

# FLORIDA GULF COAST UNIVERSITY POLICY

**Policy Number:** 1.006

**Policy Title:** Non-Discrimination, Anti-Harassment, and Sexual Misconduct

**Responsible Division/Office:** Office of Institutional Equity and Compliance

## A. POLICY STATEMENT

1. Florida Gulf Coast University (University) is committed to maintaining a respectful, fair educational and work environment, free from discrimination or harassment. The goal of the University is to prevent discrimination or harassment from occurring and to provide a means of raising and resolving complaints promptly and effectively. The University does not discriminate on the basis of race, color, religion, age, disability, sex, national origin, marital status, genetic predisposition, sexual orientation, gender identity/gender expression, or veteran status as required by applicable state and federal law, as well as University regulations and policies. Therefore, members of the University community have the right to file complaints of discrimination, harassment, and sexual misconduct. Complaint investigations will be conducted in a fair, respectful, and consistent manner. The University strictly prohibits and will not tolerate retaliation against any individual due to their participation in this process or any other protected activity. A claim of retaliation shall be treated as a separate allegation of discrimination. If the University discovers discrimination or harassment, the University will take affirmative steps to eliminate the discrimination or harassment, remedy its effects, and prevent its recurrence.
2. The informal and formal procedures set forth below are intended to afford a prompt response to charges of discrimination, harassment, sexual misconduct, intimate partner violence, and stalking. The provisions herein are also established to maintain confidentiality and fairness consistent with applicable legal requirements.

## B. REASON FOR POLICY

This Policy provides procedures whereby members of the University community, including employees, students, and third party vendors, may file complaints of alleged discrimination, harassment, ~~and~~ sexual misconduct, and retaliation. [This policy further](#) outlines the procedures used to investigate such complaints pursuant to FGCU-PR1.003, Non-Discrimination, Anti-Harassment, and Sexual Misconduct Regulation and in compliance with applicable federal, state, and local laws, as well as lawful orders and University regulations.

Note: While this Policy also addresses investigations of sexual misconduct covered by Title IX, students involved in such investigations may also be interviewed by the Office of Student Conduct within the Division of Student Affairs. Additionally, the Student Code of Conduct will also be applied to students involved in allegations of violations of this policy and its related regulation.

## C. **APPLICABILITY AND/OR ACCOUNTABILITY**

This Policy is applicable to out-of-unit faculty, staff, students, vendors, contractors, guests, patrons, and other third parties participating in any FGCU-sponsored event or program. As for in-unit faculty covered by a collective bargaining agreement, and consistent with Article 6.2 C., investigations based on allegations of discrimination, harassment, or sexual misconduct will proceed consistent with Section V, Paragraph D of this Policy.

## D. **DEFINITION OF TERMS**

1. *Complainant(s)*: A person or persons alleging violations of FGCU-PR1.003, which includes allegations of violation(s) of Title IX of the Education Amendments Act of 1972 (Title IX).
2. *Complaint*: Allegations of a violation(s) of University Regulation, FGCU-PR1.003.
3. *Consent*: The mutual assent by words or actions to engage in a particular sexual activity that must be made voluntarily and competently by all parties.
  - a) In order for consent to be given voluntarily, it must be free from threat, force, intimidation, extortion, and/or undue influence.
  - b) In order for consent to be given competently, both parties must have the capacity to consent. If one of the parties is incapacitated due to, among other things, drug or alcohol use, then that person lacks the necessary capacity, and thus the competency required to consent.
4. *Days*: Calendar days. University holidays (i.e., days when the University is closed) are excluded from the computation of time. If the time ends on a Saturday or Sunday, the deadline is extended to the following University business day.
5. *Decision Maker*: The President, Vice President, President's Direct Report or their designee(s) in the Respondent's chain of command, or Dean of Students, where applicable.
6. *Deputy Title IX Coordinator(s)*: A University employee designated to assist in the administration of the responsibilities related to Title IX matters.
7. *Discrimination*: The intentional or unintentional treatment of any member of the University community less favorably than those who are similarly situated based upon race, color, religion, age, disability, sex, national origin, marital status, genetic predisposition, sexual orientation, gender identity/gender expression, and/or veteran status.

