

FIU-105 Sexual Misconduct (Title IX)

Responsible University Officer: Director of the Equal Opportunity Programs and Diversity/Title IX Coordinator

Responsible Office: Equal Opportunity Programs and Diversity (EOPD)

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I. POLICY STATEMENT

Florida International University (the University) is committed to encouraging and sustaining a learning and living environment that is free from harassment, violence, and prohibited discrimination based on sex, gender, gender expression, gender identity, sexual orientation, Sexual Misconduct, Domestic and Dating Partner Violence and/or Stalking. In that regard and consistent with federal law addressing these areas (e.g., Title IX of the Education Amendments of 1972 and the Violence against Women Act (VAWA), that portion of the Title VII of the Civil Rights Act addressing sexual misconduct), the University has developed this regulation applicable to members of the University Community (i.e., students, faculty, staff, affiliated third parties, and visitors).

Members of the University community have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, Domestic Dating Partner Violence, and stalking. All members of the University community are expected to conduct themselves in a manner that does not infringe upon the rights of others and is consistent with this regulation. The University believes in zero tolerance for sexual misconduct. Zero tolerance means that, when an allegation of misconduct is brought to an appropriate administrator's attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including but not limited to serious sanctions when a Respondent is found to have violated this regulation. This Regulation has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated.

The Regulation is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom. This is to discuss all relevant matters in the classroom, to explore all avenues of scholarship, research, and creative expression, to speak freely on all matters of university governance, and to speak, write, or act as a public citizen without institutional discipline or restraint.

The University uses the preponderance of the evidence (also known as “more likely than not”) as a standard for proof of whether a violation of this Regulation occurred. In the University resolution proceedings, legal terms like “guilt, “innocence” and “burden of proof” are not applicable, but the University never assumes a Respondent is in violation of a university Regulation. Resolution proceedings are conducted to take into account the totality of all evidence available from all relevant sources.

II. PURPOSE & INTENT

The University is committed to establishing and maintaining a safe learning, living, and working environment where healthy, respectful, and consensual conduct represents the campus cultural norm. This Regulation prohibits discrimination and harassment based on sex, gender, gender expression, gender identity, or sexual orientation, Sexual Misconduct, Domestic and Dating Partner Violence, and/or Stalking. It also prohibits Retaliation against an individual for making a report of conduct prohibited under this Regulation or for participating in an investigation of an alleged violation of this Regulation. It also defines prohibited relationships of a sexual or intimate nature between individuals where one individual has power or authority over another. These prohibited forms of conduct undermine the character and purpose of the University and will not be tolerated.

This policy is in compliance with applicable legal requirements including Title IX of the Education Amendments of 1972; relevant provisions of the Violence against Women Reauthorization Act of 2013; Title VII of the Civil Rights Act of 1964; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act; and other applicable federal and Florida state laws.

III. TITLE IX COORDINATORS

The *Title IX Coordinator* is:

- knowledgeable and trained in University policies and procedures and relevant state and federal laws;
- available to advise any individual, including a Complainant, the Reporting Party, the Respondent, or a third party about the University resources and those found within and outside of the University. Resources include, but are not limited to, health care options, counselling or support, and reporting;
- available to provide assistance to any University employee regarding how to respond appropriately to a report of a possible violation of this Regulation;
- responsible for conducting and/or overseeing investigations of alleged violations of this Regulation;
- responsible for participating in ensuring the effective implementation of this Regulation,

including monitoring compliance with all procedural requirements, recordkeeping, and timeframes;

- responsible for overseeing training, prevention, and education efforts and periodic reviews of climate and culture; and
- responsible for maintaining all reports of possible violations of this Regulation and reviews such reports and complaints for systemic patterns that need to be addressed.

The Title IX Coordinator has designated Deputy Title IX Coordinators to assist in fulfilling the Title IX Coordinator duties. These are:

- Assistant Director, Office of Inclusion, Diversity, Equity & Access
Office number: 305-348-2785 email: eopd@fiu.edu
- Deputy Title IX Coordinator and Director, Office of Student Conduct and Conflict Resolution
Office number: 305-348-3939 email: conduct@fiu.edu
- Julie Berg-McGraw, Sr. Associate Athletic Director
Office number: 305-348-2352 email: julie.berg-mc_graw@fiu.edu

Concerns about the University’s application of this Regulation may be addressed to the following offices below and/or to the Deputy Title IX Coordinators listed above.

