

**FLORIDA COLLEGE SEXUAL HARASSMENT, DISCRIMINATION, AND MISCONDUCT POLICY  
AUG. 4, 2020**

**INTRODUCTION**

Every Florida College staff member, faculty member, and student has the right to work and study in an environment free from discrimination and harassment and should be treated with dignity and respect. The College prohibits discrimination and harassment against applicants, students, faculty or staff based on race, color, creed, national origin, sex, age, religion, disability, or any other classification protected by local state or federal law, so long as that person meets the College's admissions criteria (in the case of an applicant or student) and is willing to abide by the College's standard of conduct.

The College's policy against discrimination and harassment (the "Policy") incorporates protections afforded by Title IX of the *Educational Amendments of 1972*, which prohibits discrimination in educational programs and activities based on sex. The College may, under federal guidelines, discriminate regarding religion in its educational program, activities, and/or employment in accordance with specific religious tenets held by Florida College and its controlling body. Any individual whose conduct violates the Policy will be subject to disciplinary action up to and including termination for faculty and staff and suspension for students.

**JURISDICTION**

This Policy applies to conduct of any member of the Florida College community that occurs within any education program or activity – defined as locations, events, or circumstances – over which Florida College exercises substantial control over both the respondent and the context in which the sexual harassment occurs, within the United States. This Policy includes all of Florida College's educational programs or activities whether such occur on-campus or off campus. Florida College may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction (ex. outside the United States) in any manner the school chooses, including providing supportive measures or pursuing discipline.

The Policy includes all employees, part-time and full time; full time and adjunct faculty, volunteers, interns or student workers, temporary staff, and all students. A student is any person who is admitted and enrolled at Florida College for any academic period (on campus, online, dual enrolled). The Policy also includes any contractor, vendor, visitor, guest or other third parties within the College's control.

### **TITLE IX COORDINATOR**

The Title IX Coordinator oversees compliance with all aspects of Title IX. The Coordinator reports to the Academic Dean. Questions about this Policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to sexual discrimination or harassment may do so by at any time by reporting the concern to the Title IX Coordinator or by any other means that results in the Title IX Coordinator receiving the report. Reports may be submitted via telephone, email, written note, or face to face.

Todd Chandler  
Academic Advising Office, Chatlos Building  
119 N. Glen Arven Ave. Temple Terrace, FL 33617  
813-988-5131 x311  
[Chandlert@floridacollege.edu](mailto:Chandlert@floridacollege.edu)

In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the Academic Dean, Dr. John Weaver.

### **REPORTING**

Florida Colleges provides a variety of ways to report instances of alleged sexual harassment or discrimination. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report

All faculty, administrators, and dorm supervisors are considered officials with authority (OWA) and are required to report any actual or suspected discrimination or harassment to the Title IX Coordinator as soon as reasonably possible, whether or not that behavior is reported by the alleged victim. Employees must share all details of the reports they receive. The only exception to this reporting requirement are those employees designated below as a confidential reporting resource. Notice to the Title IX Coordinator or to an official with authority charges Florida College with "actual knowledge" and triggers the College's response obligations. Generally, climate surveys or classroom writing assignments do not provide notice that must be reported to the Coordinator by employees. Florida College is not responsible to respond to incidents that do not result in "actual knowledge".

Failure of a non-confidential employee, as described in this section, to report an incident of sexual harassment or discrimination of which they become aware, is a violation of this Policy and can be subject to disciplinary action for failure to comply with College policies.

### **Anonymous Reporting**

Anonymous reports may be made by submitting an anonymous message to the Title IX Coordinator. Note that these anonymous reports may prompt a need for the institution to investigate. However, depending on the information available about the incident or the individuals involved, the College's ability to respond to an anonymous report may be limited. Upon receiving an anonymous report the Title IX Coordinator will work with the Dean of Students to comply with all Clery Act reporting obligations.

### **Confidential Reporting**

Confidentiality means that the information shared by an individual cannot be revealed to any other individual except in specific defined circumstances. A confidential reporting resource is prohibited from breaking confidentiality unless 1) given express permission by the person who disclosed the information, 2) there is an imminent threat of harm to self or others, 3) the conduct involves the suspected abuse of a minor under the age of 18, or 4) as otherwise permitted by law or court order.

