php](http://police.fiu.edu/Silent_Witness.php)

**FIU Ethical Panther Line** provides a  
method to report on an anonymous basis to  
the University Compliance Office at  
<https://fiu.i-sight.com>

**Incident Reporting Form** provides a  
method to report on an anonymous basis to  
Student Affairs:  
<https://publicdocs.maxient.com/incidentreport.php?FloridaIntlUniv>

Below is a list of additional University Officials (who **are not** confidential resources) to which someone could report a violation.

Dr. Elizabeth M. Bejar  
Sr. Vice President for Academic & Student Affairs  
Division of Academic & Student Affairs  
Office: GC 225 | Phone: 305-348-2797  
Email: [vpdsa@fiu.edu](mailto:vpdsa@fiu.edu)

Sofia Trelles  
Student Ombudsperson  
Division of Academic & Student Affairs  
Office: GC 225 | Phone: 305-348-2797  
Email: [sofia.trelles@fiu.edu](mailto:sofia.trelles@fiu.edu)

Academic & Student Affairs  
Dean of Students  
Division of Academic & Student Affairs  
Office: GC 225 | Phone: 305-348-2797  
Email: [vpdsa@fiu.edu](mailto:vpdsa@fiu.edu)

Chief Alexander “Alex” Casas  
University Police Department  
MMC PG5 | Phone: 305-348-2626  
BBC SOII | Phone: 305-919-5559  
Email: [Alexander.Casas@fiu.edu](mailto:Alexander.Casas@fiu.edu)

Dr. Rebecca Friedman  
Faculty Ombudsperson  
Office of the Provost  
Phone: 305-348-0169  
Email: [Rebecca.Friedman@fiu.edu](mailto:Rebecca.Friedman@fiu.edu)

Jennifer LaPorta Baker, Chief Compliance Officer  
University Compliance & Integrity  
PC 429 | Phone: 305-348-2216  
Email: [compliance@fiu.edu](mailto:compliance@fiu.edu)

Seeking confidential assistance means talking about the alleged violation with a professional who cannot share the information with anyone else without the express permission from the person sharing the information unless there is a threat of serious harm to the person sharing the information (e.g., patient/client) and/or to others and/or there is a legal obligation to reveal such information (e.g., suspected abuse or neglect of a minor or vulnerable adult). Any individual may choose to seek support from confidential professionals on and/or off campus, including the staff at the University Victim Empowerment Program, the counselors at the University Counseling and Psychological Services Center, medical health providers, clergy, and/or rape crisis counselors (as noted in the chart above). The confidential resource will provide help in addressing the incident to the extent possible and in accordance with the person’s desires. Seeking confidential assistance does not prevent an individual from making a report at a later date.

Making a report to the University means contacting the Title IX Coordinator, Deputy Title IX Coordinator, a Responsible Employee, campus security authority, and/or the University Police. Alternatively, a report can be made to the University using the web-based options listed in the chart above.

Responsible Employees will safeguard an individual’s privacy, but **are required** by the University to promptly 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 will safeguard an individual's privacy but are required to promptly share all known details of an incident, which may constitute a Clery crime consistent with the Clery Act requirements. Clery crimes must be disclosed to the Clery Compliance Coordinator who is responsible for maintaining the University's daily crime log and annual security report, which contains information on certain crimes. No identifying information with respect to any party is included.~~

All other employees (~~who are~~ not designated as confidential resources or Responsible Employees) will safeguard an individual's privacy, but are strongly encouraged to share any information about such conduct with the Title IX Coordinator or Deputy Title IX Coordinator(s) and/or a member of the Title IX 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 Responsible Employee and/or Campus Security Authority) are strongly encouraged to report any information, including reports or partial reports, to the Title IX Coordinator or Deputy Title IX Coordinator(s) and/or a member of the Title IX Response Team.