8. *Harassment*: Unwelcome conduct, including electronic and written communication, that is based upon race, color, religion, age, disability, sex, national origin, marital status, genetic predisposition, sexual orientation, gender identity/gender expression, and/or veteran status. Harassment is further defined as behavior so severe, pervasive, or persistent that it limits a student's ability to participate in or benefit from an educational program, undermines the responsibilities of the employee, and/or creates a hostile working or learning environment.
9. *Intimate Partner Violence (Also known as "dating violence" or "domestic violence")*: The use of physical violence, force, threats, intimidation, isolation, stalking, or other forms of emotional, sexual, or economic abuse directed towards an Intimate Partner. This can take the form of behavior(s) that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, forces, threatens, blames, hurts, injures, or wounds someone. Intimate Partner Violence can be a single act or a pattern of behavior in relationships.
10. *Intimate Partner*: Persons who are or who have been dating, cohabitating, married, separated, or divorced, and may be of the same or opposite sex.
11. *Investigative Report*: The report created by the Investigator which includes: a summary of the complaint; description of the investigation, to include names of persons interviewed with dates, list of documents reviewed, and findings to include whether or not the allegation(s), more likely than not, took place; and, if at issue, whether the complaint was frivolous, knowingly false, malicious or retaliatory. Certain information may be redacted in accordance with applicable law.
12. *Investigator*: OIEC Director, or trained person designated as an Investigator by the OIEC Director or the Vice President and General Counsel, who conducts a fact-finding inquiry (investigation) and writes an Investigative Report.
13. *OIEC Director*: University employee responsible for the administration of this Policy and its corresponding Regulation, which includes compliance with Title IX.
14. *OIEC*: Office of Institutional Equity and Compliance.
- ~~14.~~15. *Protected Activity*: [This is activity which is protected by federal or state law or regulation, and includes but is not limited to participation in a University investigation, the filing of a complaint in good faith, filing a claim for worker's compensation, taking FMLA leave, or any of the federally protected activities delineated in 18 U.S.C. § 245.](#)
- ~~15.~~16. *Respondent(s)*: A person or persons whose conduct is the subject of a complaint under FGCU-PR1.003.
- ~~16.~~17. *Responsible Employee*: An employee who has the authority to take action to redress the alleged misconduct, who has the duty to report the alleged misconduct to

appropriate University officials, or an individual who would reasonably be believed to have the authority or responsibility to redress or report the alleged misconduct.

~~17.~~18. *Retaliation*: When an officer, agent, employee, student, contractor, vendor, or other third party takes an **adverse action** against an individual for his or her participation in Protected Activity. This includes but is not limited to action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation in Protected Activity. For purposes of this policy as it relates to Retaliation based on Protected Activity, Examples of adverse action include: firing, denial of a promotion, lowering a grade, unjustified negative performance evaluations and reports, increased supervision or scrutiny, sudden enforcement of previously unenforced policies, exclusion from activities or privileges open to others, or any other action that would deter a reasonable person in the same circumstances from filing a complaint or engaging in Protected Activity.

~~18.~~19. *Sexual Harassment*: Unwelcome conduct of a sexual nature including unwelcome sexual attention, which includes requests for sexual favors, and other verbal or physical conduct of a sexual nature from any person that is so severe, pervasive, or persistent that it limits a student's ability to participate in or benefit from an educational program, undermines the responsibilities of the employee, and/or creates a hostile working or learning environment. Sexual violence is a form of sexual harassment.

~~19.~~20. *Sexual Misconduct*:

- a) An actual or attempted act of rape, sexual assault, sexual battery, sexual exploitation and other forms of non-consensual sexual activity.
- b) Sexual exploitation is an act that exploits someone sexually. Examples of sexual exploitation include, but are not limited to:
  - 1) Exposing one's own or another person's intimate parts without consent;
  - 2) Recording video or audio, photographing, or transmitting intimate or sexual utterances, sounds, or images without consent of all parties involved;
  - 3) Allowing others to view sexual acts (whether in person or via a video camera or other recording device) without the consent of all parties involved; or
  - 4) Engaging in any form of voyeurism.

~~20.~~21. *Stalking*: The repeated following, harassing, threatening, or intimidating of another by any action, including but not limited to use of telephone, mail, electronic communication, social media, or any other device or method that purposely or

knowingly causes substantial emotional distress or reasonable fear of bodily injury or death.

~~21.~~22. *Title IX Coordinator*: The University employee responsible for administering a centralized complaint filing process; for investigating complaints of gender inequity and/or sexual misconduct as defined in FGCU-PR1.003; for analyzing trends; and for monitoring overall compliance with this policy as it relates to Title IX compliance and related federal, state or local legislation and regulations. The OIEC Director also serves as the Title IX Coordinator. [The definition also encompasses a Deputy Title IX Coordinator.](#)

~~22.~~23. *University*: Florida Gulf Coast University (FGCU).

