



**FLORIDA INTERNATIONAL UNIVERSITY
BOARD OF TRUSTEES
ACADEMIC POLICY AND STUDENT AFFAIRS COMMITTEE**

Zoom Meeting
Public access via <http://webcast.fiu.edu>

**Wednesday, October 28, 2020
10:00 A.M.**

*or
Upon Adjournment of Previous Meeting*

Chair: Natasha Lowell

Vice Chair: Donna J. Hrinak

Members: Cesar L. Alvarez, Jose J. Armas – *Health Affairs liaison*, Dean C. Colson, Joerg Reinhold,
Marc D. Sarnoff, Roger Tovar – *Athletics liaison*, Alexandra Valdes

AGENDA

- | | |
|---|--------------------|
| 1. Call to Order and Chair's Remarks | Natasha Lowell |
| 2. Action Items | |
| AP1. Proposed Amendment to Regulation FIU-105 Sexual Misconduct (Title IX) | Carlos B. Castillo |
| AP2. Proposed Amendment to Regulation FIU-2501 Student Conduct and Honor Code | Elizabeth M. Bejar |
| 3. New Business <i>(If Any)</i> | Natasha Lowell |
| 4. Concluding Remarks and Adjournment | Natasha Lowell |

The next Academic Policy and Student Affairs Committee Meeting is scheduled for Thursday, December 3, 2020

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Academic Policy and Student Affairs

Time: October 28, 2020 10:00 AM - 10:30 AM EDT

Location: Zoom

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2.	Action Items		
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4.	Concluding Remarks and Adjournment	Natasha Lowell	

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**THE FLORIDA INTERNATIONAL UNIVERSITY
BOARD OF TRUSTEES**

Academic Policy and Student Affairs Committee

October 28, 2020

Subject: Proposed Amendment to Regulation FIU-105 Sexual Misconduct (Title IX)

Proposed Committee Action:

Recommend to the Florida International University Board of Trustees the approval of the proposed amendment to Regulation FIU-105 Sexual Misconduct (Title IX) including the renaming to Regulation FIU-105 Sexual Harassment (Title IX) and Sexual Misconduct, and delegate authority to the University President to approve any subsequent non-material amendments based on comments to the Regulation received from the Florida Board of Governors or as a result of the regulation-making process.

Background information:

Florida Board of Governors Regulation 1.001(5)(a), University Board of Trustees Powers and Duties, provides, in relevant part, that each boards of trustees shall provide for the establishment of "the personnel program for all the employees of the university, including ... standards for performance and conduct,... disciplinary actions, complaints, appeals and grievance procedures, and separation and termination from employment."

Florida Board of Governors Regulation 1.001(3)(j)(l) provides, in relevant part, that each board of trustees is authorized to promulgate university regulations in accordance with the Regulation Development Procedure adopted by the Board of Governors; and each board of trustees shall be responsible for campus safety and emergency preparedness, to include safety and security measures for university personnel, students and campus visitors.

Florida Board of Governors Regulation 6.0105(8), Student Conduct and Discipline, in relevant part, requires university Boards of Trustees to incorporate minimum standards into any process that evaluates whether a student is responsible for sexual misconduct, gender-based discrimination, sexual harassment, sexual assault, dating violence, domestic violence, or stalking.

This Regulation was approved by the FIU Board of Trustees on August 12, 2020, on an emergency basis to satisfy a U.S. Department of Education Office of Civil Rights deadline. The Board of Governors requires the Board to approve this Regulation within 90 days after such action pursuant to the normal Regulation Development Procedure.

Supporting Documentation: Proposed Amendment to Regulation FIU-105 Sexual Misconduct (Title IX)
Executive Summary of Revisions to Regulation FIU-105 Sexual Misconduct (Title IX)

Facilitator/Presenter: Carlos B. Castillo

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THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES

Proposed Changes to FIU-Regulation 105 Sexual Harassment (Title IX) and Sexual Misconduct

October 28, 2020

Executive Summary

On May 6, 2020, the United States Department of Education Office for Civil Rights (OCR) issued regulations on Title IX of the Education Amendments of 1972 (Title IX) which prohibits discrimination based on sex. In response substantive revisions, summarized in the chart below, were made to ensure the University's compliance with the new regulations. Additional revisions, for the Board's approval, are:

- Updating the name and contact information for the Interim Title IX Coordinator;
- Addition of the Presidential Review Process that permits the President to review and make a determination on Sexual Misconduct and Sexual Harassment cases to meet the goals of this Regulation. This process mirrors language currently in Regulation 2501 Student Conduct and Honor Code;
- Including a definition of Violation of Supportive Measures(s); and
- Corrections of scrivener errors.

