

	FGCU POLICY 1.015	Responsible Unit: Office of Institutional Equity and Compliance
	Sexual Harassment Under Title IX	

A. POLICY STATEMENT

1. Florida Gulf Coast University (FGCU) affirms its commitment to ensure that each member of the University community shall be permitted to work, study, and participate in educational programs, including those receiving federal funding, services, and activities, or conduct business in an inclusive and welcoming environment. The University strives to foster a community in which diversity and inclusion are valued and opportunity is realized. This Policy is pursuant to Title IX of the Education Amendment Act of 1972 (“Title IX”) and implementing regulations. This Policy creates a mechanism for applicants, students, Employees, volunteers, visitors, as well as Vendors and Contractors of the University community in the United States, to file a complaint of Sexual Harassment, including Sexual Assault, Dating Violence, Domestic Violence, and Stalking, as defined in this Policy. 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 complaints of Sexual Harassment, including Sexual Assault, Dating Violence, Domestic Violence, and Stalking as defined in this Policy. The provisions herein are also established to maintain confidentiality and fairness consistent with applicable federal and state 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 Sexual Harassment under Title IX and Retaliation. This Policy further outlines the procedures used to investigate such complaints pursuant to FGCU Regulation 1.009, Sexual Harassment Under Title IX, 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 Harassment covered by Title IX, students involved in such investigations may also be interviewed by the Office of Student Conduct within the Division of Student Success and Enrollment Management. Additionally, FGCU Regulation 4.002, Student Code of Conduct and Student Conduct Review Process,

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 Employees covered by a collective bargaining agreement, and consistent with the applicable Article(s), investigations based on allegations of discrimination, harassment, or sexual misconduct will proceed consistent with section E. of this Policy.

D. DEFINITION OF TERMS

1. *Complainant*: An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.
2. *Consent*: Defined as set out in FGCU Regulation 1.003 Non-Discrimination, Anti-Harassment and Sexual Misconduct and its corresponding FGCU Policy 1.006, Non-Discrimination, Anti-Harassment, and Sexual Misconduct.
3. *Dating Violence*: Violence committed by a person who is, or has been, in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on consideration of:
 - a. The length of the relationship.
 - b. The type of relationship.
 - c. The frequency of interaction between the persons involved in the relationship.

For the purposes of this definition, Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.

4. *Day*: Calendar Day. University holidays and closures (e.g. Days when the University is closed) are excluded from the computation of time. If the time ends on a Saturday, Sunday, or Day when the University is closed, 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. *Document Filed by a Complainant*: A document or electronic submission (such as by e-mail or through an online portal) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.
8. *Domestic Violence*: Felony or misdemeanor crimes of violence committed by:
 - a. A current or former spouse or intimate partner of the Complainant;
 - b. A person with whom the Complainant shares a child in common;
 - c. A person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
 - d. A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
 - e. Any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
9. *Education Program or Activity*: Locations, events, or circumstances over which the University exercised substantial control over both the Responding Party and the context in which the Sexual Harassment occurred, which includes any building owned or controlled by a student organization that is officially recognized by the University.
10. *Employee*: Any out-of-unit faculty or staff member, whether part-time or full-time, regular or temporary, and includes post-doctoral scholars. For the purposes of this Policy, Employees who are also students are considered Employees if the Reporting Party alleges that the student-employee conditioned the provision of a University aid, benefit, or service which the student-employee had authority or ability to provide on an individual's participation in unwelcome Sexual Contact.
11. *Formal Complaint*: A Document Filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a Responding Party and requesting that the University investigate the allegation of Title IX Sexual Harassment.
12. *Investigator*: A person trained as an Investigator and designated by the OIEC Director or the Vice President and General Counsel, who conducts a fact-finding inquiry (investigation) and writes an investigative report.
13. *Protected Activity*: 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.

