

# Title IX Procedures

## Title IX: Sex-Based Discrimination and Sexual Harassment Policies and Procedures

### ***Sex Discrimination Prohibited***

Title IX of the Education Amendments of 1972 (“Title IX”) is a federal law that prohibits discrimination on the basis of sex in federally assisted education programs or activities. Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including sexual harassment.

Florida National University does not discriminate on the basis of sex in its education programs and activities, including admission and employment, and is prohibited by Title IX from discriminating in such a manner. The University prohibits all forms of sex discrimination and sexual harassment as defined below, which includes sexual violence.

Florida National University believes that any form of sexual harassment can have a devastating effect upon the people involved and such behavior will not be tolerated. Prompt action will be taken to protect the complainant, investigate a formal complaint, and if warranted, discipline the respondent. Such action may include suspension, dismissal, or loss of employment.

Questions regarding Title IX may be referred to the Title IX Coordinator (see below for contact information) or to the Assistant Secretary for Civil Rights of the U.S. Department of Education’s Office for Civil Rights.

### **Definitions**

#### *Sexual Harassment:*

Conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual’s participation in unwelcome sexual conduct (*quid pro quo* harassment);
2. 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 school’s education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking (as defined below).

#### *Sexual Violence:*

Sexual violence includes dating violence, domestic violence, sexual assault, and stalking.

#### *Dating Violence:*

Dating violence is 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 the complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. 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.

### *Domestic Violence:*

Domestic violence is a felony or misdemeanor crime of violence committed 1) by a current or former spouse or intimate partner of the victim; 2) by a person with whom the victim shares a child in common; 3) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; 4) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or 5) 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 the jurisdiction in which the crime of violence occurred.

The State of Florida defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. See Fla. Stat. § 741.28.

### *Sexual Assault:*

Sexual assault is any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent that meets the definition of rape, fondling, incest, or statutory rape.

Rape is 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 both males and females.

Fondling is 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 incapacity.

Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape is sexual intercourse with a person who is under the statutory age of consent. Florida statutory rape law is violated when a person has consensual sexual intercourse with an individual under age 18. However, there is an exemption for individuals close in age, which allows a person no older than age 23 to engage in consensual sexual intercourse with minors aged 16 or 17.

### *Stalking:*

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to 1) fear for the person's safety or the safety of others or 2) suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in 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. Reasonable person means a

reasonable person under similar circumstances and with similar identities to the victim. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

*Consent:*

Consent means a clear, unambiguous, and voluntary agreement between the parties engaging in specific sexual activity. A person is incapable of consent when he or she is: 1) mentally disabled; 2) mentally incapacitated; 3) physically helpless or incapacitated; or 4) under threat, coercion or force.

The State of Florida defines consent as intelligent, knowing, and voluntary consent, which does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender. Among other things, the State of Florida does not consider a victim to be able to consent if the victim is mentally defective, physically incapacitated, or has been administered any narcotic, anesthetic or other intoxicating substance that mentally or physically incapacitates the victim. See Fla. Stat. § 794.011.

*Quid Pro Quo Sexual Harassment:*

Quid pro quo harassment occurs when an employee of the school conditions the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct. This includes when advances or requests are made under circumstances implying that one's response or submission to unwanted sexual conduct might affect educational or personnel decisions that are subject to the influence of the person making the proposal.

*Complainant:*

Complainant means an individual(s) who is alleged to be the victim of conduct that could constitute sexual harassment or sex discrimination.

