



FORT VALLEY STATE UNIVERSITY

Student Sexual Misconduct Policy

I. Policy Purpose and Statement

In accordance with federal and state law including, Title IX of the Education Amendments of 1972 (“Title IX”) and Title VII of the Civil Rights Act of 1964 (Title VII), the University System of Georgia (USG) and Fort Valley State University (FVSU) prohibits discrimination on the basis of sex in any of its education programs or activities or in employment. The USG and FVSU are committed to ensuring the highest ethical conduct of the members of its community by promoting a safe learning and working environment. To that end, this Policy prohibits Sexual Misconduct, a form of sex discrimination, as defined herein.

FVSU is committed to reducing incidents of Sexual Misconduct, providing prevention tools, conducting ongoing awareness and prevention programming, and training the campus community in accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) and the Violence Against Women Act (“VAWA”). Prevention programming and training will promote positive and healthy behaviors and educate the campus community on consent, sexual assault, sexual harassment, alcohol and drug use, dating violence, domestic violence, stalking, bystander intervention, and reporting.

When Sexual Misconduct 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.

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, guests, visitors, and all individuals and

organizations doing business on behalf of or with FVSU.

- B. All reports of sexual misconduct alleged to have been committed by a student must be handled consistently with this policy.
- C. All reports of Sexual Misconduct alleged to have been committed by a non-student member of the FVSU community will be addressed and/or resolved through FVSU's and the Board of Regents' applicable policies for discipline of non-students.
- D. This policy is effective **November 15, 2021**.

III. Definitions and Prohibited Conduct

Board of Regents ("BOR"): The governing body of the University System of Georgia

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.

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.

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

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

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.

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.

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.

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" as defined by the Clery Act.

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.

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.

Rape: Penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without consent. This offense includes rape of both males and females.

Reasonable Person: An individual who is objectively reasonable under similar circumstances and with similar identities to the person being evaluated by the institution.

Reporter: An individual who reports an allegation of conduct that may violate this Policy but who is not a party to the complaint.

Respondent: An individual who is alleged to have engaged in conduct that violates this Policy.

Responsible Employees: Those employees who must promptly and fully report complaints of or information regarding sexual misconduct to the Title IX Coordinator. Responsible Employees include any administrator, 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).

Sexual Assault: Any sexual act directed against another person, without consent, including instances where an individual is incapable of giving consent.

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:

1. Invasion of sexual privacy;
2. Prostituting another individual;
3. Non-consensual photos, video, or audio of sexual activity;
4. Non-consensual distribution of photo, video, or audio of sexual activity, even if the sexual activity or capturing of the activity was consensual;
5. Intentional observation of nonconsenting individuals who are partially undressed, naked, or engaged in sexual acts;
6. Knowingly transmitting an STD or HIV to another individual through sexual activity;
7. Intentionally and inappropriately exposing one's breasts, buttocks, groin, or genitals in non-consensual circumstances; and/or
8. Sexually-based bullying.

Sexual Harassment (Student on Student): Unwelcome verbal, nonverbal, or physical conduct based on sex (including gender stereotypes), 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.

Sexual Harassment (Other Than Student on Student): Unwelcome verbal, nonverbal, or physical conduct, based on sex (including gender stereotypes), 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.

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.

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.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent. The statutory age for sexual consent in the state of Georgia is age 16.

Title IX Coordinator ("Coordinator"): 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.

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

1. 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 assault 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.

IV. Reporting Sexual Misconduct

USG and FVSU encourages the reporting of all Sexual Misconduct as soon as possible. While there is no statute of limitations on an institution's ability to respond to a report, the ability to respond diminishes with time as information and evidence may be more difficult to secure.

A. Institutional Reports

An institutional (FVSU) 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:

1. When a Responsible Employee receives a complaint; or
2. When the Title IX Coordinator 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 sexual misconduct, 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 sexual misconduct 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 [online form](#) or obtaining the form by requesting via email at titleIX@fvsu.edu
- Phone: 478-825-4284 or 478-662-6901
- Fax: 478-827-3100
- Mail-FVSU Office of Legal and Government Affairs 1005 State University Drive, Fort Valley, GA 31030
- In person: Office of Legal and Government Affairs, 1st Floor Huntington Hall or 1st Floor of Troup Building, Fort Valley, GA 31030
- [USG Ethics Hotline](#) or you can also make a report via telephone by calling the number below toll-free 24hours 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 University System Director of any allegation(s) of sexual misconduct that could, standing alone as reported, lead to the disciplinary suspension or expulsion of the Respondent(s). The System Director will work with FVSU to determine whether any support services or interim measure(s) are necessary and to assign an investigator who will work under the direction of the System Director or designee, if directed by the System Director. 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 System Director or designee. The System Director shall have the discretion to oversee the handling of the complaint.