14. *Reporting Party*: An individual who is alleged to be the subject of, or a witness to, conduct that could constitute Title IX Sexual Harassment.
15. *Respondent*: An individual who has been reported to have engaged in conduct that could constitute Title IX Sexual Harassment.
16. *Retaliation*: An adverse action or threat of an adverse action taken against a Complainant, Respondent, or any individual or group of individuals involved in the complaint, investigation, and/or resolution of an allegation of Sexual Harassment under this Policy or for engaging in any activity protected by federal or state law or University policy or regulation. This includes action taken against a bystander who intervened to stop or attempt to stop Sexual Harassment from occurring. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's Complaint or participation, or adverse actions taken with respect to academic activities or work assignments, salary, or other terms of employment.

Charging an individual with code of conduct violations that do not involve Sexual Harassment, but arise out of the same facts or circumstances as a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes Retaliation.

17. *Sexual Assault*: Any of the following sexual acts directed against another person, without Consent, including instances where the person is incapable of giving Consent.
 - a. *Rape*: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of that person.
 - b. *Fondling*: The touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the person, including instances where the person is incapable of giving Consent because of age or temporary or permanent mental incapacity.
 - c. *Incest*: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - d. *Statutory Rape*: Sexual intercourse with a person who is under the statutory age of Consent.
18. *Sexual Harassment*: Conduct on the basis of sex that satisfies one (1) of the following:
 - a. An Employee conditioning the provision of a University aid, benefit, or service on an individual's participation in unwelcome sexual contact (also known as *quid pro quo*);
 - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive,

and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity; or

- c. Sexual Assault, Dating Violence, Domestic Violence, or Stalking, as defined in this Policy.

19. *Stalking*: Engaging in a course of conduct, that is, two (2) or more acts, including, but not limited to, acts 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 - directed at a specific person that would cause a reasonable person, that is a person under similar circumstances and with similar identities to the victim, to:

- a. Fear for the person's safety or the safety of others; or
- b. Suffer substantial emotional distress – which is significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

20. *Supportive Measures*:

- a. Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter Sexual Harassment. Supportive Measures may include, but are not limited to:

- 1) Access to counseling services and assistance in setting up initial appointments.
- 2) Rescheduling of exams and assignments.
- 3) Providing alternative course completion options.
- 4) Change in class schedule, including the ability to drop a course without penalty or to transfer sections.
- 5) Modifications of work or class schedules.
- 6) Restrictions on contact between the parties.
- 7) Changes in work or housing locations.

- b. Supportive Measures will be maintained as confidential, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures.

21. *Title IX Coordinator*: The University Employee responsible for administering a Title IX related centralized complaint filing process, which includes investigating Complaints of gender inequity and/or Sexual Harassment, analyzing trends, and monitoring overall compliance with this Policy as it relates to Title IX compliance and related federal, state, or local legislation and regulations.
22. *Vendor or Contractor*: Individual or business entity in a contractual relationship with the University, but not an Employee.

E. PROCEDURES

1. Title IX Coordinator

The University will designate and authorize a Title IX Coordinator to coordinate its efforts to comply with its responsibilities under 34 C.F.R. part 106. The Title IX Coordinator's contact information is displayed on multiple pages throughout the University's website as well as other locations including flyers and trainings.

2. Jurisdiction

- a. The University's Regulation 1.009, Sexual Harassment Under Title IX and the procedures herein will apply to sex discrimination that:
 - 1) Meets the definition of Sexual Harassment set out in FGCU Regulation 1.009, Sexual Harassment Under Title IX;
 - 2) Occurs in the context of a University Educational Program or Activity;
 - 3) Occurs against a person within the United States.
- b. If the University receives a report of sex discrimination, including Sexual Harassment, not meeting these definitions, it will be reviewed and addressed under FGCU Regulation 1.003, Non-Discrimination, Anti-Harassment, and Sexual Misconduct and its corresponding Policy 1.006, Non-Discrimination, Anti-Harassment, and Sexual Misconduct.

3. Report of Sexual Harassment

- a. Any person may report sex discrimination, including Sexual Harassment, to the Title IX Coordinator or designee in person, by mail, by telephone, by electronic mail, through Florida Gulf Coast University EthicsPoint Hotline, or by any other means that results in the Title IX Coordinator or designee receiving the person's verbal or written report. Such a report may be made whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or

Sexual Harassment. Reports may be made at any time, including during non-business hours.

