



Sexual Harassment, Prohibited Conduct, & Non-Discrimination Policy

Table of Contents

I.	Policy Purpose and Statement	3
II.	Policy Application and Effective Date	3
III.	Definitions	4
IV.	Types of Prohibited Conduct	6
V.	Scope and Jurisdiction	9
VI.	Duties of the Title IX Coordinator	9
VII.	Title IX Coordinator Contact Information	10
VIII.	Reporting Responsibilities of Employees	10
IX.	Training and Awareness	10
	A. Incoming Freshman	11
	B. Continuing Students	11
	C. Student-Athletes	11
	D. New Employees	11
	E. Current Employees	11
X.	Procedural Standards	11
	A. Types of Reports – Notice/Complaints of Discrimination, Harassment, and Retaliation	11
	1. Institutional Reports	11
	2. Confidential Reports	12
	3. Law Enforcement Reports	13
	4. Anonymous Reports	13
	5. Formal Complaints	13
	6. Complaint Consolidation	13
XI.	Retaliation	14
XII.	False Complaints	14
XIII.	Amnesty	14
XIV.	Confidentiality	14
XV.	Procedure Following Receipt of Actual Notice of Prohibited Conduct	15
	A. Initial Assessment	15
	1. <i>The Respondent is a Student</i>	15
	2. <i>The Respondent is an Employee</i>	15
	3. <i>The Respondent is both a Student and an Employee</i>	16
	4. <i>The Respondent is a Third Party</i>	16
	B. Intake Process	16
	C. Filing a Formal Complaint	16
	D. Complaint Dismissal (Dismissal of Any Allegations)	17

1. Discretionary Dismissals	17
2. Mandatory Dismissals	17
3. Appeals	17
E. Advisors	18
F. Temporary Remedial Measures	19
G. Supportive Services	20
XVI. Process for Investigating and Resolving Prohibited Conduct	21
A. Formal Grievance Process – Process “A”	21
1. Investigation Procedure	22
2. Resolution/Hearing of Formal Grievance Process	23
B. Alternate Grievance Process – Process “B”	26
1. Resolution/Hearing of Alternate Grievance Process	26
C. Informal Resolution	27
XVII. Sanctions	27
A. Student Sanctions	28
B. Employee Sanctions	29
XVIII. Administrative Holds	29
XXIX. Withdrawal or Resignation Before Complaint Resolution	30
A. Students	30
B. Employees	30
XXX. Time Frame for Investigation and Resolution of Prohibited Conduct Matters	31
XXXI. Appeals	31
XXXII. Student-Athletes	32
XXXIII. Recusal for Bias	33
XXXIV. Responsible Parties and Contact Information	33
XXXV. Related Resources, Policies, and Forms	34
Policy History and Revisions	34
Appendix A – Rules of Decorum for Interviews and Hearings	36
Appendix B – Investigation Flow Chart	39
Appendix C – Statement of Rights	40
Appendix D – Hearing Procedures for Hearings Pursuant to Process “A” and Process “B”	41

I. Policy¹ Purpose and Statement

In accordance with applicable federal and state law the University System of Georgia (“USG”) and the Fort Valley State University (“FVSU” or the “University”) adheres to all federal, state, and local civil rights laws prohibiting discrimination in employment and education. FVSU does not discriminate in its admissions practices (except as permitted by law), in its employment practices, or in its educational programs or activities on the basis of sex (including pregnancy discrimination), age, disability, national origin, race, religion, genetic information, or veteran status of any person, to discharge without cause, to refuse to hire, or otherwise discriminate against any person with respect to any matter directly or indirectly related to employment or academic standing.

As a recipient of federal financial assistance for education activities, FVSU is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex. Sex based discrimination includes discrimination based on sex, sex stereotypes, and pregnancy or parenting status.

FVSU also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process internal or external to the institution. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX and by this Policy.

This Policy ensures compliance with federal and state laws including: Title VI of the Civil Rights Act of 1964 (“Title VI”), Title VII of the Civil Rights Act of 1964 (“Title VII”), Title IX of the Education Amendments of 1972 (“Title IX”), Title II of the Genetic Information Act of 2008 (“Title II”), the Americans with Disabilities Act (ADA), the Pregnancy Discrimination Act, the Age Discrimination in Employment Act (ADEA), the University System of Georgia (“USG”), and any another other applicable federal and state law.

When sexual harassment, prohibited conduct or discrimination does occur, all members of the FVSU community are strongly encouraged to report it promptly through the procedures outlined in this Policy. This Policy applies to all members of the FVSU community. This Policy is not intended to infringe or restrict rights guaranteed by the United States Constitution including free speech under the First Amendment, or the due process clauses of Fifth and Fourteenth Amendments.

The University follows the [USG Non-Discrimination and Anti-Harassment Policy 6.6](#), [USG Sexual Misconduct Policy 6.7](#), [Discipline of Students 4.6](#), and [Reports of Sexual Misconduct 6.7.2](#). The University also follows [USG Policy to Prohibit Discrimination & Harassment](#) as it relates to employees. In the event there is any conflict between the policy and procedures here and the policy and procedures in the Board of Regents Policy Manual, the language of the Board of Regents Policy Manual controls.

II. Policy Application and Effective Date

A. This Policy applies to all employees, students, community members, and any individuals participating in or attempting to participate in the University’s education program or activities or seeking admission or employment to the University.

¹ The term “Policy” used throughout this document refers to this Sexual Harassment, Prohibited Conduct, & Discrimination Policy.

B. This policy is effective March 2, 2026.

III. Definitions

A. **Advisor:** A person chosen by a party or appointed by the institution to accompany the party to meetings related to the Resolution Process, to advise the party on that process, and to either provide/draft questions or conduct questioning for the party at the hearing; depending on the process followed and if any hearing takes place.

B. **Board of Regents (“BOR”):** The governing body of the University System of Georgia.

C. **Chief Human Resources Officer (“CHRO”):** Person who is responsible for monitoring FVSU’s compliance with Title VII.

D. **Confidential Employees:** Institution employees who have been designated by the institution to talk with a Complainant or Respondent in confidence. Confidential Employees must only report that the incident occurred and provide date, time, location, and name of the Respondent (if known) without revealing any information that would personally identify the alleged victim. This minimal reporting must be submitted in compliance with Title IX and the Clery Act. Confidential Employees may be required to fully disclose details of an incident in order to ensure campus safety.

E. **Consent:** Words or actions that show a knowing and voluntary willingness to engage in mutually agreed- upon sexual activity. Consent cannot be gained by force, intimidation or coercion; by ignoring or acting in spite of objections of another; or by taking advantage of the incapacitation of another where the respondent knows or reasonably should have known of such incapacitation. Minors under the age of 16 cannot legally consent under Georgia law.

Consent is also absent when the activity in question exceeds the scope of consent previously given. Past consent does not imply present or future consent. Silence or an absence of resistance does not imply consent.

Consent can be withdrawn at any time by a party by using clear words or actions.

F. **Community:** Students, faculty, and staff, as well as contractors, vendors, visitors and guests.

G. **Complainant:** An individual who is alleged to have experienced conduct that violates this Policy.

H. **Day:** A business day when the University is in normal operation.

I. **Decision Maker:** means the person who hears evidence, determines relevance, and makes the Final Determination of whether this policy has been violated and/or assigns sanctions.

J. **Employee:** Person who is employed by the University in a part-time, full-time, or contract status.

- K. Formal Grievance Process:** means “Process A,” a method of formal resolution designated by the University to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45) and the Violence Against Women Act § 304.
- L. Hearing Officer:** The individual on the hearing panel designated to speak on behalf of the panel and make determinations of relevancy with consultation of the Hearing Panel during the hearing process.
- M. Hearing Panel:** means the panel who hears evidence, determines relevance, and makes the final determination of whether this Policy has been violated and/or assigned sanctions.
- N. Incapacitation:** The physical and/or mental inability to make informed, rational judgments. It can result from mental disability, sleep or any state of unconsciousness, involuntary physical restraint, status as a minor under the age of 16, or from intentional or unintentional taking of alcohol and/or other drugs. Whether someone is incapacitated is to be judged from the perspective of an objectively reasonable person
- O. Informal Resolution:** A complaint resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a formal Final Determination being reached.
- P. Privileged Employees:** Individuals employed by the institution to whom a complainant or alleged victim may talk in confidence, as provided by law. Disclosure to these employees will not automatically trigger an investigation against the complainant’s or alleged victim’s wishes. Privileged Employees include those providing counseling, advocacy, health, mental health, or sexual-assault related services (e.g., sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers) or as otherwise provided by applicable law. Exceptions to confidentiality exist where the conduct involves suspected abuse of a minor (in Georgia, under the age of 18) or otherwise provided by law, such as imminent threat of serious harm.
- Q. Process “A”:** means the Formal Grievance Process detailed below and defined above.
- R. Process “B”:** means the alternate grievance process that only applies when Process “A” does not, as determined by the Title IX Coordinator.
- S. Reasonable Person:** An individual who is objectively reasonable under similar circumstances and with similar identities to the person being evaluated by the institution.
- T. Reporter:** An individual who reports an allegation of conduct that may violate this Policy but who is not a party to the complaint.
- U. Resolution Process:** The process for reporting, investigating, and resolving prohibited conduct defined in this Policy.
- V. Respondent:** An individual who is alleged to have engaged in conduct that violates this Policy.

- W. Responsible Employees:** Those employees who must promptly and fully report complaints of or information regarding prohibited misconduct to the Title IX Coordinator. Responsible Employees include any Officer, supervisor, faculty member, or other person in a position of authority who is not a Confidential Employee or Privileged Employee. Student employees who serve in a supervisory, advisory, or managerial role are in a position of authority for purposes of this Policy (e.g., teaching assistants, residential assistants, student managers, orientation leaders).
- X. Title IX Coordinator (“Coordinator”):** The person who is responsible for monitoring FVSU’s compliance with Title IX, oversees investigation and adjudication of complaints, and delivers Title IX training to the FVSU community.
- Y. Title IX of the Education Amendments of 1972:** A federal law that prohibits sex (including pregnancy) discrimination in any education program or activity receiving federal financial assistance.
- Z. Title VII of the Civil Rights Act of 1964:** A federal employment law that prohibits discrimination based on race, color, religion, sex (including pregnancy) and national origin.

IV. Types of Prohibited Conduct

- A. Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the alleged victim. The existence of such relationship shall be determined based on the totality of the circumstances including, without limitation to: (1) the length of the relationship; (2) the type of relationship; and (3) 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.

