



FGCU REGULATION 1.009

*Effective Date
of Regulation*

Sexual Harassment Under Title IX

August 11, 2020

A. GENERAL STATEMENT

1. Affirmation

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 Regulation is pursuant to Title IX of the Education Amendment Act of 1972 (“Title IX”) and implementing regulations.¹ This Regulation 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 Regulation.

2. Violation

This Regulation prohibits specific forms of Sexual Harassment. Specifically, this Regulation prohibits Sexual Harassment, including Sexual Assault, Dating Violence, Domestic Violence, and Stalking, as defined in this Regulation. It shall be a violation of this Regulation for any officer, University Employee, student, visitor, agent, vendor, or contractor to commit any of the aforementioned acts as hereinafter defined, against any other officer, University Employee, student, visitor, agent, vendor, contractor, or applicant. The behavior prohibited in this Regulation are forms of conduct which, when established, shall result in Employee and/or student disciplinary action pursuant to University regulations, and the terms of any applicable collective bargaining agreement (CBA). University vendors and contractors found to have violated this Regulation will receive sanctions or other punitive actions consistent with the law and/or contract.

B. COVERAGE

1. Parties

All complaints of Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking, as defined in this Regulation, unless otherwise provided herein, shall be adjudicated under this Regulation as follows:

- a. Student complaints - Complaints between students, or where the Responding Party is

- a student and not employed by the University, shall be investigated by the Office of Institutional Equity and Compliance (OIEC). Upon a finding of sufficient evidence of a regulation or policy violation, the Respondent shall be referred to the Division of Student Success and Enrollment Management and adjudicated under FGCU Regulation 4.002, Student Code of Conduct and Student Conduct Review Process (“Student Code of Conduct”). Students who are also Employees may be subjected to further University disciplinary action, as well as disciplinary action under the Student Code of Conduct.
- b. Student v. Employee complaints – Complaints between students and Employees where the Employee is the Respondent, shall be investigated by the OIEC. Upon a finding of sufficient evidence of a regulation or policy violation, the Respondent shall be subjected to a hearing pursuant to the procedures outlined in the corresponding Title IX Sexual Harassment Policy and upon a finding of responsibility, referred to Human Resources or Academic Affairs for disciplinary action pursuant to FGCU Regulation 5.016, Disciplinary Actions, or the Collective Bargaining Agreement (CBA), as appropriate.
 - c. Employee complaints – Complaints between Employees shall be investigated pursuant to the definitions and procedures outlined in FGCU Regulation 1.003, Non-Discrimination, Anti-Harassment, and Sexual Misconduct and its corresponding Policy 1.006, Non-Discrimination, Anti-Harassment, and Sexual Misconduct.
 - d. All other complaints – i.e. visitors, vendors, applicants, etc. - shall be investigated by the OIEC. Upon a finding of sufficient evidence of a regulation or policy violation, the Respondent shall be referred to the appropriate University division for disposition.

2. Scope of Prohibitions

This Regulation provides for the prompt and equitable response to reports of Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking, as defined in this Regulation. Discrimination or harassment based on sex not meeting the definitions set out in this Regulation will be 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.

This Regulation protects University students, Employees, and other persons in the United States from Title IX Sexual Harassment in an Education Program or Activity of the University. This Regulation covers all employment practices, as well as educational, athletic, cultural, and social programs, services, and activities occurring at, or sponsored by, FGCU, in the United States. This Regulation applies to locations, events, or circumstances over which the University exercised substantial control over both the Responding Party and the context in which the Title IX Sexual Harassment occurred. This includes any building owned, operated, or controlled by a student organization, as applicable.

Additionally, conduct that occurs off-campus or outside the bounds of this Regulation can be the subject of a complaint or report 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.

C. DEFINITIONS

1. *Actual Knowledge*: Notice of Sexual Harassment or allegations of Sexual Harassment to the University's Title IX Coordinator or any official of the University who has authority to institute corrective measures on behalf of the University.
2. *Complainant*: An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.
3. *Consent*: Defined as set out in FGCU Regulation 1.003, Non-Discrimination, Anti-Harassment and Sexual Misconduct, and its corresponding Policy 1.006, Non-Discrimination, Anti-Harassment, and Sexual Misconduct.
4. *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.