The Florida College confidential resource is:

Holly Cabina  
Academic Advising Office, Chatlos Building  
119 N. Glen Arven Ave. Temple Terrace, FL 33617  
[cabinah@floridacollege.edu](mailto:cabinah@floridacollege.edu)  
813-988-5131 x273

Off campus resources who often have privileged confidentiality include licensed professional counselors, rape crisis counselors, attorneys, and medical professionals. Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

Temple Terrace Police Department  
11250 North 56<sup>th</sup> Street  
Temple Terrace, FL 33617  
813-506-6500

Tampa Police Department  
813-231-6130

Hillsborough County Sheriff  
813-247-8200

Crisis Center of Tampa Bay, the certified rape crisis center for Hillsborough County  
8398 Sheldon Rd.

Tampa, FL 33613  
Call 211 or 813-264-9961

Office for Civil Rights (OCR)

<https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

### **Privacy**

If a complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the complainant may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the complainant and the community but will not otherwise pursue formal action.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy.

### **False reports**

Any complainant or third party who provides reports of information he or she knows to be false, misleading, or deceitful will be subject to appropriate disciplinary action.

### **Child Abuse**

All persons must report any suspected case of child abuse or neglect. Any person who knowingly fails to make a report of suspected child abuse commits a crime. The source of abuse does not need to be known. If a child is in immediate danger call 911. If a child is not in immediate danger call the Florida Department of Children and Families, 800-962-2873.

## **Retaliation**

Retaliation against any person for submitting a report, cooperating with an investigation or participating in a formal or informal resolution hereunder is strictly prohibited. An individual reporting Sexual Misconduct is entitled to protection from any form of Retaliation following a report, even if the report is not later substantiated. Similarly, individuals accused of Sexual Misconduct and those who participate in an investigation conducted under this Policy are entitled to protection from any form of Retaliation, except for disciplinary action in connection with a knowingly false report. Any individual who is found to have retaliated against a person in violation of this Policy may face corrective action up to and including dismissal for students and termination for employees. Complaints of Retaliation should be filed immediately with the Title IX Coordinator.

## **Amnesty**

The College encourages the reporting of any and all alleged Sexual Misconduct. Victims of Sexual Misconduct might be hesitant to report Sexual Misconduct to College officials if they fear that they (or their friends) may be charged with a violation of another College policy, such as the Alcohol and Drug Policy. Similarly, bystanders are sometimes hesitant to offer assistance to others for fear that they may get in trouble. To encourage reporting of Sexual Misconduct, the College will provide Complainants, as well as bystanders who cooperate with an investigation under this Policy or who provide help to victims or likely victims of Sexual Misconduct, with immunity from being charged with violations of any other College policy in connection with conduct related to an alleged violation of this Policy. While violations of other policies cannot be completely overlooked, the College may provide referrals to counseling or may require educational assistance or other remedies in such cases. Although the College will provide individual bystanders with such immunity, student organizations may be subject to disciplinary action under other College policies in connection with any conduct related to an alleged violation of this Policy, if deemed appropriate or necessary for the safety and well-being of the College community.

## **DEFINITIONS**

**Coercion:** unreasonable pressure for sexual activity. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail.

**Complainant:** Any individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Consent:** “Consent” means intelligent, knowing, and voluntary words or actions that give specific permission, and does not include coerced submission. Consent must be active, not passive; silence in and of itself cannot be interpreted as consent. “Consent” shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender. Consent cannot be obtained through the use of force or coercion or by taking advantage of an individual’s inability to give consent due to incapacitation or youth.

**Decision maker:** the hearing officer and/or appeals officer of a formal resolution process.

**Force:** the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Do this or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).

- NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

**Formal complaint:** a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting the College investigate the allegation.

**Incapacitation:** incapacitation can occur mentally or physically and is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent. The question of what the respondent should have known is objectively based on what a reasonable person exercising good judgment would have known about the condition of the complainant.

**Non-consensual sexual contact:** any intentional sexual touching, however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

**Non-consensual sexual intercourse:** any sexual intercourse however slight, with any object, by a person upon another person, that is without consent and/or by force. Intercourse includes

vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

**Respondent:** Any individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Sexual assault:** any sexual act against another person, forcibly and/or against that person's will; or not forcibly when that person is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity, or because of his/her youth. There are four types of sexual assault: rape, fondling, incest, and statutory rape.