A summary of the changes approved by the Board on August 12, 2020, is as follows:

Item	Proposed Changes
Policy Statement	<ul style="list-style-type: none">- In accordance with the new regulations, the University has updated the Title IX processes and requirements under Sexual Harassment. Allegations of Sexual Misconduct will utilize the same Grievance Process.- Sexual Harassment – occurs in the University's education programs or activities within the United States. Such conduct must meet the severe, pervasive, and objectively offensive standard, as established by the Supreme Court. Furthermore, instances of Sexual Assault (as defined in the Clery Act), Dating Violence, Domestic Violence, and Stalking (as defined in the Violence Against Women Act (VAWA)) also fall under this classification.- Sexual Misconduct – includes instances of sex discrimination and sexual harassment that may occur outside of the United States that must meet the severe, pervasive, or objectively offensive standard. Including this distinct definition in this

	<p>Regulation allows the University to address conduct that does not meet the standards under the Title IX regulations but that the University has historically deemed as behavior that is against the values of the University.</p>
Title IX Coordinator	<ul style="list-style-type: none"> - The Title IX Coordinator is responsible for implementing and administering any supportive measures. - The Title IX Coordinator must meet with the Complainant to explain the grievance process, availability of supportive measures, and to determine if the allegations would constitute a violation of FIU Regulation-105 if proven to be true. The Title IX Coordinator must also meet with the Respondent to discuss the grievance process and supportive measures available to them. - Investigators from the Office of Inclusion, Diversity, Equity, & Access (IDEA) will be assigned to investigate such complaints that may constitute a violation of FIU Regulation-105.
Deputy Title IX Coordinators	<ul style="list-style-type: none"> - Deputy Title IX Coordinators are currently appointed in the Office of Inclusion, Diversity, Equity, & Access (IDEA), Office of Student Conduct and Academic Integrity (SCAI), and the Athletics Department. - A new Deputy Title IX Coordinator has been identified – the Director of Employee and Labor Relations (ELR). This new Deputy Title IX Coordinator will oversee hearings and administer sanctions for matters involving faculty, staff, and visitor respondents.
Jurisdiction	<ul style="list-style-type: none"> - The University has jurisdiction for matters of Sexual Harassment, in accordance with Title IX, if it is a University educational program or activity, including locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University. - The University has jurisdiction for matters of Sexual Misconduct when the Respondent is a member of the University community.
Supportive Measures	<ul style="list-style-type: none"> - Supportive measures may be requested by the parties at any time regardless of whether any particular course of action is sought by the Complainant while avoiding punishing the Respondent prior to a determination that the Respondent is responsible for the violation. This ensures equitable treatment of both parties.