Title IX Coordinator Shirlyon McWhorter 305-348-2785 Email: shirlyon.mcwhorter@fiu.edu	U.S. Depart. of Education Office for Civil Rights (800) 421-3481 Email: OCR@ed.gov	Equal Opportunity Commission (800) 669-4000 www.eeoc.gov//employees/howtofile.cfm
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IV. DEFINITIONS

Coercion - Conduct, intimidation, and/or express or implied threats of physical, emotional, financial, or any other type of harm that would reasonably place an individual in fear of immediate or future harm and that is employed to force or compel someone to engage in sexual contact or any other type of involuntary conduct, especially conduct which would endanger or be detrimental to the Complainant. Examples of Coercion include:

- Causing the deliberate Incapacitation of another person;
- Conditioning an academic benefit or employment advantage;
- Threatening to harm oneself if the other party does not engage in sexual contact; or
- Threatening to disclose an individual’s sexual orientation, gender identity, gender expression, or other personal or sensitive information if the other party does not engage in the sexual contact or takes actions involuntarily.

Complainant - Any individual who may have been the subject of any Sexual Misconduct, Dating or Domestic Partner Violence, and/or Stalking by the Respondent regardless of whether the individual makes a report.

Consent - A clear, knowing, and voluntary agreement to engage in specific sexual activity at the time of the activity. Consent can be communicated by words or actions as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity. Consent must be ongoing throughout the sexual activity and can

be withdrawn at any time. Sexual contact must cease immediately once withdrawal of consent is clearly communicated.

- Consent must be active, not passive.
- Lack of protest or resistance does not mean consent has been granted, nor does silence mean consent has been granted.
- Within each sexual encounter, there may be separate individual sexual acts involved, and consent to one act and/or person(s) by itself does not constitute consent to another act and/or person(s).
- The existence of a dating relationship between the persons involved, or the fact of past sexual relations, should never, by itself, be assumed to be an indicator of consent for any current or future sexual encounter even in the context of a relationship, there must be mutual consent.
- If coercion or force is used, there is no consent.
- If a person is incapacitated so that the person cannot understand the fact, nature or extent of the sexual situation, there is no consent. This may be affected by conditions due to age, alcohol or drug consumption, unconsciousness, being asleep, physical or developmental disabilities.
- Whether one has taken advantage of a position of influence over another can be a factor in determining whether there was consent.
- In order to give consent, one must be of legal age.
- The question of what the Respondent should have known as to whether the Complainant was incapacitated is objectively based on what a reasonable person, sober and/or exercising good judgment, would have known about the condition of the Complainant.

Dating or Domestic Violence – Any instance of violence or abuse (verbal, physical, or psychological) that occurs between those who are in, or have been in, an intimate relationship with each other.

- **Physical Violence or Abuse:**
 - i. Occurs when one intentionally or recklessly (1) causes bodily harm to another person; (2) attempts to cause bodily harm to another person; or (3) puts another in fear of imminent bodily harm. No Respondent may knowingly or recklessly touch any other person without that person’s consent. Punching, slapping, scratching, or otherwise striking any person, including a Dating or Domestic Partner, with any part of one’s body or with any object constitutes physical violence.
 - ii. Occurs when there is a pattern of engaging in physical violence or abuse as described above.
- **Psychological Abuse:**
 - i. Occurs when a Respondent intimidates, dominates, terrorizes, humiliates, or isolates any other person, especially a Dating or Domestic Partner.
 - ii. Occurs when there is a pattern of engaging in psychological abuse as described above.
- **Verbal Abuse:**
 - i. Occurs when a Respondent uses extreme or excessive language that is in the form of insults, name-calling, or criticism, designed to mock, shame, or humiliate another person, especially a Dating or Domestic Partner. Verbal behavior must

- be: (1) objectively endangering and (2) sufficiently severe, persistent, or pervasive to constitute verbal abuse. Singular statements and isolated incidents may fall short of this sufficiency standard. \
- ii. Occurs when there is a pattern of engaging in verbal abuse as described above.

Harassment - is a type of conduct that occurs when verbal, physical, electronic, or other conduct based on an individual's protected status interferes with that individual's (a) educational environment (e.g., admission, academic standing, grades, assignment); (b) work environment (e.g., hiring, advancement, assignment); (c) participation in a University program or activity (e.g., campus housing); and/or (d) receipt of legitimately requested services (e.g., disability or religious accommodations), thereby creating hostile environment harassment or quid pro quo harassment.