- B. Discrimination²:** Decision-making based on race, color, sex (including pregnancy), ethnicity or national origin, religion, age, genetic information, disability, or veteran status.

The definition of discrimination also includes discriminatory harassment which is defined as:

Unwelcome verbal or physical conduct based on race, color, sex (including sexual harassment and pregnancy), ethnicity or national origin, religion, age, genetic information, disability, or veteran status when it is sufficiently severe, persistent or pervasive to:

1. Unreasonably interfere with the individual’s work or educational performance;
2. Create an intimidating, hostile, or offensive working or learning environment; or

² Any prohibited conduct in the form of sex-based discrimination that occurs in an educational program or activity receiving federal financial assistance is specifically prohibited by Title IX and shall be governed by the grievance process set out in d 106.45 of the Title IX Final Rule. Title VII of the Civil Rights Act of 1964 (Title VII) generally prohibits discrimination in the workplace, including discrimination based on sex.

3. Unreasonably interfere with or limits one's ability to participate in or benefit from an institutional program or activity.
- C. Domestic Violence:** Violence committed by a current or former spouse or intimate partner of the alleged victim; by a person with whom the alleged victim shares a child in common; by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the alleged victim.
- D. Nonconsensual Sexual Contact:** Any physical contact with another person of a sexual nature without the person's consent. It includes but is not limited to the touching of a person's intimate parts (for example, genitalia, groin, breasts, or buttocks); touching a person with one's own intimate parts; or forcing a person to touch his or her own or another person's intimate parts. This provision also includes "Fondling"³ as defined by the Clery Act and "Criminal Sexual Contact"⁴ as defined by the Federal Bureau of Investigations.
- E. Nonconsensual Sexual Penetration:** Any penetration of the vagina, anus, or mouth by a penis, object, tongue, finger, or other body part; or contact between the mouth of one person and the genitals or anus of another person. This provision also includes "Rape, Incest, and Statutory Rape" as defined by the Clery Act.
- F. Retaliation:** No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.
- G. Sexual Exploitation:** Taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited.

Examples of sexual exploitation may include, but are not limited to, the following:

- Invasion of sexual privacy;
- Prostituting another individual;
- Non-consensual photos, video, or audio of sexual activity;
- Non-consensual distribution of photo, video, or audio of sexual activity, even if the sexual activity or capturing of the activity was consensual;
- Intentional observation of nonconsenting individuals who are partially undressed, naked, or engaged in sexual acts;

³ Fondling as defined under the Clery Act includes the touching of another person's private body parts for sexual gratification without consent, including situations in which the individual is unable to consent.

⁴ Criminal Sexual Contact as defined by the Federal Bureau of Investigations include any non-consensual touching of another person for the purpose of sexual gratification, degradation, or humiliation, and is not limited to private body parts. This definition applies regardless of the specific body part touched and includes conduct involving individuals who cannot provide consent due to age, incapacitation, or other factors.

- Knowingly transmitting an STD or HIV to another individual through sexual activity;
- Intentionally and inappropriately exposing one's breasts, buttocks, groin, or genitals in non-consensual circumstances; and/or Sexually-based bullying.

H. Sexual Harassment (*Student on Student*): Unwelcome verbal, nonverbal, or physical conduct based on sex, determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to participate in or to benefit from an institutional education program or activity in violation of Title IX.

I. Sexual Harassment (*Other Than Student on Student*): Unwelcome verbal, nonverbal, or physical conduct, based on sex, that may be any of the following:

1. Implicitly or explicitly a term or condition of employment or status in a course, program, or activity;
2. A basis for employment or educational decisions; or
3. Is sufficiently severe, persistent, or pervasive to interfere with one's work or educational performance creating an intimidating, hostile, or offensive work or learning environment, or interfering with or limiting one's ability to participate in or to benefit from an institutional program or activity.

The USG also prohibits unwelcome conduct determined by a Reasonable Person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to a USG education program or activity in violation of Title IX.

J. Sexual Misconduct: Includes, but is not limited to, such unwanted behavior as dating violence, domestic violence, nonconsensual sexual contact, nonconsensual sexual penetration, sexual exploitation, sexual harassment and stalking.

K. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

1. 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 person's property.
2. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily, require medical or other professional treatment or counseling.

L. Title IX Sexual Harassment: Conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning the provision of aid, benefit, or service of the institution 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 recipient's education program or activity; or

3. Sexual assault⁵ as defined by the Clery Act and dating violence, domestic violence, or stalking as defined by VAWA Amendments.

The alleged conduct must have occurred in the United States on or at an institution sponsored or affiliated event where the institution exercises substantial control over both the Respondent and the context, or in the buildings owned or controlled by a student organization that is officially recognized by FVSU.

V. Scope and Jurisdiction

This Policy prohibits sex-based discrimination and retaliation. This Policy also prohibits Sexual Harassment as defined in the Title IX Final Rule as a form of sex-based discrimination. Title IX's definition of Sexual Harassment includes Sexual Assault, Dating Violence, Domestic Violence, and Stalking. This Policy also prohibits sexual harassment, discrimination, and retaliation as defined in Title VII of the Civil Rights Act of 1964 ("Title VII"). Collectively, all forms of conduct included in this Policy and accompanying procedures are referred to as "Prohibited Conduct."

Prohibited Conduct allegedly committed is addressed by this Policy when it occurs on institution property, at FVSU-sponsored or affiliated events, or off campus. Alleged Prohibited Conduct in violation of Title IX is addressed by this policy when the Prohibited Conduct occurs against a person in the United States on institution property, or at institution-sponsored or affiliated events where the institution exercises substantial control over both the Respondent and the context, or in buildings owned or controlled by a student organization that is officially recognized by the institution. Prohibited Conduct in violation of Title IX includes any forms of discrimination that is sex-based and sexual harassment as defined by Title IX. FVSU's Title IX Coordinator is responsible for oversight of the investigation and resolution of all reports of Prohibited Conduct with the exception of conduct that is prohibited by Title VII. If the Title IX Coordinator determines that conduct is prohibited by Title VII, then FVSU's CHRO shall be responsible for the oversight of the investigation and resolution of said report. The CHRO shall have the same duties, obligations, and rights given in this Policy as the Title IX Coordinator when it comes to prohibited conduct that falls under Title VII.

VI. Duties of the Title IX Coordinator

The Title IX Coordinator will oversee FVSU's review, investigation, and resolution of reports of Prohibited Conduct to ensure the FVSU's compliance with Title IX, and related laws and guidance, and the effective implementation of this Policy. All reports of Prohibited Conduct covered by this Policy must be reported to the Title IX Coordinator. The allegations are subject to resolution using FVSU's Process "A", Process "B", or Informal Resolution process as determined by the Title IX Coordinator.

Title IX Coordinators at USG institutions shall have a direct reporting relationship to both the institution's President or the President's designee and the USG Assistant Vice Chancellor for Student Affairs or their designee. The President of each institution shall determine the

⁵ An offense that meets the definition of rape, fondling, incest, or statutory rape. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

organizational and operating reporting relationships for the Coordinators at the institution and exercise oversight of institutional issues relating to Sexual Misconduct. However, the Assistant Vice Chancellor for Student Affairs or designee shall have authority to direct the Coordinators' work at each institution as needed to address system-wide issues or directives. The President of each institution shall consult with the Assistant Vice Chancellor for Student Affairs on significant personnel actions involving Coordinators, to include but not be limited to, appointment, evaluation, discipline, change in reporting structure, and termination.

The Title IX Coordinator generally is:

- Responsible for oversight of the investigation and resolution of all reports of Prohibited Conduct outlined in this Policy involving Students and employees;
- Knowledgeable and trained in applicable FVSU policies and procedures, and relevant state and federal laws;
- Available to advise any individual, including a Reporter, Respondent, or third party, about the courses of action available at the FVSU, both informally and formally;
- Available to provide assistance to any FVSU employee regarding how to respond appropriately to a report of Prohibited Conduct;
- Responsible for monitoring compliance with all procedural requirements, recordkeeping, and timeframes outlined in this Policy; and
- Responsible for overseeing training, and any reviews of campus climate and culture regarding Sexual Harassment and other forms of Prohibited Conduct outlined in this Policy.

VII. Title IX Coordinator Contact Information

Title IX Coordinator
Michelle M. Clarington, J.D.
Huntington Hall, Office 108
Office of Legal and Government Affairs
Fort Valley State University
1005 State University Drive
Fort Valley, Georgia 31030
Office Phone: 478-825-4284
Work Cell Phone: 478-662-1406
Email: michelle.clarington@fvsu.edu

VIII. Reporting Responsibilities of Employees

FVSU has designated certain employees on campus as Responsible Employees. All employees are designated as Responsible Employees except for those who are designated as Confidential or Privileged Employees.

Within 24-hours of receiving the disclosure, the Responsible Employee must 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, and a brief description of the incident by telephone, by email, or through the [Sexual Harassment/Misconduct Reporting Form](#).

IX. Training and Awareness

FVSU will provide students and employees with information regarding the awareness, intervention, and prevention of Prohibited Conduct, and the procedure to be followed in filing complaints.

A. Incoming Freshman

Every incoming (freshman and transfer students) student is required to complete a mandatory online training regarding Prohibited Conduct, prevention and intervention, and how to report incidents related to Sexual Harassment and other forms of Prohibited Conduct.

B. Continuing Students

FVSU is also committed to educating its students on awareness of Prohibited Conduct. As a result, every student is required to complete a mandatory training covering the topic of awareness, consent, and prevention.

C. Student-Athletes

In compliance with NCAA policy on Campus Sexual Violence, all student-athletes, coaches, and staff must take a mandatory training to be educated each year on sexual violence prevention, intervention and response. See Student Athlete section below for more information.

D. New Employees

FVSU will provide all new employees with a mandatory training on this Policy and the related procedures within a reasonable period after each new employee's appointment date.

E. Current Employees

All current employees are required to be trained annually on the awareness, prevention, and reporting of sexual harassment. Additionally, the Title IX Coordinator and all other personnel at the FVSU who serve as investigators, decision-makers, hearing panelist, and advisors will participate in annual training. We also provide the FVSU community as a whole the opportunity to participate in programs aimed at education, prevention, and awareness each year.

X. Procedural Standards

FVSU encourages the reporting of all Prohibited Conduct as soon as possible. There is no specific information required to constitute a report; however, the report should contain as much information as can be provided.

