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OVERVIEW & PURPOSE

DEFINITIONS

For the purposes of this Policy, the following definitions apply:

1) Actual Knowledge - notice of Sexual Harassment or allegations of Sexual Harassment to the University's Title IX Coordinator or other University Official with Authority.

2) **Complainant** - an individual who is alleged to be the victim of conduct that could constitute Prohibited Conduct. A Complainant must be participating in, or attempting to participate in, a UWF program or activity at the time of filing a complaint.

3) **Consent** – an affirmative act or statement by each person that is informed, freely given and mutually understood. Consent cannot be gained by force, by intimidation, through threats, by ignoring or acting in spite of the objections of another, by coercion, through manipulation or assumption, or from an individual who is incapacitated.

Lack of protest or resistance does not mean Consent, nor does silence mean that Consent has been granted. Within each sexual encounter, there may be separate individual sexual acts involved, and Consent to one act by itself does not constitute Consent to another act. Also within each sexual encounter, Consent can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations, can never by itself be assumed to be an indicator of Consent for any current or future sexual encounter.

4) **Dating Violence** – as defined in 34 U.S.C. 12291(a)(10), violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: length of relationship, type of relationship, and frequency of interaction between the persons involved in the relationship.

5) **Domestic Violence** – as defined in 34 U.S.C. 12291(a)(8), includes felony or misdemeanor crimes of 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 under the domestic or family violence laws of Florida, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Florida.

6) Force – physical force, violence, threat, intimidation, or coercion.

7) Formal Complaint – a written document filed by the Complainant or signed by the Title IX Coordinator requesting that the university investigate alleged Prohibited Conduct.¹

8) Incapacitation – a temporary or permanent state in which a person cannot make informed, rational judgments because the person lacks the physical or mental capacity to understand the

nature or consequences of their words or conduct, or the person is unable to physically or verbally communicate Consent.

Where alcohol or another drug is involved, Incapacitation is determined by the extent to which the alcohol or drug consumed affects an individual's decision-making capacity, awareness of consequences, ability to make informed judgments and ability to communicate unwillingness.

9) Intake Meeting – initial meetings, taken separately, of the Complainant and the Respondent with the Title IX Coordinator or designee for the purpose of gathering basic information and providing and reviewing this Policy, Title IX procedures and available resources.

10) **Investigators** – the individuals designated by the Title IX Coordinator to conduct investigations of alleged Prohibited Conduct under this Policy.

11) Mandatory Reporter - an employee who has the duty to report the alleged Prohibited Conduct to an Official with Authority.

12) Officials with Authority - employees designated by the University with authority to implement corrective measures in response to reports of Prohibited Conduct.

13) Prohibited Conduct – Sexual Harassment or Retaliation.

14) **Respondent** – an individual who has been alleged of engaging in Prohibited Conduct.

15) **Retaliation** – intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by this Policy, 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 Policy. Conduct automatically constitutes Retaliation under this Policy when it includes intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by this Policy.

16) Sexual Assault - an offense classified as a forcible or nonforcible sex offense under the Uniform Crime Reporting System of the Federal Bureau of Investigation. A "sex offense" is generally any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Without limiting that definition of sexual assault, the following are examples of sexual assault:

a. Fondling - the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

c. Rape - the 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 the victim. This offense includes the rape of any sex/gender. ÈJHLGÎÍÌ≀ÐÌŁIÏJKI≀FÈĿADBÄBÐÃÇĿÂDÉÊŁÅË€BŁÇÁÇÈŁÉCCÈËÊÁÁËÄÉÀ

with Authority include, but are not limited to, the Title IX Coordinator and Deputy Title IX Coordinators.

Individuals who feel that they have been victims of or who have witnessed Prohibited Conduct by a University student or University employee should report this information as soon as possible.