**Sexual exploitation:** Occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include but are not limited to: invasion of sexual privacy; engaging in voyeurism; knowingly exposing someone to or transmitting an STI, STD or HIV to another person; and sexually-based stalking and/or bullying.

**Sexual harassment:** includes any sexual or sex-based written, verbal, online, and/or physical conduct. It may take the form of any of three types of misconduct on the basis of sex.

- 1) Any instance of *quid pro quo* by which an employee conditions education benefits on participation in unwelcome sexual conduct. This may be explicit or implicit.
- 2) Any unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's educational program or activity. Such conduct creates a hostile environment.
- 3) Any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

**Sexual misconduct:** includes but is not limited to sexual harassment, non-consensual sexual contact (or attempts to commit the same), non-consensual sexual intercourse (or attempts to commit the same), and sexual exploitation.

**Stalking:** Stalking occurs when a person engages in a course of conduct toward another person under circumstances that would cause a reasonable person to fear bodily injury or experience substantial emotional distress.

Course of conduct means two or more acts including but not limited to unwelcome acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish. Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used

**Student:** any person who is admitted and enrolled at Florida College for any academic period (on campus, online, dual enrolled).

**Supportive measures:** individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

#### **SEXUAL VIOLENCE RISK REDUCTION TIPS**

Risk reduction tips can sometimes take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with recognition that these may help you to reduce your risk of experiencing a sexual violence act.

- Tell a sexual aggressor "NO" clearly and firmly. (However, note the comments on consent above – the absence of a "NO" does not imply consent.)
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Realize that the use of drugs or alcohol will affect your judgment and make you more vulnerable to sexual harassment. Importantly, use of alcohol or other drugs by any person will never function to excuse any behavior that violates this Policy.

#### **OTHER MISCONDUCT OFFENSES (WILL FALL UNDER TITLE IX WHEN SEX BASED)**

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Florida College community, when related to the admission,

initiation, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);

5. Bullying, defined as
  - a. Repeated and/or severe
  - b. Aggressive behavior
  - c. Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
  - d. That is not speech or conduct otherwise protected by the 1<sup>st</sup> Amendment.
6. Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other;
7. Stalking
8. Any other College policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex.

### **SANCTIONS**

The following sanctions may be imposed upon any member of the College community found to have violated the Sexual Harassment, Discrimination and Misconduct Policy. The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

#### **Student Sanctions**

- Warning
- Probation
- Suspension
- Withholding Diploma
- Revocation of Degree
- Transcript Notation
- Organizational Sanctions
- Other Actions

#### **Employee Sanctions**

- Warning – Written or Verbal
- Performance Improvement Plan
- Required Counseling, training, or education
- Demotion
- Loss of Annual Pay Increase
- Suspension without Pay
- Suspension with Pay

- Revocation of Tenure
- Termination

The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

#### **FEDERAL TIMELY WARNING REPORTING OBLIGATIONS**

Victims of sexual misconduct should also be aware that College administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The College will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

#### **ADDITIONAL POLICY PROVISIONS**

- a. Attempted violations: In most circumstances, the College will treat attempts to commit any of the violations listed in the Policy as if those attempts had been completed.
- b. Parental Notification: The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about individual conduct reports pursuant to the Family Educational Rights and Privacy Act.

#### **RESOLUTION OF ALLEGED VIOLATIONS**

##### **Initial assessment**

Florida College must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in light of the known circumstances.

The Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures,

inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. At the time the report is made the complainant need not decide whether to file a formal, written complaint. To the extent possible, the College will respect an individual's autonomy in making this decision.

The College must follow the grievance process of this Policy before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. In addition, the college must not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, as a way of responding in a non-deliberately indifferent manner.

Supportive measures may include, but are not limited to: referral to counseling or health services, altering the housing situation of the respondent or complainant, altering work arrangements for employees, implementing contact limitations between the parties, offering adjustments to academic course schedules or deadlines, or other measures that can fit the goal of this Policy.