Incapacitation – Incapacitation is the inability, temporarily or permanently, to give Consent because the individual is mentally and/or physically helpless, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring.

Member of the University Community - Any person who is a student, faculty or staff, any other person currently employed by the University, or working on University Premises or within On-Campus Housing, or any participant in a University-sponsored program or activity regardless of the location of the program or activity.

Reporting Party - Any person (including the Complainant) who reports an alleged violation of the FIU 105 Regulation.

Respondent - Any individual or group who has been accused of violating this policy.

Responsible Employee - Any employee who has the authority to take action to redress Sexual Misconduct, Domestic and Dating Partner Violence and/or Stalking; who has been given the duty of reporting incidents of Sexual Misconduct or any other misconduct by students to the Title IX Coordinator or other appropriate school designee; or an individual who a student/employee could reasonably believe has this authority or responsibility.

Retaliation – Acts or words taken against an individual because of the individual's participation in a protected activity that would discourage a reasonable person from engaging in protected activity. Protected activity includes an individual's good faith (i) participation in the reporting, investigation, and/or resolution of an alleged violation of this Code; and/or (ii) opposition to policies, practices, and/or actions that the individual reasonably believes are in violation of the Code. Retaliation may include intimidation, threats, Coercion, physical harm, and/or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated. Retaliation may be committed by the Respondent, the Complainant, the Reporting Party, or any other individual or group of individuals.

Revenge Porn - to publish a sexually explicit image of a person, including any depiction that contains or conveys the personal identification or information of the depicted person by any electronic, digital or other means, including to an internet website, by text, by email, and/or by or through social media without the depicted person's Consent.

Sexual Misconduct - involves failure to comply with this regulation and includes:

- **Non-Consensual Sexual Touching** – any sexual touching without Consent. Sexual touching is any intentional touching of a person’s body, including the breasts, buttocks, groin, genitals, or other intimate parts. Touching may be over or under clothing and may include the Respondent touching the Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant’s own body.
- **Obscene or Indecent Behavior**
 - i. Exposure of one’s sexual organs or the display of sexual behavior that would reasonably be obscene or indecent to others. Other forms of obscene or indecent behavior include sexual exhibitionism, engaging in prostitution, or the facilitation or solicitation of a prostitute.
 - ii. Observing another individual’s nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved.
 - iii. Recording, photographing, transmitting, showing, viewing, streaming, or distributing intimate or sexual images, audio recordings, or sexual information of another person in any form without the knowledge and Consent of all parties involved.
 - iv. Publishing a sexually explicit image of a person that contains or conveys the personal identification or information of the depicted person to an internet website, text, email, and/or social media without the depicted person’s Consent.
- **Sexual Harassment** – any unwelcome sexual advance, request for sexual favors, and/or other verbal or physical conduct of a sexual nature:
 - i. Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person’s instruction, academic standing, or participation in any University program, activity, or benefit;
 - ii. Submission to, or rejection of, such conduct by an individual is used as a basis for academic or work evaluation;
 - iii. Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University’s educational, and/or campus-residential experience when viewed both from a reasonable person in similar circumstances and the person in question.
- **Gender-based Harassment** - harassment based on gender, sexual orientation, gender identity, or gender expression, including acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve contact of a sexual nature.
- **Sexual Coercion** – the act of using pressure or force to have sexual contact with someone who has already refused.

- **Sexual Battery** – any sexual intercourse by any person upon another without Consent. Sexual intercourse includes vaginal or anal penetration, however slight, by a person’s penis, finger, other body part, or an object, or any oral-genital contact (regardless of whether it involves penetration).
- **Sexual Assault** – the threat to commit sexual battery with the immediate capacity to do so.

Stalking - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for the person’s safety or the safety of others; or (B) suffer substantial emotional distress. For the purposes of this definition--(A) 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. (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

Title IX – refers to Title IX of the Educational Amendments of 1972, which protects people from sex and gender discrimination in educational programs and activities at institutions that receive federal financial assistance. Title IX covers more than athletics and sexual assault, it addresses concerns relating to discrimination on the basis of sex or gender in all aspects of the educational process, including in the areas of recruitment, admissions, and counseling; financial assistance; the needs of pregnant and parenting community members, discipline; and employment.