A. Types of Reports – Notice/Complaints of Discrimination, Harassment, and Retaliation

1. Institutional Reports

An institutional report occurs when the University has notice of a complaint. While there is no statute of limitations on FVSU's ability to respond to a report, the ability to respond

diminishes with time as information and evidence may be more difficult to secure. Notice occurs in two instances:

- i. When the Title IX Coordinator receives a complaint, or
- ii. When a Responsible Employee receives a complaint.

Any individual may make a report, but FVSU does not have notice of the report until information is known to a Responsible Employee or the Title IX Coordinator. Complainants, or anyone with knowledge of Prohibited Conduct, may file a report with a Responsible Employee or the Title IX Coordinator. The Responsible Employees must provide a complete reporting of all information known to them to the Title IX Coordinator. Responsible Employees informed about Prohibited Conduct allegations should not attempt to resolve the situation but must notify and report all relevant information to the Title Coordinator as soon as practicable. The report may be made directly to the Title IX Coordinator in multiple formats to include:

- In writing by completing the [Sexual Harassment/Misconduct Reporting Form](#) or obtaining the form by requesting via email at titleIX@fvsu.edu
- Phone: 478-825-4284 or 478-662-1406
- Mail: FVSU Office of Legal and Government Affairs, 1005 State University Drive, Fort Valley, Georgia 31030
- In person: FVSU Office of Legal and Government Affairs, 1st Floor, Huntington Hall
- USG Ethics Hotline or you can also make a report via telephone by calling the number below toll-free 24 hours a day, 7 days a week: 1-877-516-3466.

Upon receipt of an institutional report, the Title IX Coordinator will contact the Complainant. The Title IX Coordinator will discuss the availability of supportive measures, the invitation to discuss the Complainant's wishes with respect to implementation of supportive measures, and explain the process of filing a complaint. An institutional report does not automatically prompt an investigation.

The Title IX Coordinator's identity and contact information shall be published by FVSU prominently on the University website, as well as in any relevant publication. The Title IX Coordinator shall notify the Assistant Vice Chancellor for Student Affairs of any allegation(s) of prohibited conduct that could, standing alone as reported, lead to the disciplinary suspension or expulsion of the Respondent(s). The Assistant Vice Chancellor for Student Affairs will work with FVSU to determine whether any support services or interim temporary remedial measure(s) are necessary. If an allegation is not initially identified as one that would lead to the disciplinary suspension or expulsion of the respondent(s), but facts arise during the course of the investigation that could lead to the Respondent's disciplinary suspension or expulsion, the Title IX Coordinator shall notify the Assistant Vice Chancellor for Student Affairs or his or her designee. The Assistant Vice Chancellor for Student Affairs shall have the discretion to oversee the handling of the complaint.

2. Confidential Reports

Confidential Employees or Privileged Employees may receive reports of sexual-based misconduct without the requirement to report that information to the Title IX

Coordinator, except as dictated by law or professional standards. Upon request by the Complainant, Confidential Employees and Privilege Employees may make a report to the Title IX Coordinator within the degree of specificity dictated by the Complainant.

Nothing in this provision shall prevent an FVSU employee who is otherwise obligated by law (i.e. the Clery Act) to report information or statistical data as required.

3. Law Enforcement Reports

Because Prohibited Conduct may constitute criminal activity, a Complainant also has the option, should the Complainant so choose, of filing a report with campus or local police, for the Complainant's own protection and that of the surrounding community. The University may assist the Complainant in reporting the situation to law enforcement officials. Filing a criminal report does not automatically constitute an institutional report. Any reports of Prohibited Conduct made to FVSU Campus Safety will also be reported to the Title IX Coordinator.

Law Enforcement Reports can be made by contacting FVSU Campus Safety at 478-825-6211 or by dialing 9-1-1.

4. Anonymous Reports

FVSU provides a mechanism by which individuals can report incidents of alleged Prohibited Conduct anonymously. Individuals should understand, however, that it will be more difficult for the University to respond and to take action upon anonymous reports.

Anonymous reports may be filed by completing the [Sexual Harassment/Misconduct Reporting Form](#), or by contacting the [USG Ethics Hotline](#).

5. Formal Complaints

A Formal Complaint is a written document filed by the Complainant or signed by the Title IX Coordinator alleging sexual harassment, as defined by Title IX and its implementing regulations, against a Respondent and requesting that the institution open an investigation. In order to file a Formal Complaint, the Complainant must be participating in or attempting to participate in the education program or activity of the institution occurring within the United States at the time of the filing.⁶

6. Complaint Consolidation

FVSU may consolidate complaints as to allegations of Prohibited Misconduct against more than one Respondent, by more than one Complainant against one or more Respondents, or cross-complaints between parties, where the allegations of prohibited misconduct arise out of the same facts or circumstances.

⁶ See section regarding the filing of Formal Complaints below for more detail.

Parties shall have the opportunity to request or object to the consolidation; however, the University shall have the authority to make the final determination. For the purpose of this Policy consolidation may occur during the investigation and/or the adjudication phases of the process.

XI. Retaliation

Title IX prohibits retaliation. No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

Anyone who has made a report or complaint, provided information, assisted, participated, or refused to participate in any manner in the process, shall not be subjected to retaliation. Anyone who believes that they have been subjected to retaliation should immediately contact the Title IX Coordinator. Any person found to have engaged in retaliation in violation of this Policy shall be subject to disciplinary action.

XII. False Complaints

Individuals are prohibited from knowingly making false statements or knowingly submitting false information to a USG system or university official. Any person found to have knowingly submitted false complaints, accusations, or statements, including during a hearing, in violation of this Policy shall be subject to appropriate disciplinary action (up to and including suspension or expulsion) and adjudicated under the appropriate university process.

XIII. Amnesty

Individuals should be encouraged to come forward and to report Prohibited Conduct notwithstanding their choice to consume alcohol or to use drugs. Information reported by a student during an investigation concerning the consumption of drugs or alcohol will not be used against the student in a disciplinary proceeding or voluntarily reported to law enforcement; however, students may be provided with resources on drug and alcohol counseling and/or education, as appropriate. Nevertheless, these students may be required to meet with staff members in regard to the incident and may be required to participate in appropriate educational program(s). The required participation in an educational program under this amnesty procedure will not be considered a sanction.

Nothing in this amnesty provision shall prevent an institution staff member who is otherwise obligated by law (the Clery Act) to report information or statistical data as required. This section only applies to individuals who are considered students.

XIV. Confidentiality

Where a Complainant requests that the Complainant's identity be withheld, or the allegation(s) not be investigated, the Title IX Coordinator should consider whether or not such request(s) can be honored in a manner consistent with the University's obligations to promote a safe and nondiscriminatory environment. The University should inform the Complainant that it cannot guarantee confidentiality. Honoring a Complainant's request for confidentiality shall not prevent the University from reporting information or statistical data as required by law, including the Clery Act.

XV. Procedure Following Receipt of Actual Notice of Prohibited Conduct

A. Initial Assessment

Upon notice of the alleged Prohibited Conduct, the Title IX Coordinator will assess whether a formal investigation, informal resolution, or dismissal would be appropriate. In making this determination, the Title IX Coordinator will assess whether the allegations(s), if true, would rise to the level of prohibited conduct, whether a Formal Complaint must be filed, whether an investigation is appropriate considering the circumstances, whether the parties prefer an informal resolution, and whether any safety concerns exist for the campus community. The need to issue a broader warning to the community in compliance with the Clery Act shall be assessed in compliance with federal law.

The Title IX Coordinator will first determine whether the reported conduct falls within the scope and jurisdiction of the Policy, and more specifically, within the jurisdiction of the Title IX Final Rule. Additionally, the assessment will aim to identify what Policy/ies and procedures are most appropriate to use to respond to the reported allegations. The specific procedures for assessing, reviewing and resolving Prohibited Conduct depend upon the nature of the Respondent's relationship to the University, if a Respondent is an employee, and on the type of Prohibited Conduct alleged.

- 1. *The Respondent is a Student:*** Where the facts set forth in the report would constitute Prohibited Conduct as defined by this Policy, regardless of whether the conduct occurred in the United States or in the Educational Program or Activity, the University will follow the procedures outlined within this Policy. Where the allegations do not fall within the jurisdiction of the Title IX Final Rule, the University will dismiss the allegations in the Formal Complaint pursuant to Title IX. While the allegations would be dismissed under Title IX, they could still be investigated by a different process within this Policy or by a different University policy. If there are multiple allegations, the University will evaluate each violation individually to determine whether the procedures in the Policy are followed or the allegation(s) are dismissed.
- 2. *The Respondent is an Employee:*** Where the facts set forth in the report are made against a non-Student employee, the Title IX Coordinator will assess whether the allegations fall within the jurisdiction of the Title IX Final Rule. Where the allegations do fall within the jurisdiction of the Title IX Final Rule and a Formal Complaint is filed, the University will follow the procedures outlined with this Policy. Where the allegations do not fall within the jurisdiction of the Title IX Final Rule, the University will dismiss the allegations in the Formal Complaint pursuant to Title IX. While the allegations would be dismissed under Title IX, they could still be investigated by a different process within this Policy or by a different University policy. If there are multiple allegations, the

University will evaluate each violation individually to determine whether the procedures in the Policy are followed or the allegation(s) are dismissed.

3. ***The Respondent is both a Student and an Employee:*** The Title IX Coordinator will determine whether student or employee procedures apply based upon the facts and circumstances, and whether those circumstances relate more closely to the Respondent's status as a Student or an employee.
4. ***The Respondent is a Third Party:*** The University will act to eliminate the harassment, address the behavior, and remedy its effect by providing Supportive Measures to Students or employees who have been impacted by the alleged behavior. Addressing the behavior may include an investigation, depending on the facts and circumstances. Such determination shall be made by the Title IX Coordinator.

When the Title IX Coordinator receives a report of behavior that could violate this Policy as well as other University policies, the Title IX Coordinator will determine which policy/ies and procedures apply and whether action will be taken under this Policy exclusively, or under multiple policies and/or procedures. In the event that at the time of a report or the conclusion of an investigation it becomes apparent that the alleged conduct, if true, would not constitute Prohibited Conduct, the matter may be adjudicated under another applicable policy or procedure. Further, the Title IX Coordinator will also make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report.