If the allegations in a formal complaint do not meet the definition of sexual harassment or did not occur in the school's education program or activity against a person in the United States, the College must dismiss such allegations for purposes of Title IX but may still address the allegations in any manner the school deems appropriate under the school's own code of conduct.

### **Informal Resolution (Optional)**

Before pursuing the Formal Resolution Process, every reasonable effort should be made to constructively resolve conflict. The person impacted should keep a written log that can aid in later investigation and resolution. Whenever possible and safe, the problematic behavior or misconduct should first be discussed by the impacted person and the person engaged in that behavior. The Respondent may not realize that his or her conduct is offensive or unwelcome. Many disputes can be resolved quickly and effectively with such direct communication.

The Title IX Coordinator will facilitate such conversations, upon request, and monitor them for safety. The College will never require an impacted party to contact the person involved or that person's supervisor if doing so is impracticable, or if the impacted party believes that the conduct cannot be effectively addressed through informal means. If informal efforts are unsuccessful, the formal resolution process may be initiated. Either party has the right to end the informal process and begin the formal process at any time prior to resolution.

The informal discussion can help with any or all of the following options:

- Assisting the Complainant to determine if the behavior violates the Policy, or to learn more about the Policy generally.
- Meeting with the individual whose behavior is offensive or unwelcome, discussing the situation, and making it clear that the behavior is offensive or unwelcome and should cease.
- Contacting the supervisor of the person whose behavior is offensive or unwelcome and requesting assistance to stop the behavior.

Based on the Informal Discussion, the Title IX Coordinator will determine what additional action, if any, is necessary. The Informal Discussion process will last as long as the Complainant deems it desirable to continue to meet with College officials. If not satisfied with the resolution from the Informal Discussion, the Complainant may proceed to the Formal Complaint process described below.

The College may not offer an informal resolution procedure to resolve allegations that an employee sexually harassed a student. The College may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints.

### **Formal Resolution (Optional)**

At the time of filing a formal complaint a complainant must be participating or attempting to participate in the education program or activity of the College. A formal complaint may be filed with the Title IX Coordinator person, by phone, via email or in writing. The phrase “document filed by a complainant” means a document or electronic submission that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party during a grievance process, and must comply with requirements for all Title IX personnel to be free from conflicts and bias. There is no time limit or statute of limitations on a complainant’s decision to file a formal complaint.

### **Investigation**

The Title IX Coordinator will oversee the investigation. Investigations will be completed expeditiously, but may take longer depending on their nature or complexity.

The College’s resolution will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been

dismissed or reduced. However, the College may undertake a short delay of no more than two weeks in its investigation to comply with a law enforcement request for cooperation (e.g.: to allow for criminal evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated.

All investigations will be thorough, reliable and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary. The College cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party's voluntary, written consent to do so .

The investigator will take the following steps (not necessarily in order):

- Inform the complainant and respondent of the alleged policy violation and initiation of a formal investigation.
- In coordination with campus partners, initiate any necessary remedial actions;
- Determine the identity and contact information of the complainant;
- Identify the exact policies allegedly violated;
- Conduct an immediate initial inquiry to determine if there is reasonable cause to charge the respondent, and what policy violations should be alleged as part of the report;
  - If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action;
- Meet with the complainant to finalize their statement and prepare the notice of charges on the basis of the initial inquiry;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the respondent;
- Provide regular updates to both the complainant and respondent, as appropriate, throughout the investigation;
- Send a preliminary report to both parties and their advisors, if any. Each party will have a minimum of 10 days to review this report and provide a written response, if they choose, which the investigator will consider prior to the completion of the investigative report.

- Send the investigative report to both parties and their advisors, if any. Each party will have a minimum of 10 days to review this report and provide a written response prior to the hearing.

### **Advisors**

All parties are entitled to an advisor of their choosing to guide and accompany them throughout the campus resolution process. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is both eligible and available. People who will be called as witnesses may not serve as advisors.

The parties are entitled to be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake, interviews, hearings and appeals. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The College cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the College is not obligated to provide one.

All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may not present on behalf of their advisee in a meeting, interview or hearing and should request or wait for a break in the proceeding if they wish to interact with campus officials. Advisors may confer quietly with their advisees as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors will typically be given a timely opportunity to meet in advance of any interview or hearing with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify any questions they may have, and allows the College an opportunity to clarify the role the advisor is expected to take.