~~23.~~24. *Vendor or Contractor*: Individual or business entity in a contractual relationship with the University, but not an employee.

## **E. PROCEDURES**

### **1. Filing a Complaint**

- a) An individual alleging ~~Discrimination, Harassment, or Sexual Misconduct~~ [an action covered under this policy](#) may file a complaint with the OIEC Director by informing him or her of the alleged wrongdoing. Generally, allegations should be raised within ninety (90) days of the last act of alleged Discrimination or Harassment, or within ninety (90) days from becoming aware of the alleged act, unless the Complaint alleges sexual misconduct. A Complainant completes a Complaint Form made available by the OIEC.
- b) A Complaint may also be initiated by referral from the Division of Student Affairs, as well as any other Responsible Employee.
- c) The absence of a completed Complaint form does not negate initiation of an investigation.
- d) Any necessary correspondence will be provided to the Complainant and Respondent at the address designated by the Complainant and Respondent during the Complaint procedure. Notwithstanding, the parties may also utilize additional methods of communication, including electronic communication. If a mailing address or an email address is not provided, the OIEC Director may use an address on file with the University, or the best address available.
- e) At any time throughout the process, the OIEC Director may grant the Complainant, Respondent, Investigator, or Decision Maker an extension as is reasonably necessary, and will communicate any extensions in writing to the parties. This provision is not intended to conflict with the Student Code of Conduct.

## 2. Informal Procedure

- a) Informal resolution of a Complaint may be sought when the parties desire to resolve the situation cooperatively. Notwithstanding, allegations of sexual assault will not be resolved informally or be the subject of an alternative method of dispute resolution.
- b) Before pursuing the formal procedure a Complainant may seek informal resolution through the OIEC Director by making a written request for informal resolution to the Complaint.
- c) If the Complainant has utilized the informal procedure but the matter has not been informally resolved within thirty (30) days of its submission to the OIEC Director, the Complainant must communicate to the OIEC Director whether or not he or she wishes to proceed with the formal procedure.
- d) The Complainant has fourteen (14) days from the date of the communication from the OIEC Director that the informal procedure has concluded without resolution, to notify the OIEC Director of his or her decision to move forward with the formal procedure. Failure to communicate with the OIEC Director may result in no further action by the University and the closure of the Informal Resolution request. However, if circumstances warrant investigation into the matter, the OIEC Director or Investigator may proceed with an investigation.
- e) If a Complainant believes that a Complaint cannot be resolved utilizing alternative dispute resolution, a Complainant may forego the informal procedure and go directly to the formal procedure.

## 3. Formal Procedure

- a) After the Complainant notifies the OIEC Director that he or she wishes to proceed to the formal procedure, the Complainant should complete the Complaint Form and submit it to the OIEC Director who will initiate an investigation.
- b) 1) The formal procedure cannot be utilized when a Complainant fails to make allegations, which constitute a violation of FGCU-PR1.003. When a Complainant fails to allege sufficient facts to indicate a violation may have occurred, such Complaint shall be dismissed in writing by the OIEC Director and the dismissal shall be sent to the Complainant via a form of verifiable delivery, which may include hand delivery. A dismissal for failure to allege sufficient facts to substantiate a violation of the FGCU-PR1.003 is the final University decision, unless additional facts are submitted sufficient to indicate a violation may have occurred.

2) A final University action under this policy involving a Student Respondent will come from the Division of Student Affairs.

c) Notwithstanding the provisions of the formal procedure, all allegations of violations of Title IX will be investigated to the extent an investigation is possible.

#### 4. Investigation

a) The OIEC Director or the Vice President and General Counsel investigates, or assigns a trained Investigator to initiate an investigation.

b) An Investigator will complete the investigation as promptly as possible, but no later than sixty (60) days from the date of receipt of the Formal Complaint unless there are extenuating circumstances. In such a case, notice, along with reasons for the extension, shall be provided to the parties with the amount of time the investigation shall be extended.

c) In the case of investigations of allegations of Sexual Misconduct, the OIEC Director, as Title IX Coordinator, will coordinate his or her investigation with the appropriate University departments involved to ensure the Complainant is interviewed in a collaborative manner.

d) In the event that a complaint of Discrimination or Harassment is filed against the OIEC, an investigation will be conducted by an Investigator external to the University.

e) When an external third party is the named Complainant or Respondent, the OIEC Director shall consult with the appropriate University department concerning the investigation. In such cases, the Decision Maker shall be the President, appropriate Vice President, or designee.

f) 1) Upon receiving a report under this Policy from the Complainant, the Investigator assigned to address the allegations notifies the Respondent that a Complaint has been filed against him or her and informs him or her of the nature of the Complaint. The Investigator shall explain to both the Complainant and the Respondent the informal and formal procedures, including a description of the process, the relevant avenues of redress, and provide them with a copy of this Policy.