~~A Reporting Party is encouraged to~~ Reports of conduct ~~they believed to~~ may be prohibited ~~discrimination or harassment by this Regulation~~ (or that left unchecked may rise to the level of prohibited Sexual Misconduct discrimination or Sexual h Harassment) are encouraged even if ~~the reporter is~~ they are not sure that the conduct violates this Regulation or ~~A Reporting Party is encouraged to make a report even if they~~ does not want the University to take action against a Respondent. The University will make every effort to respect a Reporting Party's autonomy if that is the Reporting Party's desire. Making a report to the University does not mean that the Reporting Party cannot also seek confidential assistance ~~then or at a later date~~.

## **VI. INTERIM PROTECTIVE SUPPORTIVE MEASURES AVAILABLE THROUGH THE UNIVERSITY**

When an informal or report Formal Complaint 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 the broader University community. The University may impose reasonable and appropriate interim protective supportive measures when necessary to protect the safety and/or emotional well-being of the parties or witnesses involved and/or to provide academic or other appropriate support. ~~Implementing any~~ interim protective supportive measures is within the sole discretion of the University. 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 and/or emotional well-being concerns can be reasonably addressed.

Interim protective Supportive measures may be afforded to the Complainant, the Reporting Party, the Respondent, and/or other involved individuals as appropriate to ensure their safety and/or well-being interim protective Supportive measures may be requested by the parties at any time regardless of whether any particular course of action is sought by the Complainant while avoiding punishing the Respondent prior to the conclusion of the grievance process. The range of

~~interim protective~~ Supportive mMeasures ~~may~~ includes, but is not limited to:

- Arranging for medical services
- Access to counseling services either provided by the University and/or through community resources
- Providing crisis intervention, case management, emotional and/or practical support, and/or safety planning through the Victim Empowerment Program for students and through the Office of Employee Assistance for faculty and staff
- Imposition of a University “No-Contact ~~Order~~ Directive” for all or some of the parties involved in the incident
- ~~Imposition of a “No Trespass 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
- Voluntary leave of absence from work in accordance with University policies
- Providing an escort to assure safe movement between classes and activities
- Providing academic support services, such as tutoring
- University-imposed leave or suspension for the Respondent.
- 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~~ Supportive mMeasures or the failure of another individual to abide by any ~~interim protective~~ Supportive mMeasure to the Title IX Coordinator or designee. ~~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. ADVISORS

During the grievance process, the Complainant and Respondent may have an advisor of their choice accompany them to any related meeting or proceeding. Advisors have no active role in any meetings or the grievance process except as explicitly provided in this Regulation. Meetings or proceedings may not be unreasonably delayed due to the selection or schedule of an Advisor, and it is the responsibility of the Complainant or Respondent to communicate relevant information to their Advisor and ensure that their Advisor comports themselves in a manner which respects this educational-administrative process. After an appropriate warning, the University reserves the right to stop a meeting or proceeding and remove an Advisor whose presence disrupts the meeting or proceedings, and then begin the meeting or proceedings without the Advisor. During a hearing held pursuant to this Regulation, an advisor will be provided by the University for cross-examination purposes only if the Complainant or Respondent does not already have an Advisor.

## **VIII.VIII. FORMAL COMPLAINTS**

A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or electronic mail using the contact information listed for the Title IX Coordinator above. A Formal Complaint may also be filed through [conduct.fiu.edu](https://fiu.edu) or <https://fiu.i-sight.com/portal/idea> <https://fiu.i-sight.com>.

If the Complainant files a Formal Complaint, the University will analyze whether it is to be dismissed. This analysis occurs prior to the investigation, and also at any point in the investigation or grievance process when the grounds for dismissal appear. In all cases, if the Formal Complaint is dismissed, the Title IX Coordinator will promptly and simultaneously provide the parties written notice of the dismissal, the reasons for the dismissal, and an opportunity to appeal.

### **Mandatory Dismissal of Formal Complaints of Sexual Harassment**

The University must dismiss a Formal Complaint of Sexual Harassment to the extent the conduct alleged in the Formal Complaint:

- Would not constitute Sexual Harassment even if proved;
- Did not occur in the University's education program or activity; or
- Did not occur in the United States.

