

Title IX: Sex-Based Discrimination and Sexual Misconduct 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, sexual assault, sexual exploitation, gender-based harassment, stalking, dating violence, domestic violence, and gender identity or failure to conform to stereotypical notions of masculinity or femininity.

Florida National University does not discriminate on the basis of sex in its education programs and activities. The University prohibits all forms of sex discrimination.

Definitions

SEXUAL HARRASSMENT:

Sexual harassment is unwelcome conduct of a sexual nature. Conduct is unwelcome if the complainant did not request or invite it and regarded the conduct as undesirable or offensive; acquiescence in the conduct or failure to complain does not always mean that the conduct was welcome. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, other verbal, nonverbal or physical conduct of a sexual nature or with sexual overtones, and gender-based harassment based on sex or sex-stereotyping.

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. 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.

Examples of Sexual Harassment

The following are examples of behavior may create a hostile environment and could be considered sexual harassment prohibited by Title IX:

- Requests or demands for sexual favors
- 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)
- Violence between intimate partners
- 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
- Reoccurring 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 Harassment Prohibited by Title IX

Sexual harassment that creates a hostile environment by interfering with, denying or limiting a student's ability to participate in or benefit from the school's program on the basis of sex is prohibited by Title IX. FNU will consider the following factors in determining whether sexual harassment creates a hostile environment:

- 1) The degree to which the conduct affects one or more students' education;
- 2) The type, frequency, and duration of the conduct;
- 3) The identity of and relationship between the respondent and the complainant;
- 4) The number of individuals involved;
- 5) The location of the incidents and the context in which they occurred; and

6) Other incidents at the school.

This includes quid pro quo sexual harassment, where such 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. For example, quid pro quo sexual harassment occurs when submission to sexual harassment is made, either explicitly or implicitly, a term or condition of instruction, employment, or participation in other College activities.

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 the charges, and if warranted, discipline the violator. Such action may include suspension or dismissal.

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 complaint procedures and possible sanctions and protective measures).

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 crises counseling include:

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
Baptist Health-Women's Health Center	(786) 596-5981

Procedures for Filing a Sexual Harassment Complaint

- A. Any member of the University community who believes that he or she has been a victim of sexual harassment (the complainant) by a student, a University employee or a third party may bring the matter to the attention of the Title IX Coordinator or Deputy Coordinators (collectively, the “Title IX Coordinators”). The complainant may also report these matters to either of the following employees: Campus Dean, Associate Dean, Assistant Dean, Vice President of Academic Affairs, Student Services Director, Student Services Officer, Student Services Assistant, Athletic Director or Assistant Athletic Director. It is the responsibility of that individual to file the report with one of the Title IX Coordinators.
- B. The complainant should present the complaint as promptly as possible after the alleged harassment occurs 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 complaints 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 accused if the reports are made promptly.
- C. If the complainant decides to proceed with a formal complaint, the complainant should submit a written statement to one of the Title IX Coordinators.
- D. FNU’s Title IX Coordinator will investigate all student complaints of sexual harassment. The Title IX Coordinator will inform the alleged offender (respondent) of the allegation, the identity of the complainant, the alleged violation of the University’s policies, and the date and location of the alleged incident(s). A written statement of the complaint will be given to both parties. Exceptions can be made when confidentiality is requested by the complainant, as described below.
- E. Cases 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.
- F. Retaliation against the complainant is prohibited. Every effort will be made to protect the complainant from retaliatory action.

Resolution of the Complaint

- A. The University will promptly take steps to ensure that the complainant and the respondent have equal access to the University’s educational programs and activities and to protect the complainant and the respondent as necessary, including taking interim measures before the outcome of an investigation. Interim measures are determined on a case-by-case basis and may include counseling, schedule accommodations, academic accommodations, no-contact directives, stay-away letters/campus bans, escorts,

limitations on extracurricular or athletic activities, and leaves of absence. When implementing interim measures, the University will make every effort to avoid depriving any student of his or her education.

- B. Reports of alleged Title IX incidents will be investigated in a thorough, impartial, and prompt fashion. The Title IX Coordinator will oversee the collecting of facts related to any reported Title IX incident and will assess whether a further review or investigation is necessary. The Title IX Coordinator will notify and interview complainants, respondents, and witnesses. At the conclusion of the investigation, the Title IX Coordinator will prepare a written report summarizing the relevant exculpatory and inculpatory evidence.
- C. Directly following the conclusion of the investigation, the Title IX Coordinator will determine whether reasonable cause exists to believe that a policy violation occurred. If such reasonable cause exists and the respondent is a student, the Title IX Coordinator will notify University administrators and determine whether to pursue an informal or formal resolution, as described below. Where the respondent is a faculty or staff member, the Title IX Coordinator will refer the results of the investigation to the Human Resources Department and the University administrators for appropriate action. The Title IX Coordinator will be kept informed of the outcome of the investigation regarding a faculty or staff member and will notify the complainant, as appropriate, of the outcome, including any accommodations the University will provide to the complainant.
- D. If reasonable cause exists to believe that a policy violation occurred, the Title IX Coordinator believes it is appropriate given the circumstances of the complaint to engage in an informal resolution process, and all parties voluntarily agree to participate in such a process, the Title IX Coordinator will initiate whatever steps he or she deems appropriate to affect an informal resolution of the complaint acceptable to both parties. The complainant or respondent may request to end the informal process at any time to begin the formal stage of the complaint process.
- If unsatisfied with the informal resolution proposed by the Title IX Coordinator, the complainant or respondent should write a written request to the Title IX Coordinator with his or her opinions and suggestions, including any request to appear before the Honor Court.
- E. If reasonable cause exists to believe that a policy violation occurred and the Title IX Coordinator believes that an informal resolution process is not appropriate based on the nature of the violation, or one or more of the parties requests access to the formal stage of the complaint process, the complaint and the results of the investigation will be forwarded to the Honor Court. Unless the Honor Court concludes that the complaint is without merit, the parties to the dispute should be invited to appear before the Honor Court, present any witnesses and evidence, and confront any adverse witnesses. The Honor Court may conduct its own informal inquiry, call witnesses, and gather whatever information it deems necessary to assist it in reaching a determination as to the merits of the allegations.