There is no specific information required to constitute a report; however, the report should contain as much information as can be provided. Reporting options can be found above and on the [Title IX website](#).

B. 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.

C. Law Enforcement Reports

Because Sexual Misconduct 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.

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

D. Anonymous Reports

FVSU provides a mechanism by which individuals can report incidents of alleged sexual misconduct 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 filed at www.fvsu.edu/say-something, Sexual Misconduct [online form](#) or [USG Ethics Hotline](#)

E. Complaint Consolidation

FVSU may consolidate complaints as to allegations of Sexual 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 sexual misconduct arise out of the same facts or circumstances.

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 sexual misconduct process.

F. Retaliation

Anyone who has made a report or complaint, provided information, assisted, participated, or refused to participate in any manner in the Sexual Misconduct 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.

G. 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.

H. Amnesty

Individuals should be encouraged to come forward and to report Sexual Misconduct 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 particular 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 regards 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.

V. Responding to Reports of Sexual Misconduct

A. Initial Evaluation of Sexual Misconduct Reports

Upon notice of the alleged Sexual Misconduct, 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 in light of 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.

B. Complaint Dismissal

FVSU may dismiss complaints on the following grounds:

1. The alleged conduct, even if proved, would not constitute sexual misconduct;
2. The Complainant notifies the Title IX Coordinator in writing that he or she would like to

- withdraw the complaint;
3. The Respondent is no longer enrolled or employed by the university; or
 4. There are circumstances that prevent the university from gathering evidence sufficient to reach a determination regarding the complaint.

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

1. Procedural irregularity that affected the outcome of the matter;
2. 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
3. The Title IX Coordinator had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter

Procedure:

The appeal must be made in writing to the Vice President of Student Affairs (the “Vice President”) or his or her designee within three (3) 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) days from the date of notice to submit a written response in support of, or challenging, the outcome.

The Vice President or his or her designee shall conclude his or her review of the written appeal and written response within ten (10) 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 Vice President 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.

C. 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 such request(s) can be honored in a manner consistent with the institution’s obligations to promote a safe and nondiscriminatory environment. The institution should inform the Complainant that FVSU cannot guarantee confidentiality. Honoring a Complainant’s request for confidentiality shall not prevent FVSU from reporting information or statistical data as required by law, including the Clery Act.

D. Support Services

Once the Title IX Coordinator has received information regarding an allegation of Sexual Misconduct, 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. Support services include counseling, advocacy, housing assistance, academic support, disability services, health and mental services, and other services, available at the student's institution. Available support services are listed on FVSU's [Title IX website](#).

E. Interim Measures

Interim measures may be implemented at any point after FVSU becomes aware of an allegation of sexual misconduct. 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 Sexual Misconduct and retaliation.

F. 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.

If an emergency removal is issued, the terms of the removal take effect immediately when the Respondent is given notice. Any incident of removal of a Respondent shall be done with the assistance of Campus Safety and/or the Office of Student Counseling & Outreach Services. FVSU must give the Respondent the opportunity to be heard on whether the Respondent's presence on campus poses a danger. The Respondent may submit a challenge of the emergency removal to the Vice President. Within three business days of receiving a challenge FVSU will determine whether the emergency removal should continue.

G. Jurisdiction

FVSU shall take necessary and appropriate action to protect the safety and well-being of its community. Sexual misconduct allegedly committed is addressed by this Policy when the misconduct occurs on institution property, or at FVSU-sponsored or affiliated events, or off-campus, as defined by other Board or Regents or FVSU student conduct policies.

H. 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 at the party's own expense. The advisor may accompany the party to all meetings and may provide advice and counsel to their respective party throughout the Sexual Misconduct process, including providing questions, suggestions and guidance to the party, but may not actively participate in the process except as outlined in [BOR 6.7.4 \(D\)](#). All communication during the Sexual Misconduct process will be between FVSU and the party and not the advisor. With the party's permission, the advisor may be copied on all communications.

I. Informal Resolutions

Formal Complaints may be resolved informally, except in the instance of an allegation by a student against a member of the FVSU faculty or staff. 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:
 - a. Written agreement of the parties to initiate the informal resolution process;
 - b. Written notice that the parties may withdraw from the process at any time prior to the agreement of the terms of the resolution;
 - c. Written notice that the final resolution precludes any further institutional actions on the allegations
3. FVSU has agreed to engage in the informal resolution process.