Title IX Coordinator –The individual University official with the primary responsibility for coordinating the University’s compliance with Title IX.

Deputy Title IX Coordinator – The Deputy Title IX Coordinator is an individual(s) designated by the Title IX Coordinator to support the Title IX Coordinator with respect to the University’s efforts to comply with Title IX.

V. JURISDICTION

Jurisdiction applies to the conduct of any employee (including faculty and/or staff) and/or student that occurs on University premises or on-campus housing, at University-related activities/events, on all locations where a University course or program is being conducted, including foreign locations, such as study abroad programs.

The University reserves the right to impose discipline based on off-campus conduct. Discipline for off-campus conduct may be pursued under the Regulation if:

- The off-campus conduct is specifically prohibited by law or the Regulation;
- The off-campus conduct demonstrates that the continued presence of the employee and/or the student on campus presents a danger to the health, safety, or welfare of the University community, is disruptive to the orderly conduct, processes and functions of the University, is contrary to the University’s mission, or is intimidating or threatening to the

- University community or member of the University community;
- The off-campus conduct is of such a serious nature that it adversely affects the employee's and/or student's suitability to remain a part of the University community; or
 - The off-campus conduct has continuing effects on the campus.
 - The University Regulation proceeding is not a criminal or judicial proceeding and is designed to address employee and/or student behavior, whether on or off-campus; therefore, alleged violations of the Regulation will be addressed independently of any criminal or judicial proceeding and regardless of whether the criminal charges have been dismissed or reduced.

VI. OPTIONS FOR SEEKING CONFIDENTIAL ASSISTANCE AND/OR MAKING A REPORT OF A POTENTIAL VIOLATION

The University is committed to providing options through multiple contact points across campus that are broadly accessible to all University community members to address a potential violation of FIU-105. Anyone may seek confidential assistance and/or make a report to the University on behalf of themselves or others. It is important to understand the differences between these two options. The chart below provides a graphical representation of the differences between the options.

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THERE IS A DIFFERENCE BETWEEN “SEEKING CONFIDENTIAL ASSISTANCE” AND “MAKING A REPORT TO THE UNIVERSITY.” IT IS IMPORTANT TO UNDERSTAND WHAT WILL HAPPEN DEPENDING UPON WHICH ACTION YOU CHOOSE.

CONFIDENTIAL ASSISTANCE*

Means talking about the situation with a professional who cannot share the information with anyone else, getting help figuring out what can be done according to your wishes, and helping with the options you choose, including if you decide to Make A Report to the University.

*There are certain legal limitations to confidentiality which will be explained to you at the beginning of any contact.

MAKING A REPORT TO THE UNIVERSITY

Means University Officials must take appropriate action



CONTACT:



On-campus professionals who can provide Confidential Assistance:

Victim Empowerment Program

24 hour crisis: 305-348-2277

MMC: SHC 270

vep.fiu.edu

Counseling & Psychological Services (CAPS)

MMC: SHC 270, 305-348-2277

BBC: WUC 320, 305-919-5305

caps.fiu.edu

Student Health Services

MMC: SHC, 305-348-3336

BBC: SHC, 305-919-5620

Office of Employee Assistance

MMC: 305-348-2469 • BBC: ACII 246B



CONTACT:



Title IX Coordinator

Deputy Title IX Coordinators

Responsible Employees

Campus Security Authorities

Student Conduct & Conflict Resolution Staff

Faculty

Police



Off-campus professionals who can provide Confidential Assistance:

Roxcy Bolton Rape Treatment Center at Jackson Memorial Hospital
 305-585-5185
 1611 N.W. 12th Avenue, Miami, FL 33136
<http://www.jacksonhealth.org/services-rape-treatment.asp>

Florida Council Against Sexual Violence Information Line
 1-888-856-RAPE

Any licensed mental health professional can provide **Confidential Assistance**

University Officials to contact for Making a Report to the University

Shirlyon McWhorter
 Title IX Coordinator
 Director, Office of Inclusion, Diversity, Equity & Access
 PC 321
 Phone: 305-348-2785
 Email: eopd@fiu.edu

Deputy Title IX Coordinator
 Director, Student Conduct and Conflict Resolution
 GC 311A
 Phone: 305-348-3939
 Email: conduct@fiu.edu

Julie Berg-McGraw
 Deputy Title IX Coordinator
 Senior Associate Athletic Director
 USCBA 202A | Phone: 305-348-2352
 Email: julie.berg-Mc_Graw@fiu.edu



OR FILE ONLINE:



Silent Witness Form provides a method to report on an anonymous basis to the FIU Police Department:
http://police.fiu.edu/Silent_Witness.php

FIU Ethical Panther Line provides a method to report on an anonymous basis to the University Compliance Office at www.convercent.com/report or by calling 1-844-312-5358.