Mandatory Reporters

University employees are considered Mandatory Reporters and must report information received regarding Prohibited Conduct to a University Official with Authority. Individuals reporting Prohibited Conduct to any Mandatory Reporter should know that every effort will be made to respect the private and sensitive nature of their allegation. However, disclosure of an allegation to any Mandatory Reporter will result in a notification to the University's Title IX office.

If a student wishes to speak confidentially with someone on campus about alleged Prohibited Conduct or any other matter, the individual should contact and schedule an appointment with Counseling and Psychological Services (850-474-2420). If an employee wishes to do the same, the individual may contact the Employee Assistance Program (1-800-860-2058).²

University Authority

Reports of Prohibited Conduct may be made by a Complainant, as defined in this Policy, or any other individual to an Official with Authority. The reported conduct must have occurred within the University's programs or activities, which include locations, events, or circumstances in which the University exercises substantial control over both the Respondent and the context in which the Prohibited Conduct occurred and any building owned or controlled by a student organization that is officially recognized by the University.

Amnesty from Related Misconduct Charges

The University will not pursue charges against a Complainant who seeks assistance under this Policy who may have been in violation of a different University policy or regulation at the time the individual was the alleged victim of Prohibited Conduct. For example, if a Complainant alleges sexual assault while under the influence of alcohol, is under the age of 21, and seeks assistance under this Policy, the University will not pursue disciplinary action against the Complainant related to underage drinking.

Effect of Criminal Investigation/Proceeding

Because Prohibited Conduct may constitute both a violation of this Policy and criminal law, the University encourages Complainants to repo

the processes are independent of one another. The outcome of a process under this Policy is likewise independent of the outcome of a related criminal process.

TITLE IX INVESTIGATION

Intake Meetings

Once an allegation is made, the Complainant will be invited to participate in an Intake Meeting. Intake Meetings include the review and explanation of this Policy and the University's Title IX procedures, available campus resources, and Supportive Measures. The Intake Meeting will also available, and without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

Depending on the circumstances, the Supportive Measures that may be available to both parties include, but are not limited to:

No Contact Order – the University may issue no-contact orders between the Respondent and the Complainant, or others involved. No-contact orders between the Complainant and Respondent are issued as dual no-contact orders.

Administrative Leave – the University may place an employee on paid administrative leave while an investigation is conducted.

On-campus Housing Reassignment – the University may complete an administrative housing reassignment in order to separate the Complainant and the Respondent. This may include reassigning the Complainant, the Respondent, or others involved. Reassignments may be temporary or permanent.

Academic Measures – the University may work with a Complainant or Respondent to assist that individual's academic coursework. Depending on the circumstances, this may include working with instructors related to missed classes, assigning the Complainant or the Respondent to a new course section as scheduling permits, allowing either party to finish the course requirements via distance learning or independent study, or, where applicable, providing either party with a withdrawal from one or more courses.

Employment Measures – the University may work with either party in the context of the individual's employment on campus, including student employment. Depending on the circumstances, this may include assigning the employee to work alternative hours, assigning the employee to a different work location, or assigning the employee to a different department during the duration of the investigation. Employment measures will be taken in accordance with UWF employment policies and applicable collective bargaining agreements.

Appeal of Supportive Measures

In the event Supportive Measures are requested, but not granted, or Supportive Measures are taken, but are unsatisfactory to either party, either party may request that the decision related to Supportive Measures be reviewed. The request for review must be made in writing and must be submitted to the Title IX Coordinator. The Title IX Coordinator will designate another University office to review the Supportive Measure decision. Additionally, the designated reviewer will provide the other party five calendar days to submit a response to the request for Supportive Measure review. The designated reviewer will make a decision based upon the documents provided by the parties and, if needed, may request an interview with either or both of the parties individually. The designated reviewer has the authority to uphold, modify or withdraw the Supportive Measures.

Emergency Removal

The University may remove Respondent from an education program or activity if:

(1) the University conducts an individualized safety and risk analysis;

(2) the University determines that Respondent poses an immediate, imminent threat arising from the allegations of Prohibited Conduct to the physical health or safety of any student or individual justifying removal; and

(3) the University provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

To challenge the removal, within three days of receiving notice of the emergency removal, the Respondent must inform the Title Coordinator in writing of the basis of the challenge. The Title IX Coordinator will provide a copy of the challenge to the Complainant.

The University will then hold a hearing without delay, as soon as possible given the circumstances, but no later than five days after the Title IX Coordinators receipt of the challenge. The University will provide written notice to the parties of the date and time of the hearing, provide both parties the opportunity to be heard at the hearing, and issue its written decision no later than three days after the hearing. The emergency removal will remain in effection dg any tapped aco.000[I, as applic T1.1s-13.06]

If a Respondent is removed pursuant to this emergency removal procedure, that individual retains all rights to an investigation and hearing as set forth in this Policy prior to any ultimate finding of responsibility and sanctions.

Nothing in this section precludes the University from placing a non-student employee on paid administrative leave during the pendency of the grievance process.

Formal Complaint Investigation

If the Complainant files a Formal Complaint, an Investigator will be assigned to complete an investigation and write an investigative report. Prior to completion of the investigative report, the University will provide the Complainant, Respondent, and their advisors, if any, an opportunity to review all evidence collected related to the Formal Complaint. The Complainant and the Respondent will be offered a period of at least 10 days to submit written comments. The University's Title IX Office will consider any written responses prior to completion of the investigation report. Once the Title IX Office completes the investigative report, copies will be provided to the parties and advisors, with at least 10 days for the parties to respond, prior to a hearing. Where an allegation of Prohibited Conduct involves more than one Complainant or more than one Respondent, references to the singular "party," "complainant," or "respondent" include the plural, as applicable.

Standard of Proof

paraprofessional acting in the professional's 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 that party's voluntary, written consent to do so for a grievance process.

In addition, during the investigatio

the parties individually. The designated reviewer has the authority to reverse the dismissal. A written decision describing the result of the appeal and rationale for the result will be issued to both parties simultaneously.

An appeal of the dismissal of the Formal Complaint must be made on one or more of the following bases:

A procedural irregularity that affected the outcome of the matter; New evidence that was not reasonably available during the intake or investigation phases For employees, the investigative report, evidence that has been disclosed to both parties, any comments of the Complainant and the Respondent, and any other relevant information will be forwarded to Human Resources (for matters concerning staff) and the Office of the Provost (for matters concerning faculty). Human Resources or the Office of the Provost, or their designee shall organize and facilitate the hearing process.

Pre-Hearing Conference

Upon referral, the University will notify the Complainant and Respondent via email of the allegations and charges and include the scheduling information for an individual pre-hearing conference. The pre-hearing conference is **not** a hearing. The purpose is to review the allegations and charges, the applicable HR policy or applicable collective bargaining agreement for in-unit employees, the hearing forum options, the process, possible sanctions, and to answer questions. During the Respondent's pre-hearing conference, the Respondent will be given the opportunity to accept responsibility or not accept responsibility for the charges.

If the Respondent accepts responsibility for the charges:

The Respondent will be asked to sign a form indicating the individual's acceptance of responsibility and that the individual is waiving the individual's right to a hearing. An email documenting the Respondent's responsibility and the discipline notice will be sent concurrently to the Respondents well as the Complainant within ten business days.

If the Respondent does not accept responsibility for the charges:

The Respondent will be asked to sign a form indicating that the Respondent does not accept responsibility for the charges and will be asked to select a hearing option. The University will schedule the hearing providing the Respondent and the Complainant with a minimum notice of five business days.

If the Respondent fails to attend the pre-conference hearing or complete the form, the matter will be referred for a hearing to occur.

Hearing Options

At the University's discretion, the decision-maker(s) at the hearing will be either a University official or designee; or a committee or panel comprised of University officials or designees.

Hearing Procedures

The hearing process shall be used to resolve Title IX related formal complaints that are not dismissed or resolved via the informal resolution process or via the pre-conference meeting as

individual's status as a Complainant, Respondent, or witness. The parties will have an equal opportunity to present facts and evidence, including fact and expert witnesses and other inculpatory and exculpatory evidence. The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

These hearings are not a criminal process and are not legal in nature. Formal rules of process, procedure, or technical rules of evidence, such as are applied in criminal or civil court, are not used in these proceedings. However, information protected under a privilege recognized by state or federal law cannot be disclosed, used, or relied upon unless the person who holds the right to exercise the privilege waives the application of the privilege.

At the discretion of the University, virtual participation via videoconference or other technology of parties, witnesses, advisors, or others is permitted, provided participants can simultaneously see and hear each other and confidentiality of the proceedings is not compromised.

Hearing Notification: the University will notify the parties via email of the date, time and location of the hearing no less than five days in advance of the hearing. This notification will also advise the parties of their rights in the conduct process. If the time or date of the hearing is not convenient to the parties, the parties must submit a written request to reschedule the hearing within two business days of the date of the notice.

Pre-Hearing Information: the University will make available to the Respondent and the Complainant, pre-hearing information including a copy of the hearing procedures and the 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 evidence upon which the University does not intend to rely in reaching a determination regarding the responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. The pre-hearing information will be available at least three business days in advance of the hearing. The parties must provide the University with a list of potential witnesses and copies of any records that individual will present at the hearing at least three business days in advance of the hearing.

Failure to appear: if either the Respondent or the Complainant fail to appear, the hearing will proceed in the absence of those persons.

Closed Hearings: hearings are closed to the public and only the Respondent, Complainant, and advisors may attend. Witnesses may not be present in the proceedings except to provide information when called upon.

Title IX Advisor: At any point during the processes, the parties may use an advisor of their choice, who may be, but is not required to be, an attorney. The University will not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or

prior to the scheduled meeting/hearing. If the advisor is an attorney, this must be disclosed at that time, as the University attorney must also be present at the meeting/hearing.

Role of the Hearing Chair or Hearing Officer: if the hearing is conducted with a committee or panel, the Hearing Chair will preside over the hearing. If the hearing is conducted with only one University official or designee, that individual will be the Hearing Officer and will preside over the hearing. The Hearing Chair or Hearing Officer will be responsible for the order and decorum of the hearing, and will ensure that the hearing procedures are followed. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Chair or Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. At that individual's discretion, the Hearing Chair or Officer may:

Accept information for consideration.

Make determinations regarding requests for postponements.

Make determinations as to procedural questions.

Make procedural modifications for purposes of expediting a process or in the interest of fairness or safety.

Exclude repetitious or irrelevant information.

Dismiss any person who is disorderly, disruptive, or non-compliant.

ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

Separation of Complainant, or Witness, or Respondent: At the request of either party, the University will provide for the entire hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties and Hearing Officer or committee or panel to see and hear the party or witness answering questions.

Past Behavior: 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 conduct alleged by the Complainant, 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.

Recording of Hearing: Hearings will be recorded. There shall be a single recording of all hearings. This recording is the official record and is the property of the University and will be considered part of the Respondent's disciplinary record. The Respondent may submit a written request for a copy of the recording which will be provided after receipt of the hearing decision letter.

Standard of Proof: the burden to prove disciplinary cases rests with the University and not with the Respondent. The standard of proof shall be "more likely than not." This means that the information presented supports the finding that it was more likely than not that the violation occurred.

Multiple Respondents Charged: in cases involving multiple Respondents from the same incident, information obtained at one hearing may be used at another hearing provided that each Respondent involved has the opportunity to review and respond to the information at that Respondent's hearing.

Deliberations: are closed and the decision making shall include only the hearing committee or panel or Hearing Officer.

Determination of Responsibility: the Hearing Officer or committee or panel shall determine whether the Respondent has violated this Policy. A finding of "responsible" or "not responsible" shall be made for each charge. The Hearing Officer or panel will determine sanctions in those cases where the Respondent is found responsible for violating the policy.

Impact Statement: If the Respondent is found responsible, the Complainant has a right to submit an impact statement to the Hearing Officer or committee or panel for consideration at the sanctioning phase only. The statement may include a description of how the Complainant was impacted by the conduct violation and may include recommendations for sanctions, penalties or restitution. However, the Hearing Officer or committee or panel are not bound by those recommendations. The relevant portions of any impact statement provided by the Complainant, or the relevant portions of character statements or other evidence regarding mitigating circumstances provided by the Respondent, will be considered by the Hearing Officer or committee or panel in issuing sanctions, so long as such information has been subject to questioning and cross-examination during the hearing. While these statements are not binding, they, together with the totality of the circumstances, should be considered by the Hearing Officer or committee or panel involved in determining the appropriate sanctions.

Hearing Decision Notification: The determination of responsibility or whether allegations are substantiated shall be in writing, provided simultaneously to the parties, and

include the following elements:

Identification of the allegations potentially constituting sexual harassment.

A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including notifications to parties, interviews, gathering of evidence, and hearings held.

Findings of fact.

Conclusions regarding the application of the relevant policy or regulation to the facts.

As to each allegation, a statement of, and rationale for, the determination of responsibility or substantiation.

A description of any disciplinary sanctions imposed upon the respondent.

A description of any remedies designed to restore or preserve equal access that will be provided to the complainant.

A statement of procedures and bases for appeal of the decision.

Employee Separation If a Respondent voluntarily leaves the University with disciplinary charges pending against that individual, the conduct process may continue with or without that individual's participation.

Accommodations for Employees with Disabilities: any employee with a disability may request reasonable accommodations during the disciplinary process. If accommodations are desired, this request must be made to the University's ADA office at least three business days in advance of the hearing. If necessary, the University may postpone the hearing to provide reasonable accommodations.

Employee Discipline

A Respondent found responsible for violations shall be subject to discipline commensurate with the offense. Counsides at the given to alg. 5336T v4 [580 T.w. [01901305a8 ha fly b/ Tg5al0 hat 570 v[i1/ees/Itoow.4(y[look

individual Complainant or Respondent that affected the outcome of the matter.

The University may uphold the discipline decision, modify the decision, remand the case to the same Hearing Officer for reconsideration of the discipline decision, or remand the case to a new Hearing Officer for a new hearing. Unless the appeal decision is to remand the case for a new hearing, the appeal decision is considered the final decision of the University. A copy of the decision of the University shall be simultaneously forwarded to both Complainant and Respondent, Human Resources or Office of the Provost, and to the Title IX Coordinator for filing and for distribution to the appropriate parties.

CONFLICT OF INTEREST

During any portion of the Title IX process, if an individual, who, because of that individual's position would ordinarily participate in the administration or disposition of a Formal Complaint under this Policy, becomes involved in a case as a Complainant, Respondent or witness, the University will assign an alternate individual to participate in the administration and or disposition of the matter. Additionally, any individual designated by the University as a Title IX Coordinator, Investigator, decision-maker, or any person designated by the University to facilitate an informal resolution process, must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

Authority: Title IX of the Higher Education Amendments of 1972

DocuSigned by:		
Approved:	Date:	
Dr. Martha D. Saunders, President		

History: P-14.01-11/13 Sexual Misconduct and Gender-Based Discrimination Policy, adopted November 2013; P14.02-02/15 Sexual Misconduct, Sexual Violence, Gender-Based Discrimination and Retaliation, adopted March 2015 as an interim policy; approved as a permanent policy following the expiration of the comment period in May 2015; adopted August 2020 as an interim policy; approved as a permanent policy following the expiration of the comment period in October 2020.