The Complainant(s) and the Respondent(s) 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. However, matters resolved informally shall not be appealable.

J. Timeframe

Efforts will be made to complete the investigation and resolution within 120 business days. Temporary delays and limited extensions may be granted by FVSU 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.

VI. Responding to Reports of Sexual Harassment Pursuant to Title IX

The implementing of Title IX regulations requires special handling of complaints of sexual harassment, as defined in the regulations and listed below. The following section outlines the required specialized handling of these matters. Unless expressly mentioned in this section, other provisions of this Policy shall apply to all alleged Sexual Misconduct.

A. Definition of Sexual Harassment

Under Title IX, sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct;
- (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 university's education program or activity; or
- (3) "Sexual assault" as defined by the Clery Act and "dating violence," "domestic violence," and "stalking" as defined by the VAWA Amendments.

B. Jurisdiction of Title IX Sexual Harassment

Alleged misconduct is addressed by Title IX when the misconduct occurs against a person in the United States on FVSU property, or at FVSU-sponsored or affiliated events where the university 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 FVSU.

C. 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 university 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 university occurring within the United States at the time of the filing.

Formal Complaints can be made via:

- In writing by completing the [online form](#) or obtaining the form by requesting via email at titleIX@fvsu.edu
- Phone: 478-825-4284 or 478-662-6901
- Fax: 478-827-3100
- Mail-FVSU Office of Legal and Government Affairs 1005 State University Drive, Fort Valley, GA 31030
- In person: Office of Legal and Government Affairs, 1st Floor Huntington Hall or 1st Floor of Troup Building, Fort Valley, GA 31030
- [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: 1-877-516-3430

D. Complaint Dismissal

FVSU may dismiss formal complaints on the following grounds:

1. The Complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the complaint;
2. The Respondent is no longer enrolled or employed by the university; or
3. There are circumstances that prevent the university from gathering evidence sufficient to reach a determination regarding the complaint.

FVSU must dismiss formal complaint on the following grounds:

1. If the conduct alleged would not constitute sexual harassment as defined, even if proved;
2. Conduct did not occur in FVSU's education program or activity; or
3. Conduct did not occur against a person in the United States.

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

1. Procedural irregularity that affected the outcome of the matter;
2. 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
3. The Title IX Coordinator had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter

Procedure:

The appeal must be made in writing to the Vice President of Student Affairs (the "Vice President") or his or her designee within three (3) 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) days from the date of notice to submit a written response in support of, or challenging, the outcome.

The Vice President or his or her designee shall conclude his or her review of the written appeal and written response within ten (10) 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 Vice President 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 Sexual Misconduct process 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, the university will provide an advisor for the purpose of conducting cross-examination on behalf of the relevant party.

All communication during the Sexual Misconduct process will be between FVSU and the party and 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.

VII. Process for Investigating and Resolving Sexual Misconduct Reports and Sexual Harassment Reports Pursuant to Title IX

Throughout any investigation and resolution proceeding, a party shall receive written notice of the alleged Sexual Misconduct, shall be provided an opportunity to respond, and shall be allowed the right to remain silent or otherwise not participate in or during the investigation and resolution process without an adverse inference resulting. If a party chooses to remain silent or otherwise not participate in the investigation or resolution process, the investigation and resolution process may still proceed, and policy violations may result.

Until a final determination of responsibility, the Respondent is presumed to have not violated the Sexual Misconduct Policy. Prior to the finalization of the investigation report, timely and equal access to information directly related to the allegations that has been gathered during the investigation and may be used at the hearing will be provided to the Complainant, the Respondent, and a party's advisor (where applicable).

Formal judicial rules of evidence do not apply to the investigation process. Additionally, the standard of review throughout the Sexual Misconduct process is a preponderance of the evidence.

A. Investigation Procedure

1. The Title IX Investigator 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 interim measures, and other rights under applicable institutional policies. For the purposes of this provision sufficient details include the identities of the parties involved if known, the conduct allegedly constituting Sexual Misconduct, 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. Notice should be provided via institution email to the party's institution email.