Advisors must refrain from interference with the College investigation and resolution. Any advisor who steps out of their role in any meeting under the campus resolution process will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will be rescheduled. Subsequently, the Title IX Coordinator or Hearing Officer will determine whether the advisor may be reinstated or may be replaced by a different advisor.

The College expects that the parties will wish the College to share documentation related to the allegations with their advisors. The College provides a consent form that authorizes such sharing. The parties must complete this form before the College is able to share records with an

advisor. The parties are not otherwise restricted from discussing and sharing information relating to allegations with others who may support them or assist them in preparing and presenting. Advisors are expected to maintain the privacy of the records shared with them by the College. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.

The College expects an advisor to adjust their schedule to allow them to attend College meetings when scheduled. The College does not typically change scheduled meetings to accommodate an advisor's inability to attend. The College will, however attempt to make provisions to allow an advisor who cannot attend in person to attend a meeting remotely.

A party may elect to change advisors during the process, and is not locked into using the same advisor throughout.

The parties must advise the investigator of the identity of their advisor at least two (2) business days before the date of their first meeting with investigators. The parties must provide subsequent timely notice to the investigators if they change advisors at any time. No audio or video recording of any kind other than as required by institutional procedure is permitted during meetings with campus officials.

### **Hearing**

After submission of the investigative report, the parties may opt for an informal resolution. If no informal resolution occurs, the process will move into a formal live hearing with cross-examination. The hearing officer, or decision maker, is the Dean of Students for Florida College and may not be the Title IX Coordinator or other investigator, though the Title IX Coordinator may need to coordinate with decision makers. The hearing officer may act alone or may convene a panel of up to 4 other people.

At the hearing, each party's advisor is permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination must be conducted directly, orally, and in real time by the advisors of choice and never by a party personally.

At the request of either party, the College must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party answering questions. Only relevant cross-

examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the College must provide without fee or charge to that party, an advisor of the school's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Schools must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

To reach a final determination regarding responsibility, the decision maker will apply the preponderance of evidence standard (whether a policy violation is more likely than not). The decision maker will provide, as expeditiously as is reasonable, a final written report which will include: the findings regarding the alleged violation(s); a description of the actions taken regarding sanctions, discipline, supportive measures, and remedies and the rationale for each; and the complainant's and respondent's right to appeal. The Title IX Coordinator will deliver a copy of the final determination to the complainant and respondent, although the content may be modified subject to the limitations of FERPA and other applicable privacy laws.

The written decision will be provided in person and/or mailed to the local mailing address of the respective party as indicated in College records and emailed to the parties' College-issued email accounts. If there is no local address on file, mail will be sent to the parties' permanent address. Once received in person, mailed or emailed, the notice of decision will be deemed presumptively delivered

### **Appeals**

Either party may appeal from a determination regarding responsibility, and from the College's dismissal of a formal complaint or any allegations therein. All sanctions imposed by the original hearing body will be in effect during the appeal. Graduation, internships/externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

The decision of the decision maker may be appealed by petitioning the Title IX Coordinator. Any party who files an appeal request must do so in writing to the within 3 business days of receiving the written decision, for a review of the decision or the sanctions imposed. The Title IX Coordinator will share the appeal with the appeals officer, Academic Dean Dr. John Weaver.

The appeals officer will share the appeal request with the other party, who may also wish to file a response and/or bring their own appeal on separate grounds. Based on the written requests/responses or on interviews as necessary, the appeals officer will send a letter of outcome for the appeal to all parties. The appeals officer can take one of three possible actions. The appeal officer 1) may dismiss an appeal request as untimely or ineligible, 2) may grant an appeal and remand the finding and/or sanction for further investigation or reconsideration at the hearing level, or 3) may modify a sanction.

The original finding and sanction will stand if the appeal request is not timely or substantively eligible, and that decision is final. The party requesting appeal must show clear error as the original finding and/or a compelling justification to modify a sanction, as both finding and sanction are presumed to have been decided reasonably and appropriately during the original hearing.

The ONLY grounds for appeal are as follows:

1. A procedural error occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.);
2. To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included;
3. The sanctions imposed fall outside the range of sanctions designated for this offense and the cumulative conduct history of the responding party.