At the time a Formal Complaint is filed, a Complainant must be participating in or attempting to participate in an University educational program or activity. Even though a Formal Complaint must be dismissed for Sexual Harassment (Title IX) purposes, the University may continue to review the allegations as Sexual Misconduct or other violation of the University's regulations, rules, and policies.

### **Permissible Dismissal of Formal Complaints of Sexual Harassment or Sexual Misconduct**

The University may dismiss a Formal Complaint in the following circumstances:

- The conduct would not constitute Sexual Misconduct even if proved;
- Upon completion of the investigation, the Title IX Coordinator concludes that there is not reasonable cause to believe that a violation of this Regulation occurred. Reasonable cause is a lower standard than preponderance of the evidence;
- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- The Respondent is no longer enrolled or employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

In determining whether to dismiss in these circumstances, the University will evaluate whether a dismissal would be clearly unreasonable in light of the known circumstances.

If dismissed, the University may continue to review the allegations as a violation of other University regulations, rules, and policies.

## ~~INVESTIGATION OF A REPORT OF A POTENTIAL VIOLATION OF FIU-105 AND RESOLUTION OF AN INVESTIGATION~~

### **Consolidation of Formal Complainants**

The Title IX Coordinator, Director of Student Conduct and Academic Integrity or the Director of Employee and Labor Relations or designee(s) may consolidate Formal Complaints against more than one (1) Respondent, or by more than one (1) Complainant against one (1) or more Respondents, or by one Party against another Party where the allegations arise out of the same facts or circumstances.

### **IX. INTERIM SUSPENSION AND ADMINISTRATIVE LEAVE**

The University may remove a Respondent from some or all of the University's programs and activities or employment on an interim basis if it determines there is an immediate threat to the health, safety, or welfare of the University or University Community arising from allegations of violations of this Regulation. Prior to placing a Respondent on Interim Suspension or Administrative Leave, the University will conduct an individualized safety and risk analysis.

If a Respondent is removed pursuant to this section, the University will provide the Respondent with written notice and an opportunity to challenge the removal. The Respondent will have three (3) Business Days from the date of the notice of Interim Suspension or Administrative Leave to challenge the decision, in writing, stating the basis of their challenge to the removal. A copy of the challenge to the Interim Suspension or Administrative Leave will be provided to the Complainant. No later than three (3) Business Days after receipt of the challenge, the University will provide a written determination to the Respondent and Complainant.

If Interim Suspension or Administrative Leave is upheld, the Respondent retains all rights to an investigation and hearing as set forth in this Regulation prior to any ultimate finding of responsibility and sanctions.

### **X. INVESTIGATION OF FORMAL COMPLAINTS**

#### **Criminal Investigations**

To initiate a criminal investigation, reports of Sexual Misconduct or Sexual Harassment should be made to the University Police Department, or local law enforcement. The criminal process is separate from this grievance process and the Rules of Civil or Criminal Procedure do not apply. The University has an obligation to promptly respond to allegations of Sexual Misconduct or Sexual Harassment and investigate all Formal Complaints while the criminal process is pending. Therefore, the University in its sole discretion may proceed with an investigation under this Regulation before, during, or after any law enforcement investigation or criminal proceedings.

#### **Notice of Allegation**

Upon receipt of a Formal Complaint, the Title IX Coordinator or designee will provide the Complainant and Respondent with written notice stating:

- this Regulation and other applicable Regulations or policies;
- the allegations of Sexual Harassment or Sexual Misconduct including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved if known, the alleged conduct constituting Sexual Harassment or Sexual Misconduct, and the date and location of the alleged incident if known;
- the Respondent is presumed Not Responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence;
- any provision of the Student Conduct and Academic Honor Code or applicable regulations, policies, or procedures that prohibits knowingly making false statements or knowingly submitting false information during the grievance process; and
- an appointment date and time where they will, separately, meet with the Title IX Coordinator for an information session to discuss the grievance process, supportive measures, and any other concerns a party may have. Each party will be provided with at least fourteen (14) Business Days between receipt of the Notice of Allegation and the date of the initial interview except in cases of emergency or where waived by the party.