*Respondent:*

Respondent means any individual(s) who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Examples of "Unwelcome Conduct" Sexual Harassment

The following are examples of behaviors that individually or in combination may be considered to constitute unwelcome conduct that a reasonable person would consider to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity and as a result meets the second prong of the definition of sexual harassment prohibited by Title IX:

- Unwelcome sexual advances, including touching, kissing, hugging, or massaging
- Non-consensual sexual activity (where the victim does not consent or is incapable of giving consent)
- Unnecessary and unwelcome references to various parts of the body
- Unwelcome statements or conduct related to a person's gender, actual or perceived sex, gender identity, or nonconformity with sex or gender stereotypes
- Recurring inappropriate or derogatory sexual innuendoes or humor
- Videotaping and photographing activity of a sexual or personal nature without consent of those being recorded

- Obscene gestures or nonverbal communication of a sexual or gender-based nature
- Sexually explicit profanity
- Use of email, the Internet, text messaging, or other forms of digital media to facilitate any of the above referenced behaviors

***Sexual Violence Prevention and Response***

The University educates the student community about sexual violence prevention through the Office of Student Services. The Office of Student Services provides educational materials and conducts prevention and awareness programs for students to promote awareness of, and to prevent sexual violence. Such materials and programs educate students regarding prohibited sexual violence (including relevant definitions), the definition of consent in the state of Florida, safe and positive options for bystander intervention, risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks, and the University’s response to sexual violence (including the grievance process and possible sanctions and supportive measures). The University also provides appropriate training to its officials who address instances of sexual violence.

If you are a victim of sexual violence, first seek safety and then immediate medical attention. The University strongly encourages any victim of sexual violence to report the incident in a timely manner. Time is a critical factor for collecting and preserving of evidence. (Ideally, a victim of sexual violence should not wash, douche, use the restroom, or change clothes prior to a medical examination at a hospital.)

The University encourages students to report incidents of sexual violence to the local police department by dialing 911 and to report the incident to the Campus Dean or Title IX Coordinators (who can also assist you with the reporting of an act of sexual violence to the police).

The University also strongly advises victims of sexual violence to seek counseling. Local organizations that specialize in crisis counseling include:

<b>Resources</b>	<b>Phone Numbers</b>
RAINN-Rape, Abuse & Incest National Network	(800) 656-4673
Victims of Crimes Services	(305) 230-6141
Opa Locka Domestic Police -Violence Intervention Unit	(305) 953-2838

***Procedures for Reporting Sex Discrimination and Sexual Harassment***

Any member of the University community may file a report of sex discrimination or sexual harassment with the Title IX Coordinator or Deputy Coordinators (collectively, the “Title IX Coordinators”). The contact information for the Title IX Coordinators is included at the end of this policy. The complainant may also report these matters to any of the following employees: Campus Dean, Associate Dean, Assistant Dean, Vice President of Academic Affairs, Associate Vice President of Academic Affairs, Vice President of Operations, Student Services Director, or

Athletic Director. It is the responsibility of that individual to file the report with one of the Title IX Coordinators.

Reports of alleged discrimination or harassment should be filed using the Title IX Grievance Form which is available online at <https://www.fnu.edu/wp-content/uploads/2011/11/Title-IX-Grievance-Form.pdf> or from the Office of Student Services or the Title IX Coordinators. Grievance Forms should be submitted directly to one of the Title IX Coordinators or the Director of Student Services. Complainants are encouraged to file reports promptly because the passage of time typically makes it more difficult to conduct an investigation. Further, it is easier to commence legal proceedings (both civil and criminal) against the respondent if the reports are made promptly.

### ***Initial Contact with Complainant***

Upon receiving a report of sex discrimination or sexual harassment, the Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures (see below), consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, explain the process for filing a formal complaint of sexual harassment, and describe the grievance process for either sex discrimination or sexual harassment (as appropriate). The complainant will be provided with a copy of the Title IX policy.

If the complainant (student or employee) is reporting an incident of sexual violence, the Title IX Coordinator will also provide a written notification of the available supportive measures, a written notification of existing resources for victims at FNU and in the community (counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims), a list of rights and options for victims of sexual violence, information about options for involving local law enforcement and campus security, and options for obtaining a protective order (if relevant). The Title IX Coordinator will offer assistance contacting law enforcement if the complainant desires but will also explain that contacting law enforcement is not required.

### ***Supportive Measures***

Upon receipt of a report of alleged sex discrimination or sexual harassment, the Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures with the appropriate department at the University. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to FNU's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or FNU's educational environment, or deter sexual harassment.

Supportive measures are determined on a case-by-case basis and may include counseling, schedule accommodations, academic accommodations, mutual restrictions on contact between the parties, escorts, limitations on extracurricular or athletic activities, increased security and monitoring of certain areas of the campus, and other similar measures. When implementing supportive measures, the University will make every effort to avoid depriving any student of his or her education.

FNU will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair its ability to provide the supportive measures. If a complainant reporting an incident of sexual violence requests a supportive measure and it is reasonably available, FNU will provide such measure, regardless of whether the complainant chooses to report the incident to campus police or local law enforcement.

### ***Emergency Removal***

In some circumstances, FNU may suspend a student-respondent from its education programs or activities on an emergency basis based on a report of sexual harassment. Before suspending the respondent, FNU will conduct an individualized safety and risk analysis to determine if there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment which justifies the removal of the respondent. If FNU makes the decision to temporarily remove the respondent, FNU will provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. The Vice President of Academic Affairs will make all decisions regarding emergency removal of students. FNU has the discretion to place employee-respondents on an administrative leave of absence during the pendency of the grievance procedure.

### ***Grievance Process for Reports of Sex Discrimination***

When the Title IX Coordinator receives a complaint alleging that the University or its employees have discriminated on the basis of sex in its education programs and activities, including admissions, employment, and athletics, the Title IX Coordinator will contact the complainant and investigate the complaint and report the findings of the investigation to the Vice President of Academic Affairs and Vice President of Operations for action. The complainant will be notified of the outcome of the complaint and any remedies provided by FNU to resolve any incidents of sex discrimination.

### ***Grievance Process for Formal Complaints of Sexual Harassment***

FNU's grievance process provides for the prompt and equitable resolution of formal complaints of sexual harassment through either an informal or formal resolution process (both of which are set forth below). The grievance process includes a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process and FNU will not impose any disciplinary sanctions against a respondent until a determination of responsibility is made. All decision-makers involved in the grievance process are required to make an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The Title IX Coordinator, Investigator, and any decision-makers will receive required training on this process and the handling of allegations of sexual harassment. When an employee is a party to a formal complaint, the Title IX Coordinator will notify FNU's Human Resources Department and the Human Resources staff will be available as a resource to the Title IX Coordinator, Investigator, and decision-makers.

FNU will respond promptly in a manner that is not deliberately indifferent (i.e., clearly unreasonable in light of the known circumstances) to all formal complaints of sexual harassment. FNU plans to conclude the grievance process in a reasonably prompt time frame. Any time frames listed below are subject to change for good cause. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

Written notice of any delay or extension and the corresponding reasons will be provided simultaneously to the complainant and the respondent. Timeframes may also be extended to account for regularly scheduled breaks between school terms or school recesses.

### ***Formal Complaints of Sexual Harassment***

A formal complaint of sexual harassment must be filed by either the complainant or the Title IX Coordinator before FNU will initiate its grievance process for sexual harassment. If after meeting with the Title IX Coordinator, the complainant decides to proceed with a formal complaint of sexual harassment, the complainant should submit a written statement to one of the Title IX Coordinators in person, by mail, or by electronic mail. The formal complaint must include the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in an education program or activity of FNU.

In cases where the complainant does not choose to file a formal complaint but where the Title IX Coordinator after considering all of the circumstances determines that FNU must initiate the grievance process to avoid being deliberately indifferent (such as when an individual or other members of the community may be at risk), the Title IX Coordinator may sign the formal complaint. FNU will not act with deliberate indifference in response to any formal complaint.

FNU may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

### **Dismissal of a Formal Complaint**

FNU must dismiss a formal complaint, if at any time during the investigation or hearing, FNU determines that:

- 1) the alleged misconduct does not meet the definition of sexual harassment (defined above);
- 2) The alleged misconduct did not occur within FNU's "education program or activity" (defined below); or
- 3) the alleged misconduct occurred against a complainant located outside of the United States.

An "education program or activity" for purposes of a formal complaint of sexual harassment includes locations, events, or circumstances over which FNU exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by FNU.