- F. The parties will be given adequate notice of any hearing before the Honor Court and will be offered equal and meaningful access to information used during the hearing, including the Title IX Coordinator's report. The parties will also have the opportunity to provide written responses to the Title IX Coordinator's report.
- G. The parties may be accompanied at the Honor Court hearing by the advisor of their choice. The advisor may not participate in the hearing, beyond providing guidance to the party being represented.
- H. The Honor Court will make findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of the school's policies using a clear and convincing evidence standard. Thus, the Honor Court must determine whether it is more probable than not that the conduct occurred.
- I. If the Honor Court determines that it is more probable than not that the conduct occurred, it should recommend sanctions against the respondent and any additional accommodations for the complainant. The Title IX Coordinator should forward the recommendation immediately to one of the campus deans. The campus dean shall proceed in the manner set forth by the university's rules and procedures, except that the need for a preliminary review will be precluded.
- J. The Honor Court can recommend the following sanctions if it finds that a student has violated this policy: Suspension, Expulsion, Loss of University Scholarship.
- K. The Honor Court can recommend the following accommodations 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 and protective/no contact orders.
- L. Florida National University seeks to resolve all Title IX reports within sixty (60) days but more complex investigations may require additional time, especially if the matter is brought before the Honor Court. The Title IX Coordinator will notify the complainant and the respondent in writing of the results of the investigation including a summary of the basis for the determination and the actions that will be taken.

Confidentiality

The Title IX Coordinator is required to investigate any report of alleged sex and gender based misconduct and to ensure measures are taken to stop adverse behavior and prevent its recurrence, as appropriate. Each report is reviewed individually and it is important to note that not every report leads to a disciplinary process.

A student can request confidentiality after making a Title IX report. For example, a complainant may request that his or her name not be disclosed or that an investigation not be conducted regarding the alleged harassment. If the complainant requests confidentiality, the Title IX

Coordinator will take all reasonable steps to investigate and respond to the complaint consistent with the student's request. The University will evaluate any confidentiality requests in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. For example, if there have been other similar accusations against the same respondent such that the University is concerned about the safety of its students, the University may not be able to respect a request for confidentiality.

If the University can honor the complainant's request for confidentiality, the Title IX Coordinator's ability to investigate the incident could be limited. For example, the University cannot take disciplinary action against the respondent if the complainant requests that his or her name not be revealed.

Even when confidentiality is not requested, the University makes every effort to protect the privacy of all individuals involved in such reporting or investigation, yet it cannot always be guaranteed depending on the nature of the incident.

Any alleged incidents 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:

- disclose to the complainant information about the sanction imposed upon a student respondent who was found to have engaged in harassment when the sanction directly relates to the complainant;
- disclose to the complainant the final results of a disciplinary proceeding against the respondent, regardless of whether the University concluded that a violation was committed, when the conduct involves a crime of violence or a non-forcible sex offense; and
- disclose to anyone—not just the complainant—the final results of a disciplinary proceeding if it determines that the student respondent is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution'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

Retaliation is prohibited under Title IX against any person who in good faith makes a complaint of sex discrimination, harassment, sexual violence, sexual misconduct, or participates as a witness in a Title IX investigation. The University, the respondent, and the respondent's associates may not retaliate against an individual for bringing a complaint or for participating in an investigation. The University will take steps to prevent retaliation against a complainant by the respondent or his or her associates.

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 # 205 C
Miami, FL 33175
Ph. # 305-226-9999 Ext. 1339
navarro@fnu.edu

Hialeah Campus - Title IX Deputies

4425 W Jose Regueiro Av (20th Av)
Hialeah, FL 33012

John Ferrari
Director of Student Services
Ph. (305) 821-3333 Ext. 1133
jferrari@fnu.edu

Silvia Borges
Job Developer
Ph. (305) 821-3333 Ext. 1075
sborges@fnu.edu

Training Center - Title IX Deputy

4206 W 12 AVE
Hialeah, Florida 33012

Jose Luis Valdes
Campus Dean/University Registrar
Ph. (305) 821-3333 Ext. 1028
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Online Learning - Title IX Deputy

4425 W. Jose Regueiro (20th) Ave.
Hialeah, Florida 33012

Sandra Lomena

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