If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the original Notice of Investigation, the University will provide notice of the additional allegations to the parties.

### **Timeline for Investigation and Responsibility Determination**

It is the University's intention to complete a Title IX investigation and reach a determination of responsibility within ninety (90) Business Days, although good-faith efforts to conduct a fair, impartial investigation in a timely manner may require a different timeline depending on the circumstances.

Any deadline set forth in this Regulation or imposed during the grievance process may be temporarily modified or given a limited extension of time for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the modification. Good cause may include considerations such as the absence of a party, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

The University may act on its own in modifying deadlines, or the parties may request an extension in writing by contacting the Title IX Coordinator, Director of Student Conduct and Academic Integrity or Director of Employee Labor Relations or designee(s) as applicable.

### **Appointment of an Investigator**

The Title IX Coordinator may designate one or more properly trained individuals to investigate a Formal Complaint, including University or third-party investigators.

In the event of a conflict or bias, the University will appoint an alternate individual so that the process is free of conflicts of interest and bias.

### **Concurrent Processes**

If the Respondent is a student and portions of the Formal Complaint include allegations that violate the Student Conduct and Honor Code but are not alleged violations of this Regulation, those allegations may be investigated and/or addressed separately by Student Conduct and Academic Integrity before, during, or after the investigation coordinated by the Title IX Coordinator described herein.

Similarly, if the Respondent is an employee or member of the University Community and portions of the Formal Complaint include allegations that violate University regulations, policies, and procedures applicable to personnel, but are not alleged violations of this Regulation, then those allegations may be investigated and/or addressed separately by Human Resources before, during, or after the investigation coordinated by the Title IX Coordinator described herein.

### **The Collection of Evidence**

Investigators will gather information from the Complainant, Respondent, and other individuals who have information relevant to the Formal Complaint. The parties will have an equal opportunity to present facts and evidence, identify witnesses, and other inculpatory and exculpatory evidence. The investigator may also interview relevant third parties who, throughout the course of the investigation, are determined to have information that may assist in the review of the formal complaint. The investigator has the discretion to determine the relevance of any witnesses provided by either party, and will determine which witnesses to interview. The investigator will not consider relevant any witnesses who are offered solely for the purpose of providing evidence of a party's character. If a party declines to provide relevant information, the University's ability to conduct a prompt, thorough, and equitable investigation may be impaired.

The University will provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all investigative interviews at least seven (7) Business Days prior to the investigative meetings, or other meetings except in cases of emergency or unless waived by the Respondent.

### **Exclusion of Certain Forms of Evidence**

The University cannot access, consider, disclose, or otherwise use a party's records that contain information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

If a party chooses to provide evidence that would otherwise be excluded under this subsection, it will be considered directly related evidence subject to the parties' inspection.

### **Review of Collected Evidence & Investigatory Report**



The Title IX Coordinator, Director of Student Conduct and Academic Integrity, or Director of Employee and Labor Relations, or designee as appropriate will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the University must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will be given at least ten (10) Business Days to submit a written response. The investigator will consider any written responses prior to completion of the investigative report.

The University will also make all directly related evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

The Title IX Coordinator or designee will send the parties and their advisors the final investigative report that fairly summarizes relevant evidence, with at least 10 (ten) Business Days prior to a hearing or determination of responsibility.

## **XI. INFORMAL RESOLUTION**

If a Formal Complaint has been filed, the University has the discretion at any time prior to reaching a determination regarding responsibility to choose to offer and facilitate informal resolution options so long as the parties give voluntary, informed written consent to attempt informal resolution. Informal resolution is not available when a Complainant is a student alleging that a University employee has engaged in Sexual Harassment or Sexual Misconduct.

In offering an informal resolution process, the University will provide the parties written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which, upon reaching an agreed resolution, it precludes the parties from resuming a formal complaint arising from the same allegations; provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint. The University will also explain any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The Informal Resolution process must be completed within fifteen (15) Business Days of the parties agreeing to pursue such a process. If not completed by that deadline, in the absence of any approved extensions, the Formal Complaint will continue to be investigated and processed for a live hearing as described in this Regulation.