Incident Reporting Form provides a method to report on an anonymous basis to Student Affairs:
<https://publicdocs.maxient.com/incidentreport.php?FloridaIntlUniv>

Below is a list of additional University Officials (who **are not** confidential resources) to which someone could report a violation.

Dr. Elizabeth M. Bejar
Sr. Vice President for Academic & Student Affairs
Division of Academic & Student Affairs
Office: GC 225 | Phone: 305-348-2797
Email: vpdsa@fiu.edu

Sofia Trelles
Student Ombudsperson
Division of Academic & Student Affairs
Office: GC 225 | Phone: 305-348-2797
Email: sofia.trelles@fiu.edu

Academic & Student Affairs
Dean of Students
Division of Academic & Student Affairs
Office: GC 225 | Phone: 305-348-2797
Email: vpdsa@fiu.edu

Chief Alexander “Alex” Casas
University Police Department
MMC-PG5 | Phone: 305-348-2626
BBC-SOII | Phone: 305-919-5559
Email: Alexander.Casas@fiu.edu

Dr. Rebecca Friedman
Faculty Ombudsperson
Office of the Provost
Phone: 305-348-0169
Email: Rebecca.Friedman@fiu.edu

Jennifer LaPorta Baker, Chief Compliance Officer
University Compliance & Integrity
PC 429 | Phone: 305-348-2216
Email: compliance@fiu.edu

Seeking confidential assistance means talking about the alleged violation with a professional who cannot share the information with anyone else without the express permission from the person sharing the information unless there is a threat of serious harm to the person sharing the information (e.g., patient/client) and/or to others and/or there is a legal obligation to reveal such information (e.g., suspected abuse or neglect of a minor or vulnerable adult). Any individual may choose to seek support from confidential professionals on and/or off campus, including the staff at the University Victim Empowerment Program, the counselors at the University Counseling and Psychological Services Center, medical health providers, clergy, and/or rape crisis counselors (as noted in the chart above). The confidential resource will provide help in addressing the incident to the extent possible and in accordance with the person’s desires. Seeking confidential assistance does not prevent an individual from making a report at a later date.

Making a report to the University means contacting the Title IX Coordinator, Deputy Title IX Coordinator, a Responsible Employee, campus security authority, and/or the University Police. Alternatively, a report can be made to the University using the web-based options listed in the chart above.

Responsible Employees will safeguard an individual’s privacy, but **are required** by the University to promptly share all details about a report of prohibited conduct (including the known details of the incident (e.g., date, time, location), the names of the parties involved, a brief description of the incident and whether the incident has been previously reported) with the ***Title IX Coordinator*** in person, by telephone, electronically, or by email. Such reporting ensures timely support for all parties and enables an effective and consistent institutional response.

Campus security authorities will safeguard an individual's privacy but **are required** to promptly share all known details of an incident, which may constitute a Clery crime consistent with the Clery Act requirements. Clery crimes must be disclosed to the Clery Compliance Coordinator who is responsible for maintaining the University's daily crime log and annual security report, which contains information on certain crimes. No identifying information with respect to any party is included.

All other employees (who are not designated as confidential resources) will safeguard an individual's privacy, but are strongly encouraged to share any information about such conduct with the Title IX Coordinator and/or a member of the Title IX Response Team in recognition of the understanding that centralized reporting is an important tool to address, end and prevent prohibited conduct. Similarly, all students (who are not otherwise required to report as a Responsible Employee and/or Campus Security Authority) are strongly encouraged to report any information, including reports or partial reports, to the ***Title IX Coordinator*** and/or a member of the Title IX Response Team.

A Reporting Party is encouraged to report conduct they believe may be prohibited discrimination or harassment (or that left unchecked may rise to the level of prohibited discrimination or harassment) even if they are not sure that the conduct violates this Regulation. A Reporting Party is encouraged to make a report even if they do not want the University to take action against a Respondent. The University will make every effort to respect a Reporting Party's autonomy if that is the Reporting Party's desire. Making a report to the University does not mean that the Reporting Party cannot also seek confidential assistance then or at a later date.