If remanded to re-open the investigation, the results of a revised investigation can be subsequently forwarded for reconsideration at the hearing level, at the discretion of the Title IX Coordinator. If the appeal remands to the hearing body for review, the reconsideration of the hearing body is not appealable.

In rare cases where a procedural error cannot be cured by the original hearing officers (as in cases of bias), the appeals officer may order a new hearing with a new body of hearing officers. The results of a reconvened hearing cannot be appealed. The results of a new hearing can be appealed, once, on any of the three applicable grounds for appeals.

The procedures governing the hearing of appeals include the following:

- All parties should be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- Every opportunity to return the appeal to the original hearing body for reconsideration (remand) should be pursued;
- Appeals are not intended to be full re-hearings of the allegation (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal;
- Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so;
- An appeal is not an opportunity for appeals officers to substitute their judgment for that of the original hearing body merely because they disagree with its finding and/or sanctions.
- The appeals officer will typically render a written decision on the appeal to all parties within three (3) business days from hearing of the appeal. The appeals officer's decision to deny an appeal request is final.

#### **ADDITIONAL NOTES**

Florida College students are responsible for knowing the information, policies and procedures outlined in this document.

Florida College reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. Students are encouraged to check online for the updated versions of all policies and procedures. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form. Reports of misconduct made after the fact may raise issues of policy and procedure application, if policies and procedures have changed. Unless the parties accept current policies, all reports are governed by the policies that were in place at the time the alleged misconduct occurred. Procedures applicable are those that are in place at the time of resolution.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

### **Notification of Outcomes**

The outcome of a campus hearing is part of the education record of the respondent party, and is protected from release under a federal law, FERPA. However, the College observes the legal exceptions as follows:

- Parties to non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking, and intimate partner violence incidents have an absolute right to be informed of the outcome, essential findings/rationale, and any sanctions that may result, in writing, without condition or limitation, and without substantial delay between notifications to each party.
- The College may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a College policy that is a “crime of violence,” including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property, intimate partner violence, stalking and kidnapping/abduction. In doing so, the College will not release any information that could lead to the identification of the reporting party.

### **Alternative Testimony Options**

For sexual misconduct reports, and other reports of a sensitive nature, whether the alleged victim is serving as the complainant or as a witness, alternative testimony options will be given, such as placing a privacy screen in the hearing room, or allowing the alleged victim to testify outside the physical presence of the respondent. While these options are intended to help make the complainant more comfortable, they are not intended to work to the disadvantage of the respondent.

### **Past Sexual History/Character**

The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or hearing unless such information is determined to be highly relevant by the Title IX Coordinator. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be reviewed in advance of the hearing by the hearing officer. While previous conduct violations by the respondent are not generally admissible as information about the present allegation, the Title IX Coordinator may supply previous reports of good faith allegations and/or findings to the hearing officer and appeals officer to consider as evidence of pattern and/or predatory conduct.

### **Witness participation in an investigation**

Witnesses are expected to cooperate with and participate in the College's investigation. Any witness who declines to participate in or cooperate with an investigation will not be permitted to offer evidence or testimony later in a hearing. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely if they cannot be interviewed in person. Parties who elect not to participate in the investigation will have the opportunity to offer evidence during the hearing and/or appeal stages of the process, though failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence. Any witness scheduled to participate in a hearing must have been interviewed first by investigators (or have proffered a written statement), unless all parties consent to the participation of that witness in the hearing.

### **Conflicts of Interest and Bias**

Florida College is committed to ensuring that its resolution processes are free from actual or perceived bias or conflicts of interest that would materially impact the outcome. Any party who feels that there is actual or perceived bias or conflict of interest that would materially impact the outcome may submit a written petition for the person's removal from the process. The petition should include specifics as to the actual or perceived bias or conflict of interest, as why the petitioner believes the bias or conflict could materially impact the outcome. Petitions should be submitted promptly to the Title IX Coordinator. Such petitions may also be made to the Academic Dean in the event that the potential conflict or bias involves the Title IX Coordinator.

### **Recordkeeping**

Records of all allegations, investigations, and resolutions will be kept by the Title IX Coordinator for seven (7) years.