B. Intake Process

Any person may submit information to the Title IX Coordinator regarding alleged Prohibited Conduct. After receiving a report of possible Prohibited Conduct committed by a Student or Employee, the Title IX Coordinator will promptly contact the Complainant, if one is identified or identifiable, to (1) discuss the availability of Supportive Measures; (2) ask about the Complainant's wishes with respect to Supportive Measures; (3) explain that Supportive Measures are available with or without the filing of a Formal Complaint; and (4) explain how to file a Formal Complaint.

C. Filing a Formal Complaint

A formal complaint can be filed by the Complainant or by the Title IX Coordinator. It may be filed during the initial intake process or another time thereafter either in person or electronically. The Complainant reserves the right to withdraw a Formal Complaint, even if filed by the Title IX Coordinator, and at any time by submitting the request in writing to the Title IX Coordinator.

The Title IX Coordinator has the discretion to file a Formal Complaint on behalf of the University. The Title IX Coordinator will consider several factors including, but not limited to:

- Whether there is a perceived risk that the Respondent may have a propensity to commit acts prohibited by this Policy;
- Whether there have been other reports about the same Respondent;
- Whether the Respondent has a history of arrests or records from the community or a prior institution indicating a history of Prohibited Conduct;

- Whether the Respondent has threatened future physical acts of Prohibited Conduct against the Reporter or others;
- Whether the alleged Prohibited Conduct was committed by multiple parties;
- Whether circumstances suggest there is an increased risk of future acts of Prohibited Conduct under similar circumstances (e.g., whether the report reveals a pattern of perpetration, such as via the illicit use of Drugs or alcohol, at a given location or by a particular group);
- Whether the alleged Prohibited Conduct was perpetrated with a Weapon;
- Whether specific circumstances afford or prevent the University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations therein; and
- Whether the alleged conduct would constitute criminal conduct.

D. Complaint Dismissal (Dismissal of Any Allegations)

At any time during the handling of a Formal Complaint, the Title IX Coordinator or Title IX Investigator may dismiss the complaint, in whole or in part.

- 1. Discretionary Dismissals:** FVSU **may** dismiss a formal complaint on the following grounds:
 - i. The Complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the complaint;
 - ii. The Respondent is no longer enrolled or employed by the university; or
 - iii. There are circumstances that prevent the university from gathering evidence sufficient to reach a determination regarding the complaint.
- 2. Mandatory Dismissals:** FVSU **must** dismiss a formal complaint on the following grounds:
 - i. If the conduct alleged would not constitute prohibited as defined, even if proved;
 - ii. Conduct did not occur in FVSU’s education program or activity; or
 - iii. Conduct did not occur against a person in the United States.

3. Appeals⁷

i. Basis for Appeals

If FVSU finds that the formal complaint be dismissed, either party shall have a right to appeal the decision on any of the following bases:

- a. Procedural irregularity that affected the outcome of the matter;
- b. New evidence that has not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- c. The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the

⁷ This section provides the process for appeals pending the outcoming of the case or before sanctions are given. For information on appeals after sanctions have been given, please see section XXXI.

individual complainant or respondent that affected the outcome of the matter.

ii. Student-Respondent Procedure for Appeal

The appeal must be made in writing to the Title IX Coordinator within three (3) business days of the Notice of Dismissal. The Title IX Coordinator shall notify the other party in writing when an appeal is filed. The non-filing party shall then have three (3) business days from the date of notice to submit a written response in support of, or challenging, the outcome. The Vice President of Student Affairs (“VPSA”) or his or her designee shall review the appeal.

The VPSA or his or her designee shall conclude his or her review of the written appeal and written response within ten (10) business days of receipt of the written response or the time allotted to file a written response by either affirming the Title IX Coordinator’s decision to dismiss the complaint or by sending the complaint back to the Title IX Coordinator to initiate a formal investigation or informal resolution. If the VPSA is not present on campus the first day he or she is sent the written appeal and written response, then time to review and respond shall not start until he or she returns to campus.

iii. Employee-Respondent Procedure for Appeal

The appeal must be made in writing to the Title IX Coordinator within three (3) business days of the Notice of Dismissal. The Title IX Coordinator shall notify the other party in writing when an appeal is filed. The non-filing party shall then have three (3) business days from the date of notice to submit a written response in support of, or challenging, the outcome. The Chief of Staff (the “COS”) or his or her designee shall review the appeal.

The COS or his or her designee shall conclude his or her review of the written appeal and written response within ten (10) business days of receipt of the written response or the time allotted to file a written response by either affirming the Title IX Coordinator’s decision to dismiss the complaint or by sending the complaint back to the Title IX Coordinator to initiate a formal investigation or informal resolution. If the COS is not present on campus the first day he or she is sent the written appeal and written response, then time to review and respond shall not start until he or she returns to campus.

E. Advisors

Both the Complainant and the Respondent, as parties to the matter, shall have the opportunity to use an advisor (who may or may not be an attorney) of the party’s choosing. The advisor may accompany the party to all meetings and may provide advice and counsel to their respective party throughout the process, including providing questions, suggestions and guidance to the party, but may not actively participate in the process except to conduct cross-examination at the hearing. If a party chooses not to use an advisor during the investigation, then pursuant to Process “A”, the University will provide an advisor for the purpose of conducting cross examination on behalf of the relevant party. Each party is entitled to only one advisor. However, the University is only required to provide an Advisor in cases being

investigated pursuant to Process “A” and covered by Title IX. The requirement does not apply to Title VII cases that are investigated pursuant to Process “A”.

All communication during the process will be between the University and the party but not the advisor. The Title IX Investigator will copy the party’s advisor prior to the finalization of the investigation report when the institution provides the parties the right to inspect and review directly related information gathered during the investigation.

With the party’s permission, the advisor may be copied on all communications. The party will have to complete a form designating a person as their advisor and authorizing the release of information before any correspondence can be shared with the advisor. The advisor, whether appointed by the University or selected by the party will also have to sign a confidentiality form before any correspondence can be shared.⁸

F. Temporary Remedial Measures

Temporary remedial measures may be implemented at any point after the University becomes aware of an allegation of prohibited conduct. These measures are designed to protect any student or other individual in the FVSU community. Such measures are also designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the campus community, or deter Prohibited Conduct.

Temporary remedial measures include but not limited to the following:

- Change in housing assignment;
- Issuance of a “no contact” directive;
- Restrictions or bars to entering certain University property;
- Changes to academic or employment arrangements, schedules, or supervision;
- Administrative Leave

An employee-Respondent can be placed on administrative leave pending the completion of the resolution process. Procedures surrounding the implementation of administrative will be consistent with those outlined in the University’s Employee Handbook and [USG Policy Dismissal, Demotions, or Suspensions](#).

- Alteration of Housing Assignment

Immediate removal and prohibition of a student from University housing by the Title IX Coordinator pending an investigation or adjudication. Through the duration of the termination of housing the student will be restricted from entering all residential floors

⁸ See Appendix A for the University’s Rules of Decorum for Interviews and Hearings for additional information on how an Advisor should conduct their self.

in University buildings. Housing assignments can also be altered by the Title IX Coordinator with the help of the Department of Residential Life.

- **Administrative Hold**

An administrative hold may be placed on a student's account upon application of formal complaint under this Policy by a designated University official and pending a completion of the grievance process. The University reserves the right to withhold the release of a party's official transcripts and/or diploma, and conferral of a degree until a final decision has been rendered. If an administrative hold is put in place pending completion of the grievance process, the party will be notified of the hold and be advised on how to request the modification to or lifting of the hold. The administrative hold will remain in place until lifted by the Title IX Coordinator or other designated University official with authority to do so.⁹

- **Emergency Removal**

Emergency removal should only occur where necessary to maintain safety and should be limited to those situations where the Respondent poses a serious and immediate danger or threat to persons or property. When assessing whether a Respondent should be removed, the institution should consider the existence of a significant risk to the health or safety of the Complainant or campus community. Additionally, there should be a consideration of the nature, duration, and severity of the risk; the probability of potential injury, and whether less restrictive means can be used to mitigate the risk. The University shall also adhere to USG's guide to Title IX-related Emergency Removal or Administrative Leave.

When an emergency removal is issued, the terms of the removal take effect immediately upon the Respondent's receipt of notice. Any incident of removal of a Respondent shall be done with the assistance of Campus Safety and/or the University counseling services. The Respondent may respond and have the opportunity to be heard on whether the Respondent's presence on campus poses a danger. The written challenge must be received by the Title IX Coordinator within three (3) business days of the removal notice. The Title IX Coordinator may submit the written challenge of the emergency removal to the VPSA or his or her designee. Within three (3) business days of receiving a challenge the University will determine whether the emergency removal shall remain in place. The Respondent shall receive written documentation of the decision.

- Other measures designed to promote the safety and well-being of the parties and the University's community.

G. Supportive Services¹⁰

⁹ See section below for information on when an Administrative Hold can be placed on a student's account.

¹⁰ No Contact Order/Directive, trespass orders, altering campus housing assignment, and changes to academic or employment arrangements, scheduled, or supervision can also be considered temporary remedial measures.

Once the Title IX Coordinator has received information regarding an allegation of Prohibited Conduct, the parties will be provided written information about support services. Support services are non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without charge that are made available to the Complainant and Respondent before or after the filing of a complaint or where no complaint has been filed.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
 - Referral to the Employee Assistance Program
 - Referral to community-based service providers
 - Visa and immigration assistance
 - Student financial aid counseling
 - Education to the institutional community or community subgroup(s)
 - Altering campus housing assignment(s)
 - Altering work arrangements for employees or student-employees
 - Safety planning
 - Providing campus safety escorts
 - Providing transportation assistance
 - Implementing contact limitations (no contact orders) between the parties
 - Academic support, extensions of deadlines, or other course/program related adjustments
 - Trespass, No Contact, or Be-On-the-Lookout (BOLO) orders
 - Class schedule modifications, withdrawals, or leaves of absence
 - Increased security and monitoring of certain areas of the campus
 - Any other actions deemed appropriate by the Title IX Coordinator

No contact orders shall be mutual orders placed on all parties involved. Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing complaint under this Policy.

XVI. Process for Investigating and Resolving Prohibited Conduct

The University shall provide a prompt, fair, and impartial investigation and resolution of all reports of Prohibited Conduct.

A. Formal Grievance Process – Process “A”

The implementing of Title IX regulations requires special handling of complaints of sexual harassment. The following outlines the required specialized handling of the matters involving Prohibited Conduct that is considered a violation of Title IX. It also outlines the process the CHRO will follow in investigating Prohibited Conduct that is alleged to be a violation of Title VII.¹¹

¹¹ References to the Title IX Coordinator and Investigator throughout the investigation, hearing process, and appeal process shall also include the CHRO or his or her designee in instances of reported Prohibited Conduct covered under Title VII.