FNU may also dismiss a formal complaint, if at any time during the investigation or hearing:

- 1) the complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- 2) the respondent is no longer enrolled at or employed by FNU; or
- 3) specific circumstances prevent FNU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

The Title IX Coordinator will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties (complainant and respondent) and will also notify the complainant of the right to appeal a dismissal. See below for more information on appeals. If a formal

complaint is dismissed under the Title IX policy, the complainant may still be able to file a complaint under another FNU policy. Students should refer to the Student Handbook and University Catalog, and employees should refer to the Employee Handbook, for additional information.

### **Notice of Allegations**

After receiving a formal complaint of sexual harassment, the Title IX Coordinator will provide a written notice of allegations to the complainant and respondent in advance of an initial interview with the Investigator to give the parties sufficient time to prepare. The notice of allegations will include:

- 1) notification of the grievance process as well as the availability of an informal resolution;
- 2) a list of the allegations of misconduct, including sufficient details known at the time such as the identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident;
- 3) a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- 4) notification that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- 5) notification that the parties may inspect and review evidence; and
- 6) the provision in FNU's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, FNU decides to investigate allegations about the complainant or respondent that are not included in the original notice of allegations, the Title IX Coordinator must provide notice of the additional allegations to the parties.

### **Informal Resolution Process**

An informal resolution process may be applied to resolve a formal complaint, except when the complainant is a student and the alleged respondent is an employee. To initiate the informal resolution process, the Title IX Coordinator will review the process with the complainant and the respondent in a timely manner and elicit their interest in engaging this process. Each party must receive written notice disclosing:

- 1) the allegations;
- 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) that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
- 4) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Both parties must give voluntary, informed written consent to participate in the informal resolution process. To reach an informal resolution, the Title IX Coordinator will initiate whatever steps he or she deems appropriate to effect an informal resolution of the complaint acceptable to both parties.

If a satisfactory resolution is reached through this informal process, the resolution will be documented and signed by both parties. If both parties sign the resolution, they may not then pursue the formal resolution process (i.e., the investigation, hearing, and appeal processes

described below). If these efforts are unsuccessful or if the complainant or respondent do not accept the informal resolution, the formal resolution process may commence. The complainant or respondent may request to end the informal process at any time to begin the formal resolution process. The complainant may request to end the informal or formal process at any time prior to a determination.

The University seeks to conclude the informal resolution process within 30 days of the parties deciding to utilize this process, however, the process may be extended for good cause.

### **Formal Resolution Process**

The formal resolution process is used to resolve formal complaints of sexual harassment made by students or employees and includes an investigation, live hearing, determination of responsibility, and appeal. FNU acknowledges that complaints involving sexual harassment are particularly sensitive and demand special attention to issues of confidentiality. Dissemination of information relating to the case will be limited in order that the privacy of all individuals involved is safeguarded as fully as possible. Please see the section titled Confidentiality below for further information.

The parties may be accompanied throughout the investigation and at the Title IX hearing by the advisor of their choice. The advisor can be, but is not required to be, an attorney. If a party does not have an advisor for the live hearing, FNU will appoint an advisor of its choice without fee or charge to represent the party during the hearing and this advisor may be, but is not required to be, an attorney.

### **Investigation**

FNU's Title IX Coordinator or another investigator appointed or retained by the Title IX Coordinator will investigate all formal complaints of sexual harassment in a thorough, impartial, and prompt fashion. FNU reserves the right to decide who will serve as the Investigator, including to retain an outside investigator, on a case by case basis. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on FNU and not on the parties.

The Investigator will oversee the collecting of facts related to any reported sexual harassment and will notify and interview complainants, respondents, and witnesses. Both parties will have the opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence to the Investigator. During the investigation, the complainant and respondent will be provided with copies of or allowed to inspect all evidence collected. Either party may submit responses to the evidence to the Investigator or may submit any additional evidence contradicting or corroborating the evidence collected by the Investigator. However, the Investigator cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional which are made and maintained in connection with the provision of treatment to the party, unless the Investigator obtains that party's voluntary, written consent to do so for the grievance process.

