

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

1. Florida Gulf Coast University member of the University community, including employees, students, or conduct business in an incident, to foster a community in which diversity is realized. This Policy is pursuant to Title IX ("Title IX") and implementing procedures for applicants, students, Employees of the University community in response to Harassment, including Sexual Harassment, Stalking, as defined in this Policy. Retaliation against any individual for Protected Activity. A claim of discrimination. If the University determines a claim of discrimination will take affirmative steps to eliminate the effects, and prevent its recurrence.
2. The informal and formal procedures for response to complaints of Sexual Harassment, Violence, Domestic Violence, and Stalking, herein are also established to ensure compliance with applicable federal and state laws.

B. REASON FOR POLICY

This Policy provides procedures for the investigation of Sexual Harassment under Title IX and Retaliation. Employees, students, and third parties may report Harassment under Title IX and Retaliation to investigate such complaints pursuant to Title IX, and in compliance with applicable laws, lawful orders and University regulations.

Note: While this Policy also addresses Sexual Harassment under Title IX, students involved in such investigations are also subject to the Student Conduct within the Division of Student Affairs.

related Regulation.

C. APPLICABILITY AND/OR ACCOUNTABILITY

This Policy is applicable to off-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, AntiHarassment, and Sexual Misconduct.
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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(nc)4 (a)4 (nc)4 (e)4 (s)-1 (w)2MC t anot, ig(r)-17 l (a)4 (nc)4]TJ -0.00

hours.

- b. Any necessary correspondence will be provided to the Complainant and Respondent using an email address and/or mailing address on f(a)40.0. (s)-1Td (1(i)-2 (l) (f(a)40. 1 Tf(s)-

not a Complainant or party during the grievance process and must comply with requirem

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 proedG*EMC /P < /MCD 09 of 1

that a determination regarding sufficient or insufficient evidence of a regulation/policy violation is made at the conclusion of the formal resolution process;

b)

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.

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- 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 and investigative appeal rights articulated in Section E21 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 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. PreHearing Meeting

The Hearing Officer will meet separately with each party to resolve hearing concerns. At this prehearing 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 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.

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.

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.
- 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

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- 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 termination of or separation from employment.

12. Appeals

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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.

- 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/sexualassault>
- 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