1. Investigation Procedure

- i. The Title IX Coordinator shall provide the parties shall with written notice of the report/allegations with sufficient details, pending investigation, possible charges, possible sanctions, available support services and temporary remedial measures, and other rights under applicable institutional policies.¹² For the purposes of this provision sufficient details include the identities of the parties involved if known, the conduct allegedly constituting Prohibited Conduct, and the date and location of the alleged incident, if known. This information will be supplemented as necessary with relevant evidence collected during the investigation. The notice should also include the identity of any investigator(s) involved. If the Respondent is an employee, then the Title IX Coordinator must also send notice of the investigation to the Vice President (or its equivalent) of the division of employment the employee is classified under. However, the notice must not contain the specific allegations. It shall only state that the employee is being investigated. Notice should be provided via institution email to the party's institution email.
- ii. Upon receipt of the Notice of Investigation, the Respondent shall have three (3) business days to provide a written response to the Title IX Investigator. The response may include any relevant information, documentation, or identification of witnesses the Respondent wishes to have considered during the investigation. Failure to respond within the allotted timeframe will not prevent the investigation from proceeding
- iii. The Title IX Investigator shall conduct a thorough investigation and should retain written notes and/or obtain written or recorded statements from each interview. The Title IX Investigator shall also keep a record of any party's proffered witnesses not interviewed, along with a brief, written explanation of why the witnesses were not interviewed.
- iv. In accordance with the, all employees, [USG Human Resources Administrative Practices \(HRAP\) on Cooperation in Internal Investigations](#) both parties and non-parties, are required to cooperate to the fullest extent possible in any internal investigation conducted by the Board of Regents or any institution thereof when directed to do so by the persons who have been given investigative authority.
- v. The Title IX Investigator shall not access, consider, disclose, or otherwise use a party's records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional made in connection with the party's treatment unless the party has provided voluntary written consent. This also applies to information protected by recognized legal privilege.
- vi. The initial investigation report shall be provided to the Complainant, the Respondent, and a party's advisor (if applicable). This report should fairly summarize the directly related evidence gathered during the investigation and clearly indicate any resulting charges or alternatively, a determination of no charges. For purposes of this Policy, a charge is not a finding of responsibility.

¹² Written notice of the report/allegations may also be referred to a Notice of Investigation ("NOI").

- vii.** The Complainant and the Respondent shall have at least ten (10) business days to review and respond in writing to the initial investigation report and directly related information gathered during the investigation. The Title IX Investigator will review the Complainant's and the Respondent's written responses, if any, to determine whether further investigation or changes to the investigation report are necessary. If any response is received from either party, the Title IX Investigator shall immediately send said response to the other party. Although, the receiving party will not have an additional opportunity to respond to the response given by the other party.
- viii.** The final investigation report should summarize the relevant evidence, and be provided to the Complainant, the Respondent, and a party's advisor, if applicable, at least ten (10) business days prior to the hearing. The final investigation report should also be provided to the Hearing Panel¹³ members for consideration during the adjudication process. Any possible recommendations or sanctions shall be removed from the final investigation report prior to it being provided to the Hearing Panel.
 - a.** If the parties are given notification that the formal complaint or any allegation(s) is dismissed after the investigation is completed, either party will have the right to appeal such decision.

2. Resolution/Hearing of Formal Grievance Process

All Prohibited Conduct cases shall be adjudicated by a panel of faculty and/or staff. However, Prohibited Conduct covered by Title VII and employee-respondent Title IX cases, shall be adjudicated by the Vice President (or its equivalent) of the division of employment the employee is classified under. That person will serve as the Decision Maker. All institutional participants in the resolution process shall receive appropriate annual training as directed by the USG Assistant Vice Chancellor of Student Affairs or Coordinator and required by the Clery Act and Title IX.

In no case shall a hearing to resolve a Prohibited Conduct allegation take place before the investigation report has been finalized. The investigator may testify as a witness regarding the investigation and findings but shall otherwise have no part in the hearing process and shall not attempt to otherwise influence the proceedings outside of providing testimony during the hearing. All relevant evidence shall be available at the hearing for the parties and their advisors to reference during the hearing.

Relevant facts or evidence that were not known or knowable to the parties prior to the issuance of the final investigative report may be admissible during the hearing. Where practicable, parties must submit any new facts or evidence to the Title IX Coordinator. The Title IX Coordinator may consult as necessary with the Office of Legal and Government Affairs to determine the relevance of any newly submitted facts or

¹³ References to the Hearing Panel shall also include the Vice President of the division of employment the employee is classified under in instances of reported Prohibited Conduct covered under Title VII.

evidence. The Title IX Coordinator will determine how the facts or evidence will be introduced, which may include, but is not limited to, enclosing the new facts or evidence in communications or materials shared with the parties and the hearing panel prior to the hearing. The admissibility of any facts or evidence known or knowable by the parties prior to the issuance of the final investigative report, and which were not submitted during the investigation, shall be determined by the Title IX Coordinator in compliance with the obligation to provide both parties an equal opportunity to present and respond to witnesses and other evidence. Notice of the date, time, and location of the hearing as well as the selected hearing panel members or decision maker shall be provided to the Complainant and the Respondent at least ten (10) business days prior to the hearing. Notice shall be provided via institution email to the parties' institution email. Parties may attend the hearing with their advisor.

Hearings shall be conducted in-person or via video conferencing technology. Where the University determines that a party or witness is unable to be present in person due to extenuating circumstances, the University may establish special procedures to permit that individual to provide testimony from a separate location. In doing so, the University must determine whether there is a valid basis for the individuals' unavailability, require that the individual properly separated in a manner that ensures testimony has not been tainted, and make a determination that such arrangement will not unfairly disadvantage any party. Should it be reasonably believed that the individual presented tainted testimony, the hearing panel will disregard or discount the testimony. Parties may also request to provide testimony in a separate room from the opposing party, so long as no party is unfairly disadvantaged, and they have the opportunity to view the testimony remotely and submit follow-up questions.

At all times, participants in the hearing process; including parties, a party's advisor, and University officials, are expected to act in a manner that promotes dignity and decorum throughout the hearing. Participants are expected to be respectful to others and follow procedural formalities outlined by this Policy and the institution. The University reserves the right to remove any participant from the hearing environment if the participant refuses to adhere to the institution's established rules of decorum. Please see Appendix A for the University's Rules of Decorum for Interviews and Hearings and Appendix D for Hearing Procedures.

The University shall maintain documentation of the investigation and resolution process, which may include written findings of fact, transcripts, audio recordings, and/or video recordings. Any documentation shall be maintained for 7 (seven) years.

i. Employee Hearings

All Prohibited Conduct adjudications involving an employee-respondent, shall be addressed utilizing Board and institutional employment policies and procedures including [Human Resources Administrative Practice Manual, Prohibit Discrimination & Harassment](#). Employee hearings will be decided by the Decision Maker who shall be the Vice President (or its equivalent) of the division of employment the employee is classified under.

ii. Title IX Hearings¹⁴

- a. Where a party or a witness is unavailable, unable, or otherwise unwilling to participate in the hearing, including being subject to cross-examination, the hearing panel shall not draw an adverse inference against the party of witness based solely on the party's absence from the hearing or refusal to subject to cross-examination.
- b. The parties shall have the right to present witnesses and evidence at the hearing.
- c. The parties shall have the right to confront witnesses and evidence at the hearing, including the other party, by having their advisor ask relevant questions directly to the witness. The Hearing Officer or Decision Maker in consultation with the Hearing Panel shall limit questions raised by the advisor when they are irrelevant to determining the truth of the allegations against the Respondent(s). In any event, the Hearing Officer or Decision Maker shall err on the side of permitting all the proposed questions and must document the reason for not permitting any particular questions to be raised.
- d. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior shall be deemed irrelevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the alleged conduct or consent between the parties during the alleged incident.
- e. The Hearing Panel shall not access, consider, disclose, or otherwise use a party's records made or maintained by a physician, psychiatrist, or other recognized professional made in connection with the party's treatment unless the party has provided voluntary written consent. This also applies to information protected by recognized legal privilege.
- f. Formal judicial rules of evidence do not apply to the resolution process and the standard of evidence shall be a preponderance of the evidence.
- g. Following a hearing, the parties shall be simultaneously provided a written decision via FVSU email of the hearing outcome and any resulting sanctions or administrative actions. The decision must include the allegations, procedural steps taken through the investigation and resolution process, findings of facts supporting the determination(s), determination(s) regarding responsibility, and the evidence relied upon and rationale for any sanction or other administrative action. The University shall also notify the parties of their right to appeal as outlined below.

¹⁴ This section also applies to Title VII Hearings.

B. Alternate Grievance Process – Process “B”

The following outlines the handling of Prohibited Conduct that is a violation of this policy but not considered a violation of Title VII or Title IX because of subject matter or jurisdictional issues. The same procedure for investigations detailed in Process “A” applies. The procedure for hearings differ. Prohibited Conduct by an Employee Respondent shall be adjudicated by the Vice President (or its equivalent) of the division of employment the employee is classified under. The Vice President will serve as the Decision Maker. Additionally, the University does not have to provide either party with an Advisor.¹⁵

1. Resolution/Hearing of Alternate Grievance Process

- i.** The parties shall have the right to present witnesses and evidence at the hearing. Witness testimony, if provided, shall pertain to knowledge and facts directly associated with the case being heard.
- ii.** The parties shall have the right to confront any witnesses, including the other party, by submitting written questions to the Hearing Officer¹⁶ for consideration. Advisors may actively assist in drafting questions. The Hearing Officer shall ask the questions as written and will limit questions only if they are irrelevant to determining the truth of the allegations against the Respondent(s). In any such event, the Hearing Officer shall err on the side of asking all submitted questions and must document the reason for now asking any particular questions.
- iii.** Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior shall be deemed irrelevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the alleged conduct or consent between the parties during the alleged incident.
- iv.** The Hearing Panel shall not access, consider, disclose, or otherwise use a party’s records made or maintained by a physician, psychologist, or other recognized professional made in connection with the party’s treatment unless the party has provided voluntary written consent. This also applies to information protected by recognized legal privilege.
- v.** Formal judicial rules of evidence do not apply to the resolution process and the standard of evidence shall be a preponderance of the evidence.
- vi.** Following a hearing, the parties shall be simultaneously provided a written decision via FVSU email of the hearing outcome and any resulting sanctions or administrative actions. The decision must include the allegations, procedural steps taken through the investigation and resolution process, findings of facts supporting the determination(s), determination(s) regarding responsibility, and the evidence relied upon and rationale for any sanction or other administrative action. FVSU shall also notify the parties of their right to appeal, as outlined below.