If the Respondent is a student, the Director of Student Conduct and Conflict Resolution/Deputy Title IX Coordinator will oversee the matter in accordance with the Student Code of Conduct Regulation (FIU Regulation 2501) working with the *Title IX Coordinator*. If the Respondent is

an employee, the *Title IX Coordinator* will oversee the matter. If the Respondent is a student and holds a position as University employee, the *Title IX Coordinator* and the Director of Student Conduct and Conflict Resolution will determine which office will have primary oversight of the matter.

There may be instances in which a Complainant is unable or unwilling to pursue a report of Discrimination but where the *Title IX Coordinator* 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.

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#### INVESTIGATION PROCEDURES

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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 process. The *Title IX Coordinator* will select a trained investigator(s) to gather sufficient evidence to reach a fair, impartial determination as to whether the alleged violation has occurred based on the preponderance of the evidence. The investigator(s) will be trained to gather and document the available evidence to support reliable decisions, objectively evaluate the credibility of the parties and witnesses, synthesize all available evidence (including both supportive and non-supportive evidence), and take into account the unique and complex circumstances of each case. The *Title IX Coordinator* will select investigator(s) who are free of actual or reasonably perceived conflicts of interest and biases for or against any party.

Prior to the initial investigation meeting, the *Title IX Coordinator* will send to the Respondent and Complainant written notice about the allegations constituting a potential violation of this Regulation in order for the parties to prepare for meaningful participation in the matter. During an investigation, the investigator(s) will seek to meet separately with the Complainant, the Respondent, and any witnesses. Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the incident, the disclosure, or related matters. The investigator(s) will also gather other relevant information or evidence, including documents, photographs, communications between the parties, medical records (subject to the consent of the applicable person), and other electronic records as appropriate. The investigator(s), not the parties, are responsible for gathering relevant evidence to the extent reasonably possible. Both the Complainant and Respondent are encouraged to promptly submit any relevant information, including witnesses' names. If a party declines to provide relevant information, the University's ability to conduct a prompt, thorough, and equitable investigation may be impaired.

All investigations will be conducted in a prompt fashion to determine what occurred and whether steps must be taken to resolve the situation. The appropriate University

~~officials will make every effort to complete the investigation phase within a reasonable period of time 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.~~

~~Any investigation may include, but shall not be limited to, interviewing the Complainant, Reporting Party (if not the Complainant) and the Respondent regarding the allegations, interviewing other persons who may have information relevant to the allegations, preparing witness statements for all persons interviewed, and/or reviewing of any relevant documents.~~

## **XII. HEARINGS**

### **The Hearing Process**

Live hearings may be conducted with all parties physically present in the same geographic location or with any (or all) parties, witnesses, and other participants appearing virtually utilizing technology that enables participants to simultaneously see and hear each other. At the request of either party, the University will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-makers and parties to simultaneously see and hear the party or the witness answering questions.

At the live hearing, the Hearing Officer will explain each Party's rights and options and assure that fairness and procedural due process are observed throughout the hearing. The Hearing Officer will permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor. Only relevant cross-examination and other questions may be asked of a party or witness. To ensure this, before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

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

If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer and Hearing Body will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Office and Hearing Body will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

The University will create an audio or audiovisual recording, or transcript, of any live hearing. Live hearings will be closed to the public.

### **The Written Determination Regarding Responsibility**

The University will provide a written determination regarding the Respondent's responsibility simultaneously to the Parties within fourteen (14) Business Days from the conclusion of the hearing. The Decision-Maker will also provide a copy of the written determination to the Title IX Coordinator. Unless an appeal is filed, this written determination shall constitute Final Agency Action. ~~for determinations that result in suspension or expulsion of student Respondents. For employee or other University Community Respondents, unless an appeal is filed the written determination is Final Agency Action.~~ The written determination regarding responsibility will include the following:

- Identification of the allegations potentially constituting Sexual Misconduct or Sexual Harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the University's regulations to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant (without disclosing the nature of those remedies except to the extent a remedy also imposes requirements on the Respondent); and
- The grounds for appeal.