At the conclusion of the investigation, the Investigator will prepare a written Preliminary Investigative Report fairly summarizing the relevant exculpatory and inculpatory evidence. The Investigator will provide the complainant and respondent and their advisors with a copy of the preliminary investigative report allowing a 10-day response period for both parties to review and respond to the report.

Once this 10-day response period is concluded, the Investigator will review any responses received and finalize the report. The complainant, the respondent and their advisors will simultaneously receive a copy of the Final Investigative Report at least 10 days in advance of the scheduled hearing.

The Investigator will investigate the complaint independent of any external law enforcement investigations that may be ongoing. Investigators may need to postpone the investigation until law enforcement has concluded the evidence gathering portion of their investigation but will resume the investigation as quickly as possible.

## **Hearing**

A hearing will be held for each formal complaint resolved through the formal process. The Title IX Coordinator will provide written notification of the date, time, location, participants, allegations, structure of the hearing and purpose of the hearing, to all parties and witnesses whose participation is invited or expected within 14 days of the hearing to provide sufficient time to prepare to participate.

After the investigation is concluded, the formal complaint and Final Investigative Report will be forwarded to the decision-making panel. A decision-making panel of three members and two alternates (to be engaged in the case of a conflict of interest) will be chosen from the FNU administration to serve as the Title IX Hearing panel and will receive the required training. The Title IX Coordinators and the FNU President may not serve on the panel. The role of the decision-making panel will be to oversee the resolution of the complaint by interviewing all appropriate parties, including witnesses, determining the relevance of all questions posed under cross-examination, evaluating the relevance of all evidence submitted and rendering a decision of responsibility.

The live hearing will be conducted in a manner so that all parties can see and hear testimony at all times. During the hearing, the parties may be in the same room, in separate rooms (at the request of either party), or the hearing may be conducted virtually (in-part or in-whole) as long as there is appropriate technology to allow for the parties, their advisors, and the decision-making panel to see and hear each other at all times. The hearing will be recorded or transcribed, and a copy of the recording/transcription will be provided to both the complainant and respondent for review.

The parties to the formal complaint will be invited to appear before the decision-making panel, present any witnesses and evidence, and confront any adverse witnesses. The panel may conduct its own inquiry, call witnesses, and gather whatever information it deems necessary to assist it in reaching a determination of responsibility. The decision-making panel will enforce the following rules for questioning parties and witnesses:

- 1) Only the advisors for the parties or the panel may question a testifying witness (including a party), but the advisors must be allowed to question each testifying witness (including a party) directly, orally, and in real time. A party may not question the other party or the witnesses.
- 2) All questioning must be conducted in a professional and polite manner.
- 3) Questioners may only ask relevant questions. Before the party or witness answers a question, the panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- 4) Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove

- a. that someone other than the respondent committed the conduct alleged by the complainant, or
  - b. 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.
- 5) The panel may not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

If a party or witness does not submit to cross-examination at the live hearing, the decision-making panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility (including a statement made to the investigator during the investigation). The panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

### **Determination of Responsibility**

The decision-making panel will make findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of the University's policies using a clear and convincing evidence standard. Thus, the panel must determine whether it is highly probable (or substantially more likely to be true than untrue) that the conduct occurred.

After the hearing, the decision-making panel will issue a written determination regarding responsibility applying the clear and convincing evidence standard, which will be provided simultaneously to the complainant and respondent. The written determination will include:

- 1) a list of the allegations potentially constituting sexual harassment;
- 2) a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- 3) findings of fact supporting the determination;
- 4) conclusions regarding the application of FNU's policies or code of conduct to the facts;
- 5) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- 6) any disciplinary sanctions imposed on the respondent;
- 7) any remedies designed to restore or preserve equal access to FNU's education program or activity that will be provided to the complainant; and
- 8) the procedures and permissible bases for the complainant and respondent to appeal.

If the panel determines that it is highly probable that the respondent is responsible for the alleged sexual harassment, it should impose sanctions against the respondent and any additional remedies for the complainant. The Title IX Coordinator should forward the determination immediately to the appropriate campus dean. The campus dean shall proceed in the manner set forth by the University's rules and procedures to implement the sanctions and/or remedies, except that the need for a preliminary review will be precluded.