VII. INTERIM PROTECTIVE MEASURES AVAILABLE THROUGH THE UNIVERSITY

When a report is received, the ***Title IX Coordinator*** or designee, in consultation with other appropriate administrators, will make an assessment of any risk of harm to the parties, any other individuals, or the broader University community. The University may impose reasonable and appropriate interim protective measures when necessary to protect the safety and/or emotional well-being of the parties or witnesses involved and/or to provide academic or other appropriate support. Implementing any interim protective measure is within the sole discretion of the University. Because they are temporary in nature, interim protective measures may be amended or withdrawn as additional information is gathered. The ***Title IX Coordinator*** or designee, in consultation with other administrators, will maintain consistent contact with the parties so that all safety and/or emotional well-being concerns can be reasonably addressed.

Interim protective measures may be afforded to the Complainant, the Reporting Party, the Respondent, and/or other involved individuals as appropriate to ensure their safety and/or well-being interim protective measures may be requested by the parties at any time regardless of whether any particular course of action is sought by the Complainant. The range of interim protective measures may include:

- Arranging for medical services
- Access to counseling services either provided by the University and/or through community resources

- Providing crisis intervention, case management, emotional and/or practical support, and/or safety planning through the Victim Empowerment Program for students and through the Office of Employee Assistance for faculty and staff
- Imposition of a University “No-Contact Order” for all or some of the parties involved in the incident
- Imposition of a “No Trespass Order” for all or part of any University property
- Rescheduling of exams and assignments
- Providing alternative course completion options
- Change in class schedule, including the ability to drop a course without penalty or to transfer sections
- Change in work schedule or job assignment
- Change in campus housing assignment
- Assistance from University support staff in completing housing relocation, if feasible
- Voluntary leave of absence from work in accordance with University policies
- Providing an escort to assure safe movement between classes and activities
- Providing academic support services, such as tutoring
- University-imposed leave or suspension for the Respondent.
- Any other feasible measure(s), which can be tailored to the involved individuals to achieve the goals of this Regulation.

All individuals are encouraged to report concerns about the adequacy of the interim protective measures or the failure of another individual to abide by any interim protective measure to the *Title IX Coordinator*. The *Title IX Coordinator* will take appropriate, responsive, and prompt action to enforce interim protective measures and/or to respond to *Retaliation* by another party or witness.

VIII. INVESTIGATION OF A REPORT OF A POTENTIAL VIOLATION OF FIU-105 AND RESOLUTION OF AN INVESTIGATION

If the Respondent is a student, the Director of Student Conduct and Conflict Resolution/Deputy Title IX Coordinator will oversee the matter in accordance with the Student Code of Conduct Regulation (FIU Regulation 2501) working with the *Title IX Coordinator*. If the Respondent is an employee, the *Title IX Coordinator* will oversee the matter. If the Respondent is a student and holds a position as University employee, the *Title IX Coordinator* and the Director of Student Conduct and Conflict Resolution will determine which office will have primary oversight of the matter.

There may be instances in which a Complainant is unable or unwilling to pursue a report of Discrimination but where the *Title IX Coordinator* is aware of the behavior. In such instances, the *Title IX Coordinator* may choose to pursue an investigation of the alleged offense. The decision of whether or not to take further action on a report will be based on an assessment of safety and the maintenance of a non-discriminatory environment.

INVESTIGATION PROCEDURES

If, after an initial assessment of a report of a prohibited conduct, the *Title IX Coordinator* determines that an investigation is necessary, the *Title IX Coordinator* will oversee the

investigation process. The Title IX Coordinator will select a trained investigator(s) to gather sufficient evidence to reach a fair, impartial determination as to whether the alleged violation has occurred based on the preponderance of the evidence. The investigator(s) will be trained to gather and document the available evidence to support reliable decisions, objectively evaluate the credibility of the parties and witnesses, synthesize all available evidence (including both supportive and non-supportive evidence), and take into account the unique and complex circumstances of each case. The Title IX Coordinator will select investigator(s) who are free of actual or reasonably perceived conflicts of interest and biases for or against any party.