- b. Any necessary correspondence will be provided to the Complainant and Respondent using an email address and/or mailing address on file with the University, unless a preferred email address or mailing address is provided by the parties.
 - c. Upon receipt of a report of Sexual Harassment, the Title IX Coordinator, or designee, will promptly contact the Complainant confidentially to:
 - 1) Discuss the availability of Supportive Measures;
 - 2) Determine the Complainant's wishes with respect to Supportive Measures;
 - 3) Inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint; and
 - 4) Explain to the Complainant the process for filing a Formal Complaint of Sexual Harassment as defined in FGCU Regulation 1.009, Sexual Harassment Under Title IX.
 - d. The University will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment; any Reporting Party; any individual who has been reported to be the perpetrator of sex discrimination; any Responding Party; and any witness except as permitted by FERPA, as required by law, or to carry out the conducting of any investigation or hearing under these Procedures or any judicial proceedings or court order, as required by law.
4. Filing a Formal Complaint of Sexual Harassment
- a. The Complainant must submit a document via email, online portal, or in writing that contains the Complainant's physical or digital signature, alleging Sexual Harassment under Title IX against a Responding Party and requesting that the University investigate the allegation(s) of Sexual Harassment under Title IX.
 - b. At the time of the filing of a Formal Complaint, the Complainant must be participating in or attempting to participate in an Education Program or Activity of the University.
 - c. The Complainant's wishes with respect to whether the University conducts an investigation should be respected, unless the Title IX Coordinator determines that signing a Formal Complaint to initiate an investigation over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances.

- d. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or party during the grievance process and must comply with requirements for Title IX personnel to be free from conflict and bias.
 - e. The Title IX Coordinator or designee, may, at their discretion, consolidate Formal Complaints where the allegations arise out of the same facts.
5. Dismissal of Formal Complaint of Sexual Harassment under Title IX

A Formal Complaint of Sexual Harassment under Title IX may be dismissed in writing for the following reasons:

- a. If the allegations in a Formal Complaint do not meet the definition of Sexual Harassment under the FGCU Regulation 1.009, Sexual Harassment Under Title IX, or did not occur in the University's Education Program or Activity against a person in the United States, the University will dismiss such allegations, in writing, under Title IX, but may still address the allegations pursuant to University Regulation 1.003, Non-Discrimination, Anti-Harassment, and Sexual Misconduct and its corresponding FGCU Policy 1.006, Non-Discrimination, Anti-Harassment, and Sexual Misconduct.
 - b. If the Complainant informs the Title IX Coordinator in writing that the Complainant desires to withdraw from the Formal Complaint or allegations therein.
 - c. If the Respondent is no longer enrolled or Employed by the University.
 - d. Specific circumstances prevent the University from gathering sufficient evidence to reach a determination (e.g. lack of cooperation from Complainant).
6. Informal Procedure
- a. Informal resolutions may be facilitated by the University to resolve a Formal Complaint at any time prior to reaching a determination regarding responsibility. Informal resolutions do not involve a full investigation and adjudication. Parties must voluntarily Consent to the informal resolution process in writing before it can proceed. If an informal resolution is elected by the parties and deemed appropriate by the University, the parties will be provided written notice of the informal resolution, containing the following:
 - 1) The reported conduct;
 - 2) The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations;

- 3) A provision that any party has the right to withdraw from the informal resolution process and resume the formal resolution process of the Formal Complaint at any time prior to agreeing to a resolution; and
 - 4) Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
- b. Informal resolution processes will not be used to resolve reports that an Employee sexually harassed a student.
- c. Examples of Informal Resolutions include, but are not limited to:
- 1) No-Contact Agreements
 - 2) Mediation
 - 3) Training
 - 4) Volunteer Service
 - 5) Written/Verbal Apology
7. Formal Procedure
- a. The formal resolution process will begin with written notice to the parties. Within ten (10) Days of receipt of a Formal Complaint, the University will provide written notice of the investigation to parties who are known. The written notice will be provided with sufficient time to prepare a response before any initial interview. The written notice may be amended, with written notice to the parties.
- b. The written notice will include the following information:
- 1) Notice of the University's process for resolving reports of Title IX Sexual Harassment, including any available informal resolution processes;
 - 2) Notice of the allegations of Sexual Harassment, including, if known, the following:
 - a) The identities of the parties involved in the incident;
 - b) The conduct reportedly constituting Sexual Harassment; and
 - c) The date and location of the reported incident.
 - 3) Information about the parties' rights and responsibilities, including the following:

- a) That the Responding Party is presumed not responsible for the reported conduct and that a determination regarding sufficient or insufficient evidence of a regulation/policy violation is made at the conclusion of the formal resolution process;
 - b) That the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
 - c) That the parties and their advisor may inspect and review evidence; and
 - d) That it is a violation of this Policy to knowingly make false statements or knowingly submit false information during the formal resolution process.
- c. The Title IX Coordinator or designee shall confer with the appropriate University officials to ensure that, if warranted, Supportive Measures are pursued to protect both parties pending completion of the matter. Supportive Measures may also include Interim Suspension for students and/or Administrative Leave for Employees.

8. Investigation

- a. The Title IX Coordinator will assign a Deputy Title IX Coordinator(s) and/or Investigator(s) who have training and experience investigating allegations of prohibited conduct. The Investigator(s) will gather information regarding the alleged conduct and will remain neutral and impartial throughout the course of the investigation.
- b. All Employees of the University must cooperate with an investigation. Failure to do so could result in disciplinary action.
- c. An Investigator will complete the investigation as promptly as possible and within a reasonable amount of time based on individual circumstances and complexity of the case, unless there are extenuating circumstances. In such a case, notice, along with reasons for the extension, shall be provided to the parties.
- d. In the event that a valid Complaint of discrimination or harassment or conflict of interest is filed against an individual Employee within the Office of Institutional Equity and Compliance (OIEC), or the OIEC as an administrative arm of the University, an investigation will be conducted by an Investigator external to the University and will be secured by the Vice President and General Counsel.
- e. In all phases of the formal resolution process, the parties will be provided an equal opportunity to present fact and expert witnesses, and inculpatory and exculpatory evidence.

- f. The parties also will be provided an equal opportunity to have an advisor (e.g. legal counsel, a union representative, or a support person) of their choice in any meeting related to the resolution process. However, such person's role shall be limited to observation, support, or advice; the advisor shall not speak on behalf of the person to whom they are providing support or advice. If a party does not have an advisor, the University will provide an advisor without fee. That advisor will be chosen by the University and may, but is not required to be, an attorney.
- g. No party will be restricted from discussing the reported conduct under investigation or from gathering and presenting relevant evidence.
- h. Any person whose participation is invited or expected in an investigative interview, hearing, or other meeting related to the resolution process will be provided written notice of the date, time, location, participants, and purpose of the meeting with sufficient time for the party to prepare to participate.
- i. Throughout the formal resolution process, there is a presumption that the Responding Party is not responsible for the reported conduct until a determination regarding sufficient/insufficient evidence of a regulation/policy violation is made at the conclusion of the investigation process.
- j. The burden of proof and the burden of gathering evidence sufficient to reach a determination of responsibility rests on the University and not on the parties. The University will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains the party's voluntary, written Consent to do so. Similarly, no person will be required to provide evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

9. Investigative Report and Determination

- a. At the conclusion of the investigation, the Investigator(s) will prepare a draft investigative report summarizing all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint. The draft investigative report will include a determination of sufficient or insufficient evidence of a regulation/policy violation based on the preponderance of the evidence standard.
- b. Prior to the completion of the investigative report, the Title IX Coordinator, designee, or Investigator will send to each party and the party's advisor, if any, the draft investigative report for inspection and review. The evidence will be sent in an

electronic or hard copy format. The parties will have ten (10) Days to submit a written response.

- c. After receiving the parties' written responses or after the lapse of ten (10) Days without receipt of such responses, the Investigator(s) will consider any written response(s) and create an investigative report, which will fairly summarize the relevant evidence.
- d. The Title IX Coordinator or designee will send to each party and the party's advisor, if any, the final investigative report in an electronic or hard copy format. The report will be provided to the parties simultaneously.