The panel can recommend the following sanctions if it finds that a student has violated this policy: Suspension, Expulsion, Loss of University Scholarship. If the panel recommends suspension, it may also impose requirements for returning from the suspension (e.g., requirements to complete training). The panel can recommend the following sanctions if it finds

that an employee has violated this policy: Written Discipline, Probation, Suspension Without Pay, Dismissal.

The panel can recommend the following remedies for the complainant: classroom adjustments or changes, academic support (tutoring, mentoring, flexible assignment due dates, allowing the student to make up coursework), allowing the student to retake a course and/or withdraw without penalty, counseling services, protective/no contact orders, or other remedies that may be appropriate given the circumstances. The purpose of remedies is to restore or preserve equal access to FNU's education programs or activities and remedies, unlike supportive measures, they need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. The Title IX Coordinator will be responsible for overseeing the implementation of any remedies in conjunction with the appropriate Campus Dean.

The determination regarding responsibility becomes final either on the date that the parties receive the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. Appeals are discussed in the following section.

### ***Appeals***

Both parties involved have the right to appeal the determination regarding responsibility or the dismissal of a formal complaint to the President/CEO, who will serve as the Appeals Officer. Notice of intent to appeal must be submitted within 14 days of the written notification of the determination or dismissal, and will be based on one or more of the following grounds:

1. Procedural irregularity that affected the outcome of the matter.
2. New evidence, which was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
3. The Title IX Coordinator, Investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The written notice of the intent to appeal must provide a written statement challenging the outcome. Both parties will be provided with a copy of the notice of intent to file an appeal and the appeal procedures by the Title IX Coordinator. The non-appealing party may submit a written statement supporting the outcome and/or objecting to the grounds on which the appeal was filed within 14 days of receipt of the notice of appeal. The Appeals Officer will consider the related documents (such as the investigative report, hearing transcript, determination of responsibility, and prior disciplinary records) but will not consider information that is not relevant, including information about the prior sexual history of the complainant. The Appeals Officer will issue a written decision describing the result of the appeal, the rationale for the result and the grounds on which the appeal was granted or denied. The decision of the Appeals Officer is final and will be issued simultaneously to both the complainant and the respondent, typically within 14 days of the deadline by which the parties must submit their written statements, absent extenuating circumstances.

### ***Confidentiality***

Except as necessary to investigate and resolve complaints of sex discrimination or formal complaints of sexual harassment, FNU will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, any individual who has made a report or

filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness.

For a report of sex discrimination, if the complainant requests to remain anonymous, the Title IX Coordinator will take all reasonable steps to investigate and respond to the report consistent with the student's request, but the Title IX Coordinator's ability to investigate the incident will be limited. In some circumstances, the University may not be able to respect the request for anonymity in order to avoid being deliberately indifferent to the report of sex discrimination.

For a report of sexual harassment where the complainant wishes to be anonymous and does not intend to file a formal complaint, the Title IX Coordinator will work with the complainant to provide supportive measures and will keep such supportive measures confidential to the extent possible (as described above in the section titled "Supportive Measures"). As discussed above in the section titled "Formal Complaints of Sexual Harassment", there may be some circumstances where the Title IX Coordinator receives a report of sexual harassment and determines that he/she must sign a formal complaint to avoid being deliberately indifferent, even if the complainant does not wish to pursue a formal complaint. This may occur where there have been other similar accusations against the same respondent such that the University is concerned about the safety of its students.

Any reports of sexual violence must be reported to the Office of Student Services so they may be included in the University's crime log and the annual security report. Crimes of sexual violence can be reported without disclosing either party's name or any other information that would identify the parties.

Complaints involving students are protected under the Family Education Rights and Privacy Act (FERPA) but may be disclosed for legitimate educational purposes within the University. To disclose the information outside of the University, any affected students would have to give explicit permission for the information to be shared through the Disclosure of Information Form available at the FNU Publications webpage and at the Office of the Registrar, except as described below.