¹⁵ Please see Appendix A for the University’s Rules of Decorum for Interviews and Hearings and Appendix D for Hearing Procedures.

¹⁶ References to Hearing Officer and Hearing Panel shall also include the Decision Maker under this section.

C. Informal Resolution

The Complainant and Respondent, as parties to the matter, may have the option of selecting informal resolution as a possible resolution in certain cases where the parties agree, and it is deemed appropriate by the institution. This process is a restorative voluntary process. The Respondent will not be charged with a violation of this Policy unless it is agreed upon by the parties. The Complainant, the Respondent, and the University must agree to engage in the informal resolution process and to the terms of the informal resolution.

The informal resolution process is designed to eliminate the Prohibited Conduct, prevent its recurrence, and remedy its effects in a manner that meets the needs of the Complainant and Respondent while still maintaining the safety of the overall campus community.

Formal Complaints may be resolved informally, except in the instance of an allegation by a student against an Employee. The following must be met to proceed with the informal resolution process:

1. The parties have received written notice of the allegations
2. The parties have received written explanation of the informal process to include, but not limited to:
 - i. Written agreement of the parties to initiate the informal resolution process;
 - ii. Written notice that the parties may withdraw from the process at any time prior to the agreement of the terms of the resolution;
 - iii. Written notice that the final resolution precludes any further institutional actions on the allegations
3. The University has agreed to engage in the informal resolution process.

The Complainant, Respondent, and the University have the option to end informal resolution discussions and request a formal process at any time before the terms of an informal resolution is reached.

Some possible options to Informal Resolution include but are not limited to¹⁷:

- Counseling Sessions
- Title IX Training(s)
- Alcohol Training(s)
- No Contact Order
- Restriction from participation in specific clubs/organizations
- Restriction from participation in particular events
- Community service

Matters resolved informally shall not be appealable.

XVII. Sanctions

In determining the severity of sanctions or corrective actions the following should be considered: the frequency, severity, and/or nature of the offense; history of past conduct; an offender's willingness to accept responsibility; previous institutional response to similar conduct; strength

¹⁷ See section below regarding sanctions for additional possible options.

of the evidence; and the wellbeing of the university community. The institution will determine sanctions and issue notice of the same, as outlined above.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a grievance process at any time, and/or referring that information to another process for resolution.

A. Student Sanctions

The following are the common sanctions that may be imposed upon students alone or in combination:

1. **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.
2. **Required Counseling:** A mandate to meet with and engage in either University - sponsored or external counseling to better comprehend the misconduct and its effects.
3. **Required Training:** A mandate to participate in sensitivity training/awareness education programs, alcohol and other drug awareness and abuse prevention programs.
4. **Probation:** A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
5. **Suspension:** Termination of student status for a definite period of time not to exceed two (2) years and/or until specific criteria are met. This sanction will be noted on the student's official transcript while the student is suspended.
6. **Expulsion:** Permanent termination of student status and revocation of rights to be on campus for any reason or to attend University-sponsored events. This sanction will be noted permanently as a Disciplinary Expulsion on the student's official transcript.
7. **Withholding Diploma:** The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for violating policy.
8. **Revocation of Degree:** The University reserves the right to revoke a degree previously awarded from the University for fraud, misrepresentation, and/or other violation of University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
9. **Other Actions:** In addition to or in place of the above sanctions, the Recipient may assign any other sanctions as deemed appropriate.

For suspension and expulsion, the institution must articulate, in its written decision, the substantial evidence relied upon in determining that disciplinary suspension or expulsion were appropriate. For purposes of this Policy substantial evidence means evidence that a reasonable person might accept to support the conclusion.¹⁸

¹⁸ See FVSU Student Handbook for additional information regarding sanctions and sanction ranges.

B. Employee Sanctions

All Prohibited Conduct adjudication involving an employee Respondent, shall be addressed utilizing Board and institutional employment policies and procedures including [Human Resources Administrative Practice Manual, Prohibit Discrimination & Harassment.](#)

The following are the common sanctions that may be imposed upon employees alone or in combination:

1. Verbal or Written Warning
2. Performance Improvement Plan/Management Process
3. Enhanced Supervision, Observation, or Review
4. Required Counseling
5. Required Training or Education
6. Probation
7. Denial of Pay Increase/Pay Grade
8. Loss of Oversight or Supervisory Responsibility
9. Demotion
10. Transfer
11. Reassignment
12. Delay of (or referral for delay of) Tenure Track Progress
13. Assignment to New Supervisor
14. Restriction of Stipends, Research and/or Professional Development Resources
15. Suspension/Administrative Leave with Pay
16. Suspension/Administrative Leave without Pay
17. Termination
18. Other Actions: In addition to or in place of the above sanctions/responsive actions, the Recipient may assign any other actions as deemed appropriate.

An employee found in violation Title IX will be issued sanctions ranging from a formal written reprimand to termination of employment.

XVIII. Administrative Holds

During the Resolution Process, administrative holds may be placed on a student's account, thus denying the student access to his/her records and accounts (i.e., financial aid, academic transcript, academic registration access, etc.). Administrative disciplinary holds may be applied in the following situations:

- A. A student has been temporarily suspended from the University and is awaiting a hearing date;
 - B. A student has agreed to either enter into negotiations for an informal resolution or an informal resolution agreement has been signed. In this instance, the hold(s) are removed and reapplied as needed to allow a student to continue matriculation while he/she completes the terms of the agreement.
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- C. A student is required to attend a hearing with but has failed to attend.
- D. A student has appeared before the Hearing Panel and has been subsequently sanctioned. In this instance, the hold(s) are removed and reapplied as needed to allow a student to continue matriculation while he/she completes the prescribed sanction(s).
- E. A student has appeared before the Hearing Panel and has been subsequently suspended from the University. The hold will remain on the student's account until the suspension sanction has been completed or overturned on appeal.
- F. A student has appeared before the Hearing Panel and has been subsequently expelled from the University. The hold will remain permanently unless removed pursuant to appeal.
- G. A student is required to complete a training mandated by this policy but fails to complete the training by the deadline stipulated.

XXIX. Withdrawal or Resignation Before Complaint Resolution

A. Students

Should a Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the Resolution Process typically ends with a dismissal, as the University has lost primary disciplinary jurisdiction over the withdrawn student. However, the University may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, the University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University in any capacity until the resolution process is completed or until all sanctions, if any, have been satisfied. Admissions and Human Resources will be notified, accordingly.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely and, if found in violation, that student is not permitted to return to University unless and until all sanctions, if any, have been satisfied.

The student's account will be notated in either occurrence mentioned above.

B. Employees

Should an employee Respondent resign with unresolved allegations pending, the Resolution Process typically ends with dismissal, as the University has lost primary disciplinary jurisdiction over the resigned employee. However, the University may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the matter is dismissed or pursued to completion of the Resolution Process, the University will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

If approved by USG, the employee who resigns with unresolved allegations pending is not eligible for academic admission or rehire with the University or any University location, and the records retained by the Title IX Coordinator will reflect that status.

All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

XXX. Time Frame for Investigation and Resolution of Prohibited Conduct Matters

Efforts will be made to complete the investigation and resolution within 120 business days. Temporary delays and limited extensions may be granted by the University for good cause throughout the investigation and resolution process. The parties will be informed in writing of any extension or delay and the applicable reason. The Title IX Coordinator, or his or her designee, shall keep the parties informed of the status of the investigation.

XXXI. Appeals

An appeal may be allowed in any case where sanctions are issued, even when such sanctions are deferred or held “in abeyance,” such as probation or expulsion. An appeal is also allowed from a determination regarding responsibility and from the University’s dismissal of a formal complaint or any allegations. The Respondent and the Complainant shall have the right to appeal the outcome on any of the following grounds:

- A. To consider new information, sufficient to alter the decision, or other relevant facts not brought out in the original hearing, because such information was not known or knowable to the person appealing during the time of the hearing;
- B. To allege a procedural error within the hearing process that may have substantially impacted the fairness of the hearing, including but not limited to whether any hearing questions were improperly excluded or whether the decision was tainted by a conflict of interest or bias by the Title IX Coordinator, Title IX Investigator(s), decision makers(s); or
- C. To allege that the finding was inconsistent with the weight of the information.

The Respondent or Complainant may appeal to the President or his or her designee in writing, provided the basis for the appeal is limited to the criteria listed above. Parties who have accepted an Informal Resolution are not eligible for appeal. A Respondent or Complainant will have five (5) business days from receipt of the official outcome letter to send their appeal to the Title IX Coordinator. The appeal must be submitted in writing on the appeal deadline and must explicitly state why an appeal is warranted. When an appeal is timely received and appropriately sets forth one or more of the grounds outlined above, the non-appealing party will receive a copy of the appeal and will have five (5) business days from the date of the notice of appeal to submit a response to the Title IX Coordinator. The non-appealing party’s response shall be limited to the matters properly raised on appeal.

The Title IX Coordinator will compile all pertinent information and deliver the appeal packet to the President or his or her designee. The appeal shall be a review of the record only, and no new meeting with the Respondent or Complainant is required. The President or designee may:

- A. Affirm the original finding and sanction;
- B. Affirm the original finding but issue a new sanction of greater or lesser severity;
- C. Remand the case back to the decision-maker to correct a procedural or factual defect;
or
- D. Reverse or dismiss the case if there was a procedural or factual defect that cannot be remedied by remand.

The President or his or her designee's decision shall be simultaneously issued in writing to the parties within a reasonable time period. The President or his or her designee's decision shall be the final decision of the University. In no case shall there be provided more than one level of institutional appeal.

Following the decision of the President or his or her designee a student may apply to the Board of Regents for further review of the decision pursuant to [USG Policy 6.26 Application for Discretionary Review](#). Appeals received after the designated deadlines above will not be considered unless the Institution or Board of Regents has granted an extension prior to the deadline. If an appeal is not received by the deadline the last decision on the matter will become final.

XXXII. Student-Athletes

The University and the National Collegiate Athletic Association ("NCAA") are committed to sexual violence prevention. Sexual discrimination, sexual harassment and sexual and interpersonal violence violate human decency and the Association's core values. In keeping with its commitment, the NCAA has adopted a Policy on Campus Sexual Violence. The policy can be found at the following link: [NCAA Policy to Combat Campus Sexual Violence](#). The policy is hereby incorporated into this policy by reference.

All incoming, continuing and transfer student-athletes must complete an annual disclosure related to their conduct that resulted in discipline through a Title IX proceeding or in a criminal conviction for sexual, interpersonal or other acts of violence. Transfer student-athletes also must disclose whether a Title IX proceeding was incomplete at the time of transfer. Failure to make a full and accurate disclosure could result in penalties, including loss of eligibility to participate in athletics as determined by the University. The disclosure may be completed accessing the [FVSU Student-Athlete Annual Serious Misconduct Attestation Form](#).

Description of discipline through a Title IX proceeding or criminal conviction for sexual, interpersonal, or other acts of violence is defined as:

- **Interpersonal Violence**: Violence that is predominantly caused due to the relationship between the victim and the perpetrator, including dating and domestic violence.
- **Sexual Violence**: A term used to include both forcible and nonforcible sex offenses, ranging from sexual battery to rape.
- **Other Acts of Violence**: Crimes including murder, manslaughter, aggravated assault or any assault that employs the use of a deadly weapon or causes serious bodily injury.

All incoming, continuing and transfer student-athletes shall be notified that failure to disclose may result in disciplinary action, up to and including expulsion from the University. When the University has an independent reason to inquire into a current or prospective student-athletes prior conduct, the institution shall conduct a thorough inquiry designed to gather all information needed to assess the situation, including but not limited to a background check and internet search. The University is expected to ask the student-athlete and others who might possess pertinent information to provide any such information, and where appropriate, to request authorization from such persons to obtain pertinent documents and information from third parties. The inquiry may be fulfilled by either the Title IX Coordinator or Director of Compliance in the FVSU Athletics Department.

Once the information is gathered, a review panel, appointed by the President of the University, shall be notified prior to making the decision to provide aid or allow the student-athlete to practice or compete. All information provided will be kept confidential to the extent authorized by applicable law.

- A. The Review Panel consisting of the University's Title IX Coordinator or designee, Director of Compliance in the FVSU Athletics Department or designee, and a faculty athletics representative ("The Student-Athlete Review Panel"), with counsel from the Office of Legal and Government Affairs.
- B. The Student-Athlete Review Panel shall submit a written report to the University President or his/her designee who shall be a person outside the Athletic Department or the President's Chief of Staff, and the Athletic Director that describes the basis for its recommendation to either allow the student-athlete to compete or not compete; and
- C. Both the President or his/her designee who shall be a person outside the Athletic Department or the President's Chief of Staff, and the Athletic Director shall review and approve the Student-Athlete Review Panel's recommendation.

Any inquiries into a former student directed to the University regarding any conduct defined in this section from any other colleges or universities shall be submitted to the Title IX Coordinator. The Title IX Coordinator will then work with other university officials to gather or process information to share with the requesting college or university.

Further, the athletics department will cooperate with the University investigations into reports and matters related to sexual and interpersonal violence involving student-athletes and athletics department staff in a manner compliant with institutional policies for all students.

XXXIII. Recusal for Bias

Any party may challenge the participation of any FVSU official, employee or student panel member in the process on the grounds of personal bias by submitting a written statement to the Chief of Staff or his or her designee setting forth the basis for the challenge. The written challenge should be submitted within a reasonable time after the individual knows or reasonably should have known of the existence of the bias. The Chief of Staff or his or her designee will determine within in five (5) business days whether to sustain or deny the challenge and, if sustained, the replacement to be appointed.

XXXIV. Responsible Parties and Contact Information

Party	Contact Information
Michelle M. Clarington, J.D. Title IX Coordinator	Office of Legal and Government Affairs Phone: 478-825-4284 Email: michelle.clarington@fvsu.edu
Preston F. Martin, J.D. Title IX Investigator	Office of Legal and Government Affairs Phone: 478-825-4261 Email: preston.martin@fvsu.edu
Chief Human Resources Officer	Office of Human Resources Phone: 478-825-6301

XXXV. Related Resources, Policies, and Forms

- A. [USG Policy 6.7 Sexual Misconduct](#)
- B. [USG Policy 4.7 Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings](#)
- C. [USG Policy 6.26 Application for Discretionary Review](#)
- D. [Human Resources Administration Manual- Employee Relations: Prohibit Discrimination & Harassment](#)
- E. [Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#)
- F. [Title VII of the Civil Rights Act of 1964](#)
- G. [FVSU Student Handbook](#)
- H. [NCAA Policy to Combat Campus Sexual Violence](#)
- I. [FVSU Student-Athlete Annual Serious Misconduct Attestation Form](#)
- J. USG Office of Ethics and Compliance Investigative Resource Guide

Policy History and Revisions

Date of Revision	Notes
November 2021	Revised to include a more detailed investigation and hearing process pursuant to Final Rule.
August 2022	Revised to include discrimination pursuant to Title VII. Revised to include a more detailed investigation, hearing, and appeal process.
TBD	<ul style="list-style-type: none"> • Updated position titles, USG policy referenced, and external links. • Deleted references to gender/gender identity and sexual orientation. • Clarified the definition of “sex”. • Removed outdated links and references. • Removed mandatory filing of a formal complaint in cases of sexual assault. • Added reporting structure of Title IX Coordinator pursuant to USG policy. • Removed the requirement of university appointed advisor for Title VI cases. • Revised the Emergency Removal procedure.
November 2025	<ul style="list-style-type: none"> • Updated Nonconsensual Sexual Contact definition to include “Criminal Sexual Contact” as defined by the Federal Bureau of Investigation. • Removed outdated links and references. • Updated Policy language from “interim measures” to “temporary remedial measures”. • Updated Policy to include section on “Employee Hearings” • Updated Policy to include section regarding all employees requirement to cooperate in any internal investigation. • Revised Policy to include a one-person decision maker for employee respondent cases.

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| | <ul style="list-style-type: none">• Clarified the appeals process for cases pending an outcome.• Clarified the position of the University when the Complainant fails to participate. |
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Appendix A – Rules of Decorum for Interviews and Hearings

Title IX processes in the higher education setting are not civil or criminal proceedings. Pursuant to Title IX, Institutions may provide reasonable rules of order and decorum to facilitate these processes, and such rules may be enforced through the removal of Advisors who refuse to comply with the rules, by postponements, and by the accountability of parties and witnesses to applicable codes of conduct. These rules and standards apply equally to all parties, their Advisors, and witnesses.

Decorum Expectations for Advisors During Investigation Interviews

- Advisors are present during interviews primarily to assist the party being interviewed. The interviewed party is responsible for presenting their own information. Advisors are not typically permitted to speak for a party and do not have an active role during any meetings or interviews except to advise their advisee.
- Students are required to sign a disclosure form that permits their Advisor to have copies of their student records pertinent to the complaint.
- Advisors are required to sign the University confidentiality agreement before any information can be shared with them regarding the complaint.
- Advisors may not act abusively or disrespectfully toward the investigator(s) during the interview process. The advisor may not yell, scream, badger, or physically invade an investigator's personal space.
- An Advisor may be removed or replaced if their presence is disruptive, obstructive, or unreasonably interferes with the University's ability to address the complaint. In such a case, the Complainant or Respondent may seek another Advisor.
- Advisors may take no action during the interview that a reasonable person would view as intended to intimidate a party, witness, or official into not participating in the process or meaningfully modifying their participation in the process. This behavior may also be a form of retaliation.

Decorum Expectations for Participants for In-Person Hearings

- To avoid disruption to the hearing, participants should not leave the room or the online meeting during hearing proceedings except during breaks. Breaks will be reasonably granted when requested.
- Cell phones should be turned to the "OFF" setting during proceedings unless the Hearing Panel grants permission for the use of a phone.
- The University will record proceedings. The University does not permit any other participant to record (including audio and/or video) any meeting, interview, or hearing without express written permission of the Title IX Coordinator.

Decorum Expectations for the Parties During the Hearing

- No party will address the other for any reason unless given express permission by the Hearing Panel.
- During cross-examination, only a party's Advisor or hearing official may speak to or address the other party or witnesses.
- No party or witness will interrupt the proceedings with applause, heckling, outbursts, or other disruptive behavior.
- Any threat of violence expressly made by any party will be immediately reported by the Hearing Panel to the appropriate office for review and/or to law enforcement.
- No participant may act abusively or disrespectfully during the hearing toward any other party or to witnesses, Advisors, or the Hearing Panel.

Decorum Expectations for Advisors During the Hearing

- No Advisor may act abusively or disrespectfully during the hearing toward any other party or to witnesses, Advisors, or the Hearing Panel.

- The Advisor may not yell, scream, badger, or physically invade a party, witness, or the Hearing Panel's personal space.
- Advisors may not approach the other party or witnesses without obtaining permission from the Hearing Panel and should remain seated.
- The Advisor may not use profanity or make irrelevant ad hominem attacks upon a party or witness.
- Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
- The Advisor may not ask repetitive questions or questions that will elicit an answer that is repetitive. This includes questions that have already been asked by the Hearing Panel or an Advisor during cross-examination.
- When the Hearing Panel determines that a question is duplicative or is otherwise not relevant, the Advisor must move on to another question.
- Advisors may take no action during the hearing that a reasonable person would view as intended to intimidate a party, witness, or University official into not participating in the process or meaningfully modifying their participation in the process. This behavior may also be a form of retaliation.

Warning and Removal Process During Interviews

- During investigation interviews, the assigned investigator(s) has/have the sole discretion to determine if the Advisor has violated the Rules of Decorum.
- The investigator(s) has/have the discretion to remove the offending Advisor from the interview or permit them to stay, provided they follow the Rules of Decorum after a warning.
- When an investigator removes a party's Advisor, the party may select a different Advisor of their choice or may choose to proceed without an Advisor during the interview.
- Reasonable delays, including the temporary adjournment of the interview, may be anticipated should an Advisor be removed.
- A party is not required to have an Advisor during the investigation interview(s).

Warning and Removal Process During the Hearing

- The Hearing Panel and/or Title IX Coordinator has the discretion to determine if the Rules of Decorum have been violated.
- The Hearing Panel will notify the offending person of any violation and has the discretion to remove the offending person or may allow them to continue participating in the hearing or another part of the process after a warning.
- When the Hearing Panel removes a party's Advisor, the party may select a different Advisor of their choice, or accept an Advisor provided by the University.
- Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an Advisor be removed.
- A party cannot serve as their own Advisor in this circumstance.
- The Hearing Panel shall document any decision to remove an Advisor in the written determination regarding responsibility.

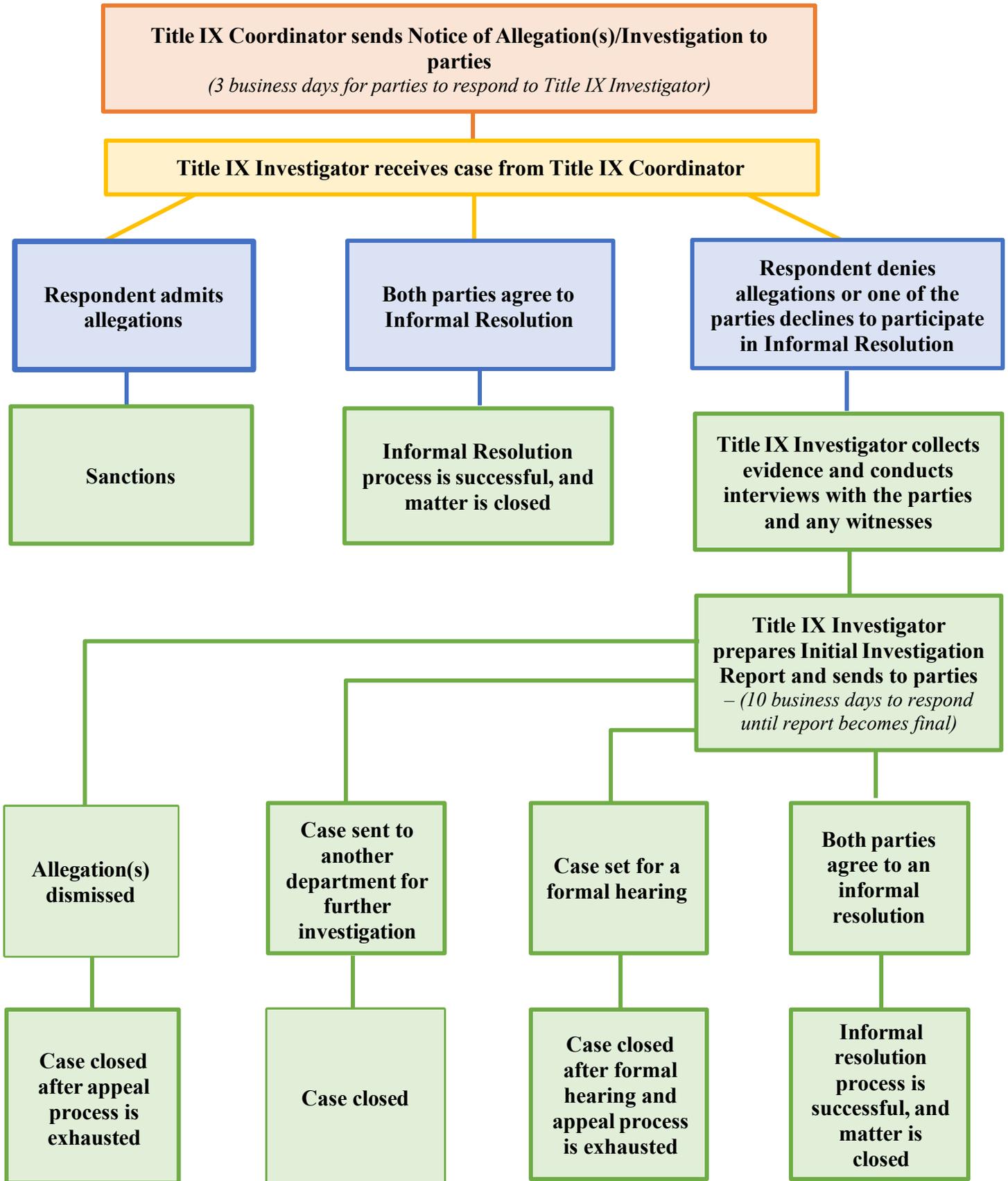
Relevant Questions Asked in Violation of the Rules of Decorum

- When an Advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or invading the witness' or party's personal space, the question will be deemed not relevant by the hearing chair because it is abusive.
- Under that circumstance, the Hearing Panel will notify the Advisor of the violation of the Rules, and, if the question is relevant, will allow the Advisor (or by a replacement Advisor, should the Advisor be removed for violation of the Rules) to re-ask the question in a respectful, non-abusive manner.

Authority to Prohibit Future Participation

For flagrant, multiple, or continual violations of these Rules, in one or more proceedings, Advisors may be prohibited from participating in the Advisor role on a temporary or permanent basis in future proceedings at the University as determined by the Title IX Coordinator or their designee.

Appendix B – Investigation Flow Chart



Appendix C – Statement of Rights

1. The Complainant has the right to file a report with law enforcement. The Complainant may also file a report alleging a violation of this Policy.
2. The Complainant has the right to have the Complainant’s name withheld from “timely reports” issued under the Clery Act.
3. Both the Complainant and the Respondent have the right to remain silent or otherwise not participate in or during the investigation and resolution process without an adverse inference resulting. However, University Employees are required to participate in the process.
4. Both the Complainant and the Respondent have the right to have an advisor of their choice accompany them throughout the investigatory and/or resolution process.
5. Both the Complainant and the Respondent will be informed simultaneously, in writing, of the outcome of the disciplinary proceeding, and when the result becomes final.
6. Both the Complainant and the Respondent may be at the hearing during the presentation of any evidence or material on which a recommendation will be made.
7. In appropriate cases, both the Complainant and the Respondent may request reasonable adjustments including but not limited to adjustments in academic programs and campus living arrangements.
8. Both the Complainant and the Respondent may appeal the decision pursuant to this Policy.
9. Both the Complainant and the Respondent have the right to have orders of protection, no contact agreements, restraining orders, or similar lawful orders issued by criminal, civil or tribunal courts, enforced on campus.

Appendix D – Hearing Procedures for Hearings Pursuant to Process “A” and Process “B”¹⁹

All formal administrative hearings conducted under this Policy pursuant to Process “A” or Process “B” will be conducted as follows, and further details regarding these procedural components are further outlined in sections above:

1. The Hearing Officer will open and establish rules and expectations for the live hearing.
2. The Complainant and Respondent will each be given the opportunity to provide opening statements.
3. The Hearing Officer under consultation with the Hearing Panel will ask questions of the parties and fact and expert witnesses (if applicable);
4. The Complainant and Respondent will be given the opportunity for live cross examination of parties and fact and expert witnesses (through their Advisor) (as applicable) after the Hearing Officer conducts their initial round of questioning. During the parties’ cross-examination, the Hearing Officer will have the authority to pause cross examination at any time for the purposes of asking their own follow up questions and any time necessary in order to enforce the established Rules of Decorum.
5. After examination of all parties and witnesses is complete, the parties will each be given the opportunity to provide closing statements and the Hearing Officer may ask any final questions of parties at the Hearing Officer/Panel’s discretion.
6. The hearing will adjourn, and the Hearing Panel will objectively evaluate the relevant information and independently make a decision regarding responsibility of the Respondent.
7. The hearing will reconvene once the Hearing Panel has made their decision, and the Hearing Officer will notify the parties of the outcome.
8. If the Hearing Panel finds the Respondent in-violation of Prohibited Conduct outlined in this Policy, then sanction(s) will be assigned. If the Hearing Panel finds the Respondent not in-violation of Prohibited Conduct outlined in this Policy, the hearing concludes after the Hearing Officer has announced their decision.
9. Upon the conclusion of the hearing, parties will be notified that they will receive a written decision letter through the Maxient system outlining the decision, any sanctions or remedies imposed on the Respondent (if found in-violation), and the rationale for the decision and any sanctions imposed (if applicable).

Procedural Questions. All procedural questions are subject to the final decision of the Hearing Officer/Panel.

Hearing decorum.²⁰ All parties, witnesses, and Advisors are required to adhere to the stated Rules of Decorum for Interviews and Advisors.

Relevant Questioning & Cross-examination. The Hearing Officer reserves the right to ask questions of all parties and witnesses who participate in the hearing. Once the Hearing Officer has concluded asking all relevant questions, each party’s Advisor is permitted to ask the other party and any witnesses any relevant questions and follow-up questions, including those challenging credibility, subject to the Hearing Officer’s control and rules regarding relevance. If hearing is pursuant to Process “A”, such questioning must be conducted directly, orally, and in real time by the party’s Advisor and never by a Complainant or Respondent personally.

Before any party or witness(es) answers a cross-examination question, the Hearing Officer must first determine whether the question is relevant. Questions posed through cross examination will only be permitted if they are deemed relevant to the allegation(s) in question. If the Hearing Officer deems a question irrelevant, they will provide their explanation for excluding that question. The basic test for relevance is whether the question posed is probative on the question of responsibility. In determining whether a question is relevant, the focus is on

¹⁹ The College of New Jersey, *Sexual Harassment, Misconduct, and Discrimination Policy*, effective November 11, 2021.

²⁰ See Appendix A for details on the University’s Rules of Decorum for formal administrative hearings.

whether the evidence is pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true. While an Advisor may offer explanation as to the relevance of a question, a Hearing Officer has the final discretion over the determination of relevance and their determination is not subject to challenge during a hearing but may be raised as a procedural error on appeal.

Additional information. New information, relevant records, exhibits, and written statements may be accepted as information for consideration at the discretion of the Hearing Panel.

Decline to provide information. All parties and witnesses who are students have the right to decline to provide any written or oral statements, submit to cross examination during a hearing, or provide any information on their behalf. In any of these circumstances, the Hearing Officer cannot draw any inferences about the determination regarding responsibility based solely on a party's or witness' absence from the live hearing or refusal to answer cross examination or other questions.

Decision in absentia. If a Respondent, with notice, does not appear for a hearing, the Title IX Coordinator may postpone the hearing. Alternatively, the hearing can proceed, and the Hearing Panel can hear the information in support of the charges in the Respondent's absence and will make a decision on the information available for consideration at the time. However, the Hearing Panel is prohibited from drawing an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.

Non-compliant Complainant. If at any time the Complainant fails to participate in the process whether by written notice by failure to respond, or by not appearing at the scheduled hearing, the Title IX Coordinator may dismiss the formal complaint based on there being circumstances that prevent the University from gathering evidence sufficient to reach a determination regarding the complaint.