10. Hearings

- a. Once the Investigative Report has been completed upon a finding of sufficient evidence of a regulation/policy violation and investigative appeal rights articulated in Section E.10, have expired or been exhausted, a copy of the report will be provided to the appropriate Division/Office for adjudication/disposition as follows:
 - 1) Student Respondent - FGCU Regulation 4.002, Student Code of Conduct and Student Conduct Review Process ("Student Code of Conduct"). Students who are also Employees may be subject to further University disciplinary action as well as disciplinary action under the Student Code of Conduct.
 - 2) Employee Respondent –hearing pursuant to the procedures outlined below.
 - 3) External Respondent – e.g. visitors, Vendors, applicants, etc. - referred to appropriate University Division(s) for disposition.
- b. Decisions regarding Employee Respondent responsibility will be made by an internal or external Hearing Officer appointed by the University. Both parties have the ability to challenge the appointment of a Hearing Officer based on an actual conflict of interest, bias, or lack of impartiality. The request must be submitted in writing or raised no later than the date of the pre-hearing meeting and must clearly state the grounds to support a claim of bias, conflict of interest, or an inability to be fair and impartial.
- c. Hearings will be conducted by an internal or external Hearing Officer appointed by the University and will serve as a single Decision Maker. Hearings will generally be conducted within thirty (30) Days of the transmission of evidence collected to the parties for inspection and review and will occur according to the following procedures.
- d. Advisors

- 1) Each party may be accompanied to the hearing by an advisor of their choice. If a party does not have an advisor present at the live hearing, the University will provide an advisor without fee. That advisor will be chosen by the University and may, but is not required to be, an attorney. The advisor provided by the University will only conduct cross-examination on behalf of the party and will not draft questions or otherwise advise the party in any portion of the resolution process.
- 2) All advisors are expected to conduct themselves with appropriate decorum, to respect the privacy of the parties and witnesses, and to avoid delaying, disrupting, or otherwise interfering with the Hearing or any other portion of the resolution process.

e. Pre-Hearing Meeting

The Hearing Officer will meet separately with each party to resolve pre-hearing concerns. At this pre-hearing meeting, the parties will each have the opportunity to raise any challenge to the composition of the Hearing Panel based on bias, conflict of interest, or lack of impartiality. The parties will also have the opportunity to address questions about the hearing process. At this meeting, the Hearing Officer will also review expectations for hearing participants, including any advisor.

f. Hearing Procedures

- 1) Hearings will be conducted in closed session. Hearings must be conducted live, but at the request of either party or at the discretion of the University, Hearings may be conducted with the parties located in separate rooms with technology enabling the Hearing Panel and parties to simultaneously see and hear the party or witness answering questions. Hearings will be recorded by audio or audiovisual means, and the recording or transcript will be made available to the parties for review and inspection.
- 2) Both parties will have the opportunity to provide a statement of their account related to the alleged conduct, beginning with the Complainant and followed by the Respondent. Each party will then have the opportunity to present any witnesses, beginning with the Complainant's witnesses and followed by the Respondent's witnesses.
- 3) The Hearing Officer and/or Hearing Panel and the parties or their advisors may pose questions to any individual (including parties and witnesses) providing statements at the hearing. Each party's advisor will be permitted to ask the other party all relevant questions and follow-up questions, including those challenging credibility, after the party initial statement. Each party or their advisor will be permitted to ask witnesses all relevant questions and follow-up questions, including those challenging credibility, after the witness's initial statement. This cross-examination will be conducted directly, orally, and in real time. The cross-

examination of each party will be conducted by the party's advisor and never by a party themselves.