5. *Deputy Title IX Coordinator(s)*: A University Employee designated to assist in the administration of the responsibilities related to Title IX matters.
6. *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.
7. *Domestic Violence*: Felony or misdemeanor crimes of violence committed by:
 - a. A current or former spouse or intimate partner of the Complainant;

- b. By a person with whom the Complainant shares a child in common;
 - c. By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
 - d. By 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. By 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.
8. *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.
9. *Employee*: Any 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.
10. *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.
11. *Frivolous Complaint*: A Frivolous Complaint is one that is trivial, superficial, senseless, groundless, or brought in bad faith.
12. *Reporting Party*: An individual who is alleged to be the subject of or a witness to conduct that could constitute Title IX Sexual Harassment.
13. *Respondent*: An individual who has been reported to have engaged in conduct that could constitute Title IX Sexual Harassment.
14. *Responding Party*: An individual who has been reported to have engaged in conduct that could constitute Title IX Sexual Harassment.
15. *Retaliation*:

Retaliation occurs when an adverse action or threat of an adverse action is 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 Regulation 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 attempted 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.

16. *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.

17. *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 Regulation.

18. *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, 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, that is, significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

19. *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.

20. *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 Regulation as it relates to Title IX compliance and related federal, state, or local legislation and regulations.

D. REPORTING

1. University Response

- a. This Regulation prohibits specific forms of Sexual Harassment. More particularly, this Regulation prohibits Sexual Harassment, including Sexual Assault, Dating Violence, Domestic Violence, and Stalking, as defined in this Regulation.
- b. When the University has Actual Knowledge of a potential violation of this Regulation, the Title IX Coordinator, in consultation with other administrators, will implement reasonable and appropriate Supportive Measures to restore or preserve equal access to the University's Educational Program or Activities and to protect the safety of the parties.
- c. When a Formal Complaint under this Regulation is filed, as detailed in the corresponding Title IX Sexual Harassment Policy, the University will initiate a formal process of investigation and adjudication of the alleged Policy violation.

2. Reporting Responsibility of Employees

- a. All University Employees must report information they have about occasions of alleged Sexual Harassment to the Title IX Coordinator. This reporting requirement excludes those University Employees who are statutorily prohibited from reporting such information only when they are acting within their protected role. Exempted Employees are in the following offices:
 - 1) Counseling and Psychological Services (CAPs);
 - 2) Student Health Services;
 - 3) Community Counseling Center; and
 - 4) Confidential Victim Advocate.
- b. Any University Employee who receives a report, observes, or learns of an alleged violation of this Regulation has an absolute and unqualified duty to immediately report the alleged violation to Title IX Coordinator as soon as possible. Should they know of such activity and fail to report it, they may be subjected to disciplinary action pursuant to FGCU Regulation 5.016, Disciplinary Actions. Periodic training on these topics must be completed by all Employees.

3. Responsibility of Complainant

The Complainant is not required to inform an alleged offender of the offensiveness of the behavior in order to make a complaint under this Regulation. Frivolous Complaints are a

violation of this Regulation and may be cause for disciplinary action.

4. Amnesty Provision for Students

- a. Allegations of Sexual Harassment involving students should be brought to the University's attention as soon as possible, regardless of whether or not it occurred on campus, off campus, or at a University-sponsored event. Therefore, students who make a good faith report, on their own behalf or on behalf of another person, of Sexual Harassment will not be subject to disciplinary actions related to intoxication or possession under the Student Code of Conduct in connection with the reported situation, provided that any such violations did not, and do not, place the health or safety of any other person at risk.
- b. However, students should understand that this directive applies only to the Student Code of Conduct and does not preclude or prevent action by police or other law enforcement agencies. As such, any violation of federal or state criminal law involving the use or possession of alcohol or illegal drugs may result in prosecution, as FGCU cannot grant amnesty from proceedings in the federal or state criminal justice system.
- c. Law enforcement agencies may act within their jurisdiction in enforcing any applicable federal, state, or local laws.

5. Retaliation

- a. 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.
- b. The prohibition against Retaliation extends to protected activity covered by federal or state law or University policy or regulation. The Office of Institutional Equity and Compliance will conduct investigations of Retaliation depending on the circumstances surrounding the allegation of Retaliation. If allegations of Retaliation or conflict of interest are made against the Office of Institutional Equity and Compliance, the General Counsel will secure the services of an external Investigator to address complaints of Retaliation and conflicts of interest against the Office of Institutional Equity and Compliance.

Authority

Title IX of the Education Amendments Act of 1972 and accompanying regulations

*The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
(Clery Act), 20 U.S.C. section 1092 et al
Violence Against Women Reauthorization Act of 2013 (VAWA), section 304*

History of Regulation

New (Emergency Regulation) 08/11/20

Approved by Florida Gulf Coast University Board of Trustees

August 11, 2020

ⁱ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026 (May 19, 2020)