2) The OIEC Director shall confer with the appropriate University officials to ensure that, if warranted, interim measures are pursued to protect both parties pending completion of the matter.

g) The Respondent will be afforded an opportunity to provide a response to the allegations. Moreover, both parties will have the opportunity to present witnesses and other evidence for consideration.

- h) All persons involved with the investigation are cautioned that retaliation is strictly prohibited. It is imperative that matters discussed during the investigation are kept confidential in order that the fact-finding nature of the investigation is in no way hindered or impaired. Investigations encompass, but are not limited to, witness interviews, the gathering of documentation and other evidence, as well as other investigative techniques deemed appropriate by the Investigator. All members of the University community are expected to cooperate with an investigation. Failure to do so could result in disciplinary action. This provision is not intended to conflict with any provision of Title IX or other applicable federal and state law(s).
- i) Any person interviewed by an Investigator as part of an investigation will be permitted to be accompanied by legal counsel, a union representative, or a support person, if so desired. However, such person's role shall be limited to observation, support, or advice; such support person shall not represent or speak on behalf of the person to whom they are providing support or advice.
- j) An investigation is considered concluded when the Investigator provides an Investigative Report to the appropriate Decision Maker with a determination of whether the allegation(s), more likely than not, occurred.
- k) A summary of the Investigative Report, including the general basis for the Complaint and the determination, shall be provided to the Complainant and the Respondent.

#### 5. Investigative Report, Determination, and Disciplinary Action

- a) Once the Investigative Report has been completed, a copy will be provided to the Decision Maker for a determination as to what, if any, disciplinary action will be imposed. At the same time, or soon thereafter, the Investigative Report, or summary report, will be released to the Complainant and Respondent via certified mail, return receipt requested, hand-delivery (with proof delivery), or any other verifiable method of delivery, including electronic mail.
- b) A determination by the Decision Maker as to disciplinary action, if any, will occur within 14 days of the delivery of the Investigative Report, unless the Respondent is covered under a collective bargaining agreement or the Student Code of Conduct. Under those circumstances, the relevant documents will control the imposition of the disciplinary action, if any. If warranted, an extension of time is permitted to reach a determination as to disciplinary action.
  - 1) The Decision Maker will implement disciplinary action as soon as reasonably practicable, when in his or her judgment it is appropriate. Moreover, the Decision Maker will attempt to take whatever steps are within his or her control to prevent the recurrence of the offending behavior and to correct its discriminatory effects on the Complainant and others, if appropriate.

2) The Respondent and the Complainant may, if appropriate, be informed of the disciplinary action to be imposed.

3) Any discipline to be imposed shall be determined in accordance with the Student Code of Conduct (FGCU PR-4.002) where the Respondent is a student; Disciplinary Actions (FGCU-PR5.016) and related policies where the Respondent is an employee; and a collective bargaining agreement where the Respondent is an in-unit Faculty.

#### 6. Request for Reconsideration

- a) A person may request reconsideration of the findings made by the Investigator within seven (7) calendar days of receiving the investigative findings. A request for reconsideration of the findings can be made to the Office of the General Counsel.
- b) The reconsideration request must be based on one of the following:
  - 1) There is new evidence that was not available at the time of the investigation that should be considered; or
  - 2) The Investigator did not consider all information that was available during the investigation (e.g. did not interview a key witness, did not consider applicable documentation, etc.).
- c) Within seven (7) calendar days of receipt of a request for reconsideration, the General Counsel, or designee, will make one of the following determinations:
  - 1) The investigation should be remanded to the Investigator for further consideration of the evidence; or
  - 2) The requestor has not presented information that warrants a review of the investigative findings and thus the investigative findings are final.
- d) The determination as to the request for reconsideration is not a substantive review of the investigation; rather, the reconsideration process is in place to ensure that each party to the investigation is provided full due process.