- 4) Only relevant cross-examination and other questions may be asked. Before a participant answers a question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
 - 5) Questions and evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged 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.
 - 6) If a party or witness does not submit to cross-examination at the hearing, the Hearing Officer and/or Hearing Panel must not rely on any statement of that party or witness in reaching a decision regarding responsibility. The Hearing Officer and/or Hearing Panel cannot draw an inference about the determination regarding responsibility based solely on a party or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- g. Determination Regarding Responsibility
- 1) The determination regarding responsibility will be made by the Hearing Officer or Hearing Panel after the hearing and cannot be made by the Title IX Coordinator or the Investigator(s). Within seven (7) Days of the conclusion of the Hearing, the Hearing Officer or Hearing Panel will make a determination of responsibility using the preponderance of the evidence standard and will issue a written determination regarding responsibility.
 - 2) In reaching the determination regarding responsibility, the Hearing Officer or Hearing Panel will objectively evaluate all relevant evidence – both inculpatory and exculpatory. The Hearing Officer or Hearing Panel will not make credibility determinations that are based on a person's status as Complainant, Respondent, or witness. The Hearing Officer or Hearing Panel will not rely on any statement of that party or witness who did not submit to cross examination.
 - 3) The written determination will be provided to the parties simultaneously. The written determination will include findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the Respondent, remedies provided to the Complainant, information about the appeal process, including the available grounds for an appeal, the time frame for submitting an appeal, and the name of the Appeals Officer who will be assigned to review any appeal filed.

11. Disciplinary Action/Sanctions

- a. A determination by the Decision Maker as to disciplinary action, if any, will occur within fourteen (14) Days of the delivery of the determination regarding responsibility, unless the Respondent/Employee 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.
- b. The Respondent and the Complainant may, if appropriate, be informed of the disciplinary action to be imposed.
- c. Any discipline to be imposed shall be determined in accordance with the Student Code of Conduct, where the Respondent is a student; FGCU Regulation 5.016, Disciplinary Actions, and related policies where the Respondent is an Employee; and a collective bargaining agreement where the Respondent is a covered Employee.
- d. These sanctions, disciplinary actions, and corrective measures are designed to:
 - 1) Address the effects of the misconduct on the Complainant and the University community;
 - 2) Hold the Respondent accountable for the conduct committed; and
 - 3) Eliminate Sexual Harassment, prevent its recurrence, and remedy its effects.
- e. The sanctions, disciplinary actions, and corrective actions the University imposes may include educational, restorative, rehabilitative, and/or punitive components. Some behavior, however, is so harmful to the educational process and/or the work environment that it requires severe sanctions or disciplinary action, including suspension from the University or expulsion from the University or suspension without pay from employment or termination of or separation from employment.

12. Appeals

- a. Either party may appeal from a determination regarding responsibility or from the University's dismissal of a Formal Sexual Harassment Under Title IX Complaint, in whole or in part, within seven (7) Days of receiving the determination of responsibility or dismissal. An appeal can be made to the Vice President and General Counsel on the following basis:
 - 1) Procedural irregularity that affected the outcome of the matter;

- 2) New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and/or
 - 3) The Title IX Coordinator, designee, and/or Investigator(s) had a conflict of interest or bias that affected the outcome of the matter.
- b. Within seven (7) Days of receipt of a request for appeal, the Vice President and General Counsel, or designee, will make one (1) of the following determinations:
- 1) The matter should be remanded for further consideration of the evidence, to correct any procedural irregularities, or alleviate any conflict of interest/bias; or
 - 2) The requestor has not presented information that warrants a review and thus the findings are final.
- c. The determination as to the appeal is not a substantive review of the matter; rather, the appeal process is in place to ensure that each party is provided full due process.
- d. Appeals/grievances regarding disciplinary action/sanction(s) must be made pursuant to the procedures outlines in the Student Code of Conduct, where the Respondent is a student; FGCU Regulation 5.016, Disciplinary Actions, and related policies where the Respondent is an Employee; and a collective bargaining agreement where the Respondent is a covered Employee.

13. Remedies

When there has been a determination that the Respondent has violated the Policy, the University will consider appropriate remedies, based upon the findings and unique circumstances of each report. Remedies are measures taken to address the effects of the conduct on the Complainant, restore the Complainant's safety and well-being, and maximize the Complainant's educational and employment opportunities. Remedies seek to restore to the Complainant, to the extent possible, all benefits and opportunities lost as a result of the Sexual Harassment. Remedies may include, but are not limited to, adjustment of work or class assignments, location, and/or schedule or recommending a review of a negative performance or grade decision that may have resulted from the conduct that violated the Policy.

