

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

NOTICE OF CHANGE TO APPROVED REVISED REGULATION

REGULATION TITLE: Sexual Harassment (Title IX) and Sexual Misconduct

REGULATION NO.: FIU-105

SUMMARY: On May 6, 2020, the United States Department of Education Office for Civil Rights (OCR) issued regulations on Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination based on sex. In response, substantive revisions were made to ensure the University's compliance with the new regulations and approvals of said revisions were obtained from the University's Board of Trustees. On October 28, 2020, the Board of Trustees approved the revised regulation to be effective until its February 2021 board meeting. This change will eliminate the date restriction and therefore, make the revised regulation effective without such date restriction.

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 (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 8th Street, PC 511, Miami, FL 33199
Email: devillee@fiu.edu | Phone: 305.348.2103 | Fax: 305.348.3272

DATE OF PUBLICATION: January 22, 2021

THE FULL TEXT OF THE PROPOSED REGULATION IS PROVIDED BELOW:

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

I. POLICY STATEMENT

Florida International University (the University) is committed to encouraging and sustaining a learning and living environment that is free from 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, Dating 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 consistent with 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 a 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 a University education program or activity regardless of location. 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.

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 Regulation is not meant to inhibit or prohibit educational content or discussions protected by academic freedom or the First Amendment, 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.

II. TITLE IX COORDINATORS

The *Title IX Coordinator* is:

- knowledgeable and trained in University policies and procedures and relevant state and federal laws;
- 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 overseeing investigations of alleged violations of this Regulation;
- responsible for ensuring the effective implementation of this Regulation, including monitoring compliance with all procedural requirements, recordkeeping, and timeframes;
- responsible for overseeing training, prevention, 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:

Courtney McHenry
Office of Inclusion, Diversity, Equity, & Access (IDEA)
 Office number: 305-348-2785
 Email: cmchenry@fiu.edu
 Address: 11200 S.W. 8th Street, PC 321
 Miami, FL 33199

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:

- Michelle R. Horvath, Assistant Dean of Students, Office of Student Conduct and Academic Integrity
 Office number: 305-348-3939
 email: conduct@fiu.edu
- Julie Berg-McGraw, Sr. Associate Athletic Director, Athletics Department
 Office number: 305-348-2352
 email: julie.bergmc_graw@fiu.edu
- Joann Cuesta-Gomez, Director, Office of Employee & Labor Relations
 Office number: 305-348-4186
 email: 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 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.

The Title IX Coordinator, investigators, and Hearing Officer(s), and Hearing Body will be 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.

FIU Office of University U.S. Depart. of Education Equal Opportunity Compliance and Integrity Office for Civil Rights Commission

(305) 348-2216

(800) 421-3481

(800) 669-4000

Email: compliance@fiu.edu

III. 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, the day of the event, act, or default that initiates the period shall be excluded.

Complainant - Any individual who 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.

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 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.

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 a 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 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.

Responsible Employee - Any employee with authority to institute corrective 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 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.

Obstruction – 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 (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 Regulation.

Retaliation – 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.

Sexual Harassment – Conduct on the basis of sex which occurs in the United States in a 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:

- *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.
- *Sex-based 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.

- *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
- *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.

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.

Violation of Supportive Measure(s): Failure to comply with a Supportive Measure(s) imposed pursuant to this Regulation.

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.

V. 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 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.

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 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). 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 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.

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

MAKING A REPORT TO THE UNIVERSITY

Means University Officials must take appropriate action

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**

Courtney McHenry

Interim Title IX Coordinator

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

PC 321

Phone: 305-348-2785

Email: idea@fiu.edu

Michelle Horvath

Director, Student Conduct and Academic Integrity
(SCAI)

GC 311A

Phone: 305-348-3939

Email: conduct@fiu.edu

Joann Cuesta Gomez

Director, Employee & Labor Relations (ELR)

PC 236

Phone: 305-348-4186

Email: elr@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

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

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

Incident Reporting Form provides a
method to report on an anonymous basis to
Student Affairs:

<https://publicdocs.maxient.com/incidentreport.php?FloridaIntlUniv>

All other employees 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) 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) are strongly encouraged to report any information, including reports or partial reports, to the Title IX Coordinator or Deputy Title IX Coordinator(s).

Reports of conduct believed to be prohibited by this Regulation (or that left unchecked may rise to the level of prohibited Sexual Misconduct or Sexual Harassment) are encouraged even if the reporter is not sure that the conduct violates this Regulation or 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.

VI. SUPPORTIVE MEASURES

When an informal or 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 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 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.

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. 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 Supportive Measures 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 Directive" for all or some of the parties involved in the incident
- 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 Supportive Measures or the failure of another individual to abide by any Supportive Measure to the Title IX Coordinator or designee. Any violation of a Supportive Measure will be investigated and adjudicated under this Regulation.

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. 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 or <https://fiu.i-sight.com/portal/idea> .

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 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 Complainant is filed, a Complainant must be participating in or attempting to participate in a 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.

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.

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. 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.

XVIII. RETALIATION AND OBSTRUCTION

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, they should report the behavior to the Title IX Coordinator or investigator. 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, Amended 8-13-20, Amended 10-30-20.