### XIII. DISCIPLINARY SANCTIONS

In reaching a determination regarding sanctions, consideration will be given to any aggravating and mitigating circumstances. The sanctions described below are a description of the range of sanctions available, and not an exhaustive list of all sanctions that may be imposed.

Student Conduct and Academic Integrity will oversee disciplinary sanctions for students and student organizations. Students or student organizations who are found to have violated this Regulation will be subject to disciplinary sanctions as set forth in the Student Conduct and Academic Code, FIU- Regulation 2501. Any sanctions will be proportionate to the severity of the violation and the student's cumulative conduct history. Sanctions include, but are not limited to, reprimand, educational sanctions, counseling assessment, restitution, disciplinary probation, restrictions, exclusion from university housing, suspension, loss of university recognition, or expulsion.

Human Resources will oversee disciplinary sanctions for non-students. Faculty and staff who are found to have violated this Regulation will be subject to disciplinary action pursuant to applicable collective bargaining agreements or applicable personnel regulation, policies, or procedures. Sanctions include, but are not limited to letters of reprimand, training, performance improvement plans, reassignment, demotion, suspension with or without pay, and termination.

Third parties (including contractors and visitors) who are found to have violated this Regulation may be barred from the campus and/or conducting business with the University.

#### **XIV. REMEDIES**

In some cases, the Hearing Official or Hearing Panel may find that remedies are needed for a Complainant when a Respondent is found responsible for violating this Regulation. Remedies are designed to restore or preserve the Complainant's equal access to the University's education program or activities. As an example of the range of remedies available, remedies may include similar individualized services as defined in Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. Remedies do not include damages or other financial awards, or other relief that would impose an undue hardship on the University.

The Title IX Coordinator is responsible for the effective implementation of any remedies. When a determination indicates that remedies will be offered to the Complainant, the Complainant should contact the Title IX Coordinator to arrange for appropriate remedies.

#### **XV. PROCESS OF PRESIDENTIAL REVIEW**

The President will notify the Appellate Officer within three (3) Business Days of notification of a disciplinary outcome if he/she wishes to review the underlying disciplinary matter. This review will serve as the appeal process for the Respondent and Complainant. Any other appeal process will immediately cease.

No later than one (1) Business Day after the President notifies the Appellate Officer, the Appellate Officer shall notify the Respondent and Complainant of the President's decision to review the underlying disciplinary matter including sanctions. The Respondent and Complainant may provide the President with any information (including any documents supporting an appeal if not previously submitted) within three (3) Business Days of the Appellate Officer's notification.

The President may only consider the information previously provided in this disciplinary matter, any appeals submitted by the Respondent and Complainant, and any information that meets the grounds for appeal as outlined in Section XVI.

The President shall issue a written decision, including the results of the appeal and rationale, to the Respondent, Complainant, Appellate Officer, and Title IX Coordinator within fourteen (14) Business Days of notification of a disciplinary outcome. The President's decision constitutes Final Agency Action and will include notice of the Respondent's right to appeal to an external judicial forum.

#### **XVI. APPEALS**

Both parties will be notified and provided with the opportunity to appeal a determination or dismissal based on the following grounds only:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or Hearing Official had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; or
- The sanctions are extraordinarily disproportionate to the violation committed.

An appeal must be submitted in writing to the Appellate Officer within seven (7) Business Days of the date of the Hearing Official or Hearing Body’s written determination and identify the grounds and arguments for challenging the outcome. If the appeal is based on newly discovered evidence, the evidence must be submitted with the written appeal.

Upon receipt of an appeal, the University will notify the other party in writing when an appeal is filed and provide them with seven (7) Business Days to submit a written statement in support of or challenging the outcome.