#### **F. MISCELLANEOUS PROVISIONS**

- 1. After an incident of Sexual Misconduct, Intimate Partner Violence, or Stalking, the individual should consider seeking medical attention and law enforcement assistance as soon as possible. In circumstances of sexual assault, health care providers can treat injuries and take steps to address concerns of pregnancy or sexually transmitted disease. Although the University strongly encourages all members of its community

to report such violations of this Policy to law enforcement, it is the affected individual's choice whether or not to make such a report.

2. As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining protection from abuse through the use of a protective order related to the incident, more difficult. If an individual suffering from an incident covered by this Policy chooses not to make a complaint regarding the incident, he or she nevertheless should consider speaking with the University Police Department or other law enforcement agencies to preserve evidence in the event the individual reconsiders the decision not to make a Complaint.
3. Regardless of whether criminal charges are filed, allegations under this policy may also be heard through the Student Code of Conduct Regulation (FGCU-PR4.002) where a student is the accused.
4. The Director of the OIEC is the custodian of filed records associated with the investigation of complaints under FGCU-PR1.003.
5. The University may utilize the procedure articulated in this Policy to address investigations in general. If this process is used for an investigation involving something other than discrimination, harassment, or sexual misconduct, the processes may be modified, to some extent, on a case by case basis. Additionally, the time frames for actions may be modified and extended as warranted.

## **G. RESOURCES**

1. The University will provide resources to support persons who have made allegations of Sexual Assault, Intimate Partner Violence or Stalking. Regardless of whether a person who reports such allegations elects to pursue a criminal complaint, the University will assist persons alleging Sexual Misconduct, Intimate Partner Violence, and Stalking. To the extent cooperation and consent are provided, University offices, including the University Police Department (UPD), Counseling and Psychological Services (CAPS), the Student Health Services (SHS), and the Case Manager for Student Affairs will work cooperatively to ensure that the Complainant's health, physical safety, academic status, and employment status are protected, pending the outcome of a formal university investigation of the allegations. For example, if reasonably available and as applicable, a Complainant may be offered changes to his or her work environment, academic schedule or university-provided housing, in addition to counseling, health services and assistance in notifying appropriate local law enforcement.
2. a) If requested, within CAPS and SHS, resources are available to provide support to students. Additionally, the Case Manager in Student Affairs can coordinate assistance and support related to a student's physical and mental health, personal safety, and academic status. For its employees, the University offers assistance through the

Employee Assistance Program. Also, protection from abuse through the use of protective orders may be available through the court system.

b) The Office of the Dean of Students offers assistance in navigating the conduct process to accused and/or charged Students.

c) Other resources available related to Sexual Misconduct, Intimate Partner Violence, or Stalking include:

- 1) Abuse, Counseling and Treatment of Fort Myers: <http://www.actabuse.com/>
- 2) Assault and Rape Information, Support and Education (ARISE): <http://www.fgcu.edu/arise/>
- 3) Congreso (multiservice organization focused on Latino Communities): <http://www.congreso.net/site/>
- 4) Department of Justice: <http://www.justice.gov/ovw/sexual-assault>
- 5) Florida Coalition Against Domestic Violence: <http://www.fcadv.org/>
- 6) Florida Counsel Against Sexual Violence: <http://www.fcasv.org/>
- 7) Project Help of Naples: <http://projecthelpnaples.org/>

#### *Related Information*

FGCU-PR1.003, Non-Discrimination, Anti-Harassment, and Sexual Misconduct

FGCU-PR4.002, Student Code of Conduct and Student Conduct Review Process

FGCU-PR5.016, Disciplinary Actions

FGCU-PR5.020, Grievance Regulation

FGCU Policy 1.007, Consensual Relationship Policy and Procedure

#### *Specific Authority*

[42 USC §§ 2000e-17 et. seq., 42 USC § 2000d, 42 USC §1681 et. seq., 29 USC §701 et. seq., §760.01 et. seq., Florida Statutes, BOG Regulation 2.003](#)

#### *History*

New: 1/20/09; Amended: 02/12/10, 01/27/15, 07/28/15, \_\_\_\_\_

**FLORIDA GULF COAST UNIVERSITY POLICY**

**Policy Number:** 1.006

**Policy Title:** Non-Discrimination, Anti-Harassment, and Sexual Misconduct

**Responsible Division/Office:** Office of Institutional Equity and Compliance

**APPROVED**

---

Wilson G. Bradshaw, President

---

Date

DRAFT