14. Retaliation

- a. All persons involved with the investigation are cautioned that Retaliation is strictly prohibited. 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.

- b. Any University student, Employee, visitor, or group that engages in Retaliation against a University student, Employee, or visitor who has filed a complaint alleging discrimination, participated in an investigation, or otherwise exercised their rights and privileges against discrimination, will be subject to disciplinary action pursuant to University regulations. This prohibition against Retaliation applies regardless of the merits of the initial complaint of discrimination.
- c. The prohibition against Retaliation extends to Protected Activity covered by federal or state law or University policy or regulation. The OIEC will conduct an investigation of Retaliation depending on the circumstances surrounding the allegation of Retaliation. The Office of the General Counsel will secure outside counsel to conduct an investigation in the event there is valid complaint of a conflict of interest against an individual Employee of the OIEC or the OIEC as an administrative arm of the University.
- d. The exercise of rights protected under the First Amendment does not constitute Retaliation.

F. MISCELLANEOUS PROVISIONS

1. After an incident of Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking as defined in this Policy, 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 any medical concerns or related issues. 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, they 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, where a student is the Respondent/accused.

4. The Director of the OIEC is the custodian of filed records associated with the investigation of Complaints under FGCU Regulation 1.009, Sexual Harassment Under Title IX.
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 Sexual Harassment under Title IX, 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 Harassment, including Sexual Assault, Dating Violence, Domestic Violence, and Stalking as defined in this Policy. Regardless of whether a person who reports such allegations elects to pursue a criminal complaint, the University will assist persons alleging Sexual Harassment, including Sexual Assault, Dating Violence, Domestic Violence, and Stalking. To the extent cooperation and Consent are provided, University offices, including but not limited to, the Confidential Victim Advocate, the University Police Department (UPD), Counseling and Psychological Services (CAPS), Student Health Services (SHS), and Student Care Services 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 their work environment, academic schedule or University-provided housing, in addition to counseling, health services, and assistance in notifying appropriate local law enforcement.
2. If requested, within CAPS and SHS, resources are available to provide support to students. Additionally, Student Care Services 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 (EAP). Also, protection from abuse through the use of protective orders may be available through the court system.

EAP- <https://www.fgcu.edu/hr/benefits/perks>

3. The Office of Student Conduct offers assistance in navigating the conduct process to accused and/or charged Students.
4. Other resources available related to Sexual Harassment, including Sexual Assault, Dating Violence, Domestic Violence, and Stalking include:
 - a. Abuse, Counseling and Treatment of Fort Myers: <http://www.actabuse.com/>

- b. Assault and Rape Information, Support and Education (ARISE): <http://www.fgcu.edu/arise/>
- c. Department of Justice: <http://www.justice.gov/ovw/sexual-assault>
- d. Florida Coalition Against Domestic Violence: <http://www.fcadv.org/>
- e. Florida Counsel Against Sexual Violence: <http://www.fcasv.org/>
- f. Project Help of Naples: <http://projecthelpnaples.org/>

Related Information

FGCU Regulation 1.003, Non-Discrimination, Anti-Harassment, and Sexual Misconduct
FGCU Regulation 1.009, Sexual Harassment Under Title IX
FGCU Regulation 4.002, Student Code of Conduct and Student Conduct Review Process
FGCU Regulation 5.016, Disciplinary Actions
FGCU Regulation 5.020, Grievance Regulation
FGCU Policy 1.006, Non-Discrimination, Anti-Harassment, and Sexual Misconduct
FGCU Policy 1.007, Consensual Relationship Policy and Procedure

Authority

29 USC §701 et. seq.
42 USC §1681 et. seq.
42 USC § 2000d
42 USC §§ 2000e-17 et. seq.
Title IX of the Education Amendments Act of 1972 and accompanying regulations
Section 760.01 et. seq., Florida Statutes
BOG Regulation 1.001, University Board of Trustees Powers and Duties
BOG Regulation 2.003, Equity and Access

History

New 08/11/20

APPROVED

*s/Michael V. Martin
 Michael V. Martin, President

August 11, 2020
 Date