After both parties have had an opportunity to present their arguments challenging or supporting the outcome, the Appellate Officer will issue a written decision within fourteen (14) Business Days simultaneously to both Parties with the result of the appeal and the rationale. The Appellate Officer will also provide a copy of the appellate decision to the Title IX Coordinator. The University’s decision shall constitute Final Agency Action.

## **XVII. PRIVACY AND CONFIDENTIALITY**

The University will keep information and actions taken in accordance with this Regulation confidential to the extent possible under the law, meaning it will only disclose information to individuals with a legitimate need to know in order to review, investigate, and resolve reports of Sexual Misconduct or Sexual Harassment, or as permitted or required by law.

The University may release information about Sexual Misconduct or Sexual Harassment in certain circumstances without permission in order to warn and protect the University Community.

### **RESOLUTION OF THE INVESTIGATION WHEN THE RESPONDENT IS AN EMPLOYEE**

~~Upon completion of the investigation, a report shall be prepared which includes a summary of the complaint, a description of the investigation, the findings of fact, and a determination whether a violation of Regulation FIU-105 is substantiated or unsubstantiated. The conclusion that a violation was substantiated will be based on a preponderance of the evidence standard. The final investigation report shall be given to the following people at or about the same time (as is practicable): the Complainant, the Respondent, and the Director of Employee and Labor Relations and/or the Division of Academic Affairs. The appropriate office will determine what action, including discipline, (if any) may be necessary. No decision about discipline or implementing any discipline will be taken until the time for filing an appeal has lapsed or when the appeals process has finally concluded.~~

~~Either party may seek review of the final investigation report by the Vice President for Human Resources or a designee by filing an appeal within seven (7) business 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 report.~~

~~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 as soon as is practicable. The other party may file a response to the appeal to the Vice President for Human Resources within seven (7) business days of receipt of the appeal. The Vice President for Human Resources or designee shall issue a written finding within seven (7) business 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 or about the same time (as is practicable). These deadlines may be extended when necessary (but not in an attempt to delay the final resolution of the matter).~~

~~Once the appeal process has concluded, the Director of Employee Labor and Relations Department and/or the Division of Academic Affairs (if the faculty is involved) will make a recommendation to the Respondent's supervisor as to whether any disciplinary action should be taken against the Respondent. The resolution of the complaint will be communicated to the Complainant and Respondent at or about the same time (as it practicable).~~

## ~~RESOLUTION OF THE INVESTIGATION PROCESS WHEN THE *RESPONDENT* IS A STUDENT~~

~~Upon completion of the investigation, a report shall be prepared which includes a description of the investigation, a summary of the complaint and the witness statements. The Director of Student Conduct and Conflict Resolution/Deputy Title IX Coordinator will review the report in order to determine whether there is a potential violation(s) of the Student Conduct Code.~~

~~If the Director determines that there has been a violation(s), the Director will follow the process that is described in the Student Conduct Code. See FIU Regulation 2501 at <http://regulations.fiu.edu/regulation>.~~

## ~~IX. RETALIATION~~

### ~~XVIII. RETALIATION AND OBSTRUCTION~~

~~For purposes of this Regulation, *Retaliation*, retribution or reprisal is defined as adverse action taken against an employee or student as a result of an employee or student's good faith reporting of violations of law, rule, regulation, policy or other misconduct.~~

~~Retaliation and Obstruction are prohibited during any portion of the grievance process. If a member of the University community believes that Retaliation or Obstruction may have been taken against them or others as a result of filing a grievance, complaint or report of a violation of law, rule, regulation or policy, they should report the behavior retaliation to the EOPD Title IX Coordinator or investigator Office. The situation will be reviewed and a response will be~~

provided to the employee or student who alleged the Retaliation or Obstruction. Charging an individual with a violation for making a materially false statement in bad faith in the grievance process under this Regulation does not constitute Retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. Exercising any rights secured by the First Amendment does not constitute Retaliation.

Specific Authority: Board of Governors Regulation 1.001 (5)(a). History-- Formerly FIU-104 (repealed) and FIU-103 (repealed). New April 15, 2015, Amended June 8, 2018, Emergency Amended 8-13-20, Amended.