2. Upon receipt of written notice, the parties shall have at least three (3) business days to respond in writing. In that response, the Respondent shall have the right to admit or deny the allegations, and to set forth a defense with facts, witnesses, and supporting materials. A Complainant shall have the right to respond to and supplement the notice. Throughout the Sexual Misconduct process the Complainant and the Respondent shall have the right to present witnesses and other inculpatory and exculpatory evidence. If the Respondent admits responsibility, the process may proceed to the sanctioning phase or may be informally resolved, if appropriate.
3. 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.
4. 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.
5. 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 relevant 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.
6. The Complainant and the Respondent shall have at least ten (10) calendar 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.
7. The final investigation report should be provided to the Complainant, the Respondent, and a party's advisor, if applicable, at least ten (10) calendar days prior to the Hearing. The final investigation report should also be provided to all Hearing Panel members for consideration during the adjudication process.
 - a. If the final investigation report includes a dismissal of the formal complaint or any allegations, both parties have the right to appeal pursuant to the procedure listed in section VI(D) of this policy.

B. Resolution/Hearing

The Respondent and the Complainant, 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. Where a matter is not resolved through informal resolution a hearing shall be set. All Sexual Misconduct cases shall be heard by a panel of faculty and/or staff. All institutional participants in the Sexual Misconduct resolution process shall receive appropriate annual training as directed by the System Director or Coordinator and required by the Clery Act and Title IX.

In no case shall a hearing to resolve a Sexual Misconduct 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 directly related 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 shall 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 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 shall be provided to the Complainant and the Respondent at least 10 calendar 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 FVSU determines that a party or witness is unable to be present in person due to extenuating circumstances, FVSU may establish special procedures to permit that individual to provide testimony from a separate location. In doing so, FVSU 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 FVSU 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. FVSU 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.

The institution 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 seven years.

Additionally, the following standard will apply to Title IX and Non-title IX Sexual Misconduct Hearings respectively.

- **Title IX Hearings**

1. 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.

2. The parties shall have the right to present witnesses and evidence at the hearing.

3. 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/Chair of the Hearing 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 shall err on the side of permitting all the raised questions and must document the reason for not permitting any particular questions to be raised.

4. 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.

5. 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.

6. Formal judicial rules of evidence do not apply to the resolution process and the standard of evidence shall be a preponderance of the evidence.

7. 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.

- **Non-Title IX Sexual Misconduct Hearings**

1. 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.

2. The parties shall have the right to confront any witnesses, including the other party, by submitting written questions to the Hearing Officer 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.

3. 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.

4. 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.

5. Formal judicial rules of evidence do not apply to the resolution process and the standard of evidence shall be a preponderance of the evidence.

6. 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.

VIII. Possible Sanctions for Sexual Misconduct and Sexual Harassment under Title IX

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 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 broad range of sanctions includes: expulsion; suspension for an identified time frame or until satisfaction of certain conditions or both; temporary or permanent separation of the parties (e.g., change in classes, reassignment of residence, no contact orders, limiting geography of where parties can go on campus) with additional sanctions for violating no-contact orders; required participation in sensitivity training/awareness education programs; required participation in alcohol and other drug awareness and abuse prevention programs; counseling or mentoring; volunteering/community service; loss of institutional privileges; delays in obtaining administrative services and benefits from the institution (e.g., holding transcripts, delaying registration, graduation, diplomas); additional academic requirements relating to scholarly work or research; financial restitution; or any other discretionary sanctions directly related to the violation or conduct.

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.

See FVSU Student Handbook for additional information regarding sanctions.

IX. 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. The Respondent and the Complainant shall have the right to appeal the outcome on any of the following grounds:

1. 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;
2. 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
3. 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. Students who have accepted an Informal Resolution are not eligible for appeal. A Respondent or Complainant will have five (5) 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) 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:

1. Affirm the original finding and sanction;
2. Affirm the original finding but issue a new sanction of greater or lesser severity;
3. Remand the case back to the decision-maker to correct a procedural or factual defect; or
4. 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 institution. 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 [Board of Regents Policy 6.26](#). Appeals received after the designated deadlines above will not be considered unless FVSU 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.

X. 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 Vice President of Student Affairs 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 Vice President will determine within in five (5) days whether to sustain or deny the challenge and, if sustained, the replacement to be appointed.

XI. Related Resources and Polices

University System of Georgia-Board of Regents Policies:

[Section 4.6.5, Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings](#)

[Section 6.7, Sexual Misconduct Policy](#)

[Federal Register- Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#)

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 USC §1092(f), et. Seq.; 34 CFR §668.46

FVSU Student Handbook

XII. Responsible Party

Questions regarding this policy should be directed to:

Job title: Title IX Coordinator

Department: Office of Legal and Government Affairs

Phone: 478-825-4284

Email: titleix@fvsu.edu