Advisors	<ul style="list-style-type: none"> - During the grievance process, the Complainant and Respondent may have an advisor of their choice accompany them to any related meeting or proceeding. An advisor may be, but is not required to be, an attorney, including faculty, staff, parent/guardian, attorney, friend, alumni, or any other person who is not a Witness in the process. - During a hearing held pursuant to this Regulation, an advisor will be provided by the University for cross-examination purposes only if the Complainant or Respondent does not already have an advisor.
Formal Complaints	<ul style="list-style-type: none"> - Formal complaints may be filed with the Title IX Coordinator or online (via conduct.fiu.edu or fiu.i-sight.com). - The University must dismiss a formal complaint of Sexual Harassment if: 1) it would not constitute Sexual Harassment if proved; 2) did not occur in the University's education program or activity; or 3) did not occur in the United States. This is in accordance with the standards set forward by the new regulations. - Although a formal complaint may be dismissed for Sexual Harassment purposes, the University may continue to review the allegations as Sexual Misconduct or other violation of the University's regulations and policies. - The University may dismiss a formal complaint of Sexual Harassment or Sexual Misconduct if: 1) the conduct would not constitute Sexual Misconduct even if proved; 2) upon completion of the investigation, the Title IX Coordinator concludes that there is not reasonable cause to believe that a violation of this Regulation occurred; 3) the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; 4) the Respondent is no longer enrolled or employed by the University; or 5) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. - In determining whether to dismiss a formal complaint, the University will evaluate whether a dismissal would be clearly unreasonable in light of the known circumstances.
Interim Suspension and Administrative Leave	<ul style="list-style-type: none"> - If a Respondent is removed from a University education program or activity, the University will provide the Respondent with written notice and an opportunity to challenge the removal within three (3) Business Days from the date of the notice of Interim Suspension or Administrative Leave. This is new protocol required by the new

	<p>regulations that ensures equitable treatment of the Respondent so that they are not wrongfully punished before a determination of responsibility is issued.</p>
Grievance Process	<ul style="list-style-type: none"> - Criminal Investigation: The University, in its sole discretion, may proceed with an investigation under this Regulation before, during, or after any law enforcement investigation or criminal proceedings. This clarifies that a criminal proceeding and a University proceeding are distinct, and may be pursued simultaneously. - Concurrent Processes: If a complaint that includes allegations that the Respondent engaged in behavior that violates University regulations, policies, and procedures (including the Student Conduct and Honor Code), but are not alleged violations of this Regulation, then those allegations may be investigated and/or separately addressed by Student Conduct and Academic Integrity (for students) or Employee and Labor Relations (for faculty or staff). This process may take place before, during, or after the investigation pursuant to this Regulation.
a) Investigation Process	<ul style="list-style-type: none"> - Once the Title IX Coordinator determines that a formal complaint may be a violation if proven true and if the University has jurisdiction over this matter, then the University will initiate an investigation of the allegations. - Notice of Allegations: A written Notice of Allegations will be provided to both parties, which references: this Regulation and other applicable regulations or policies; the allegations and sufficient details known at the time; a presumption that the Respondent is not responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the grievance process; provisions, regulations, or policies that prohibit knowingly making false statements or knowingly submitting false information during the grievance process; and, for the respondent, an appointment to meet with the Title IX Coordinator for an information session. The University will provide a notice of additional allegations if allegations arise that are not included in the original notice, related to the Complainant or Respondent. - The University intends to complete a Title IX investigation and reach a determination of responsibility within ninety (90) Business Days. - Trained investigators from the Office of Inclusion, Diversity, Equity, & Access (IDEA) will conduct investigations. In the event of a conflict or bias, the University will appoint an alternate individual so that the process is free of conflicts of interest and bias.

	<ul style="list-style-type: none"> - It is the investigators responsibility to gather information and evidence to review for the investigative report. Both parties may present evidence and identify witnesses, however the investigator has the discretion to determine the relevance of any evidence/witness presented. The investigator will not consider relevant any character witnesses. Both parties, and their advisor, have the opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint. This includes making such directly-related evidence available at any hearing, including for purposes of cross-examination. - Informal Resolution Process: At any time prior to reaching a determination of responsibility during the grievance process, an informal resolution may be pursued, provided that both parties give voluntary, informed written consent to attempt informal resolution. This option is not available when a Complainant is a student alleging that a University employee (Faculty or Staff) has engaged in Sexual Misconduct or Sexual Harassment. The University will provide the parties written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which, upon reaching an agreed resolution, it precludes the parties from resuming a formal complaint arising from the same allegations; provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. The Informal Resolution process must be completed within fifteen (15) Business Days of the parties agreeing to pursue such a process.
b) University Live Hearing	<ul style="list-style-type: none"> - Live hearings may be conducted with all parties physically present in the same geographic location or with any (or all) parties, witnesses, and other participants appearing virtually utilizing technology that enables participants to simultaneously see and hear each other. - The Deputy Title IX Coordinator for Students – Assistant Dean of Students – will coordinate and arrange the University Live Hearing for matters where the Respondent is a student. The Deputy Title IX Coordinator for Faculty and Staff – Director of Employee and Labor Relations – will do the same for matters where the Respondent is a faculty or staff member. - The University will create an audio or audiovisual recording, or transcript, of any live hearing. Live hearings will be closed to the public.