Prior to the initial investigation meeting, the Title IX Coordinator will send to the Respondent and Complainant written notice about the allegations constituting a potential violation of this Regulation in order for the parties to prepare for meaningful participation in the matter. During an investigation, the investigator(s) will seek to meet separately with the Complainant, the Respondent, and any witnesses. Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the incident, the disclosure, or related matters. The investigator(s) will also gather other relevant information or evidence, including documents, photographs, communications between the parties, medical records (subject to the consent of the applicable person), and other electronic records as appropriate. The investigator(s), not the parties, are responsible for gathering relevant evidence to the extent reasonably possible. Both the Complainant and Respondent are encouraged to promptly submit any relevant information, including witnesses' names. If a party declines to provide relevant information, the University's ability to conduct a prompt, thorough, and equitable investigation may be impaired.

All investigations will be conducted in a prompt fashion to determine what occurred and whether steps must be taken to resolve the situation. The appropriate University officials will make every effort to complete the investigation phase within a reasonable period of time from the filing of a report or when the University becomes aware of behavior that may be a violation of this Regulation. The parties will be advised of any extension of time as needed to complete the investigation phase.

Any investigation may include, but shall not be limited to, interviewing the Complainant, Reporting Party (if not the Complainant) and the Respondent regarding the allegations, interviewing other persons who may have information relevant to the allegations, preparing witness statements for all persons interviewed, and/or reviewing of any relevant documents.

RESOLUTION OF THE INVESTIGATION WHEN THE *RESPONDENT* IS AN EMPLOYEE

Upon completion of the investigation, a report shall be prepared which includes a summary of the complaint, a description of the investigation, the findings of fact, and a determination whether a violation of Regulation FIU-105 is substantiated or unsubstantiated. The conclusion that a violation was substantiated will be based on a preponderance of the evidence standard. The final investigation report shall be given to the following people at or about the same time (as is practicable): the Complainant, the Respondent, and the Director of Employee and Labor Relations and/or the Division of Academic Affairs. The appropriate office will determine what

action, including discipline, (if any) may be necessary. No decision about discipline or implementing any discipline will be taken until the time for filing an appeal has lapsed or when the appeals process has finally concluded.

Either party may seek review of the final investigation report by the Vice President for Human Resources or a designee by filing an appeal within seven (7) business days of receipt of the investigation report. The appeal shall be based on one or more of the following:

- relevant evidence was not reviewed and/or
- new evidence is available, or
- the factual evidence was insufficient to support the report.

The appeal shall be in writing and shall set forth the issues to be considered in the appeal. Copies of the appeal shall be provided to the other party as soon as is practicable. The other party may file a response to the appeal to the Vice President for Human Resources within seven (7) business days of receipt of the appeal. The Vice President for Human Resources or designee shall issue a written finding within seven (7) business days after receipt of the appeal, or of a response to the appeal, whichever is later, and will give the report to all parties at or about the same time (as is practicable). These deadlines may be extended when necessary (but not in an attempt to delay the final resolution of the matter).

Once the appeal process has concluded, the Director of Employee Labor and Relations Department and/or the Division of Academic Affairs (if the faculty is involved) will make a recommendation to the Respondent's supervisor as to whether any disciplinary action should be taken against the Respondent. The resolution of the complaint will be communicated to the Complainant and Respondent at or about the same time (as it practicable).

RESOLUTION OF THE INVESTIGATION PROCESS WHEN THE *RESPONDENT* IS A STUDENT

Upon completion of the investigation, a report shall be prepared which includes a description of the investigation, a summary of the complaint and the witness statements. The Director of Student Conduct and Conflict Resolution/Deputy Title IX Coordinator will review the report in order to determine whether there is a potential violation(s) of the Student Conduct Code. If the Director determines that there has been a violation(s), the Director will follow the process that is described in the Student Conduct Code. See FIU Regulation 2501 at <http://regulations.fiu.edu/regulation>.

IX. RETALIATION

For purposes of this Regulation, ***Retaliation***, retribution or reprisal is defined as adverse action taken against an employee or student as a result of an employee or student's good faith reporting of violations of law, rule, regulation, policy or other misconduct.

If a member of the University community believes that ***Retaliation*** may have been taken against them as a result of filing a grievance, complaint or report of a violation of law, rule, regulation or policy, they should report the retaliation to the EOPD Office. The situation will be reviewed and a response will be provided to the employee or student who alleged the ***Retaliation***.

Specific Authority: Board of Governors Regulation 1.001 (5)(a). History-- Formerly FIU-104 (repealed) and FIU-103 (repealed). New April 15, 2015, Amended June 8, 2018.