Under FERPA the University does not need student consent to:

- 1) disclose to the complainant information about the sanction imposed upon a student respondent who was found to have engaged in sexual harassment when the sanction directly relates to the complainant;
- 2) disclose to the complainant the final results of a disciplinary proceeding against the student respondent, regardless of whether the University concluded that a violation was committed, when the conduct involves sexual violence or a crime of violence including arson, burglary, robbery, criminal homicide, assault, destruction/damage/vandalism of property and kidnapping/abduction; and
- 3) disclose to anyone—not just the complainant—the final results of a disciplinary proceeding (including the name of the student respondent, the violation, and the sanction) if it determines that the student respondent is an alleged perpetrator of sexual assault or a crime of violence (see bullet above for examples), and, with respect to the allegation made, the student has committed a violation of the University's rules or policies.

Medical records are confidential and medical and health professionals are required to maintain confidentiality with regard to the patient's information.

### ***Retaliation; False Complaints***

Retaliation against any person who in good faith makes a report or formal complaint of sex discrimination or sexual harassment, or participates or refuses to participate in any manner in a Title IX investigation or hearing, is prohibited under Title IX. The University, the respondent, and other individuals may not retaliate against an individual for bringing a complaint or for participating in an investigation.

Retaliation includes intimidation, threats, coercion or discrimination against any individual for the purpose of interfering with any right or privileged secured by Title IX or this policy. Institutions are also prohibited from bringing 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 Title IX.

The University will take steps to prevent retaliation against a complainant by the respondent or his or her associates. Any instances of retaliation should be reported to the Title IX Coordinator immediately and may result in disciplinary sanctions independent of other sanctions already implemented under this policy. Reports of retaliation by the University will be investigated by the Title IX Coordinator (or an outside investigator if the report involves the Title IX Coordinator) through the grievance process for sex discrimination.

FNU will not tolerate intentional false reporting of incidents. It is a violation of this policy to make an intentionally false report of a policy violation. False reports made by students will be handled through the Student Grievance Procedure. Making a false report may also violate state criminal statutes and civil defamation laws.

### ***Contact Information for the Title IX Coordinators***

Reports of alleged sexual harassment by a student, staff or faculty can be filed with any of the following individuals:

#### **Florida National University - Title IX Coordinator**

Bernardo Navarro  
South Campus Assistant Dean  
11865 SW 26 St Ste. H3  
Room 205C  
Miami, FL 33175  
Ph. (305) 226-9999 Ext. 1339  
[navarrob@fnu.edu](mailto:navarrob@fnu.edu)

#### ***South Campus - Title IX Deputies***

Margarita Velez  
Admissions Supervisor  
11865 SW 26 St Ste. H3  
Room 205B  
Ph. (305) 226-9999 Ext. 1313  
[mvelez@fnu.edu](mailto:mvelez@fnu.edu)

*Hialeah Campus - Title IX Deputies*  
4425 W Jose Regueiro Av (20th Av)  
Hialeah, FL 33012

Harold Flores  
Assistant Campus Dean  
Ph. (305) 821-3333 Ext. 1044  
[hflores@fnu.edu](mailto:hflores@fnu.edu)

Kelly Krenkel  
Director of Accreditation & Compliance  
JR Building – 502F  
Ph. (305) 821-3333 Ext. 1048  
[kkrenkel@fnu.edu](mailto:kkrenkel@fnu.edu)

*Training Center - Title IX Deputy*  
4206 W 12 AVE  
Hialeah, Florida 33012

Jose Luis Valdes  
Campus Dean/University Registrar  
Room 130  
Ph. (305) 821-3333 Ext. 1028  
[jvaldes@fnu.edu](mailto:jvaldes@fnu.edu)

*Online Learning - Title IX Deputy*  
4425 W. Jose Regueiro (20th) Ave.  
Hialeah, Florida 33012

Dr. Emry Somnarain  
Online Director  
Room 143  
Ph. (305) 821-3333 Ext. 1067  
[esomnarain@fnu.edu](mailto:esomnarain@fnu.edu)