	<ul style="list-style-type: none"> - Hearing Body and Hearing Officer: the Hearing Body is responsible for determining responsibility upon the conclusion of a University Live Hearing. Trained University officials will make up the Hearing Body, which will be chaired by the Hearing Officer. The Hearing Officer is tasked with determining whether questions posed during the cross-examination period are relevant before they are answered. - The Hearing Officer will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including that challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor. - Written Determination of Responsibility: the University will provide a written determination regarding the Respondent's responsibility simultaneously to the Parties within fourteen (14) Business Days from the conclusion of the hearing.
c) Administration of Sanctions and/or Remedies	<ul style="list-style-type: none"> - Disciplinary Sanctions: Students or student organizations who are found to have violated this Regulation will be subject to disciplinary action as set forth in the Student Conduct and Honor Code, FIU Regulation 2501. Any sanctions will be proportionate to the severity of the violation and the student's cumulative conduct history. Faculty and staff who are found to have violated this Regulation will be subject to disciplinary action pursuant to applicable collective bargaining agreements or applicable personnel regulation, policies, or procedures. Third parties (including contractors and visitors) who are found to have violated this Regulation may be barred from the campus and/or conducting business with the University. - Remedies: Remedies are designed to restore or preserve the Complainant's equal access to the University's education program or activities. Remedies do not include damages or other financial awards, or other relief that would impose an undue hardship on the University. The Title IX Coordinator is responsible for the effective implementation of any remedies.
Appeals	<ul style="list-style-type: none"> - An appeal must be submitted in writing to the Senior Vice President for Academic and Student Affairs (if Respondent is a Student) or the Vice President of Human Resources (if Respondent is faculty or staff) within seven (7) Business Days following receipt of the Hearing Official or Hearing Body's written determination and identify the grounds and arguments for challenging the outcome. This is meant to ensure that the same person who reviews

	<p>the appeal is not the same person who issue the determination, in order to ensure equitable and impartial review of the appeal.</p> <ul style="list-style-type: none"> - Upon receipt of an appeal, the University will notify the other party in writing when an appeal is filed and provide them with seven (7) Business Days to submit a written statement in support of or challenging the outcome. - After both parties have had an opportunity to present their arguments challenging or supporting the outcome, the Appellate Officer will issue a written decision within fourteen (14) Business Days simultaneously to both parties with the result of the appeal and the rationale.
Obstruction and Retaliation	<ul style="list-style-type: none"> - Obstruction: Any act or behavior that impairs, interferes with, or obstructs the orderly grievance process of the University or any part thereof or the rights of one or more individual. This includes, but is not limited to: <ul style="list-style-type: none"> - Knowingly making false statements or knowingly submitting false information during the grievance process; or - Knowingly destroying potentially relevant evidence. - Charging an individual with Obstruction under this Regulation does not constitute Retaliation. Exercising any rights secured by the First Amendment does not constitute Retaliation.

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**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES FLORIDA
BOARD OF GOVERNORS**

NOTICE OF CHANGE TO PROPOSED AMENDMENT TO REGULATION

REGULATION TITLE: Sexual Misconduct (Title (IX))

REGULATION NO.: FIU-105

SUMMARY: On May 6, 2020, the United States Department of Education Office for Civil Rights (OCR) issued regulations on Title IX of the Education Amendments of 1972 (Title IX) which prohibits discrimination based on sex. In response substantive revisions, summarized in the chart below, were made to ensure the University's compliance with the new regulations. Additional revisions, for the Board's approval, are:

- Updating the name and contact information for the Interim Title IX Coordinator;
- Addition of the Presidential Review Process that permits the President to review and make a determination on Sexual Misconduct and Sexual Harassment cases to meet the goals of this Regulation. This process mirrors language currently in Regulation 2501 Student Conduct and Honor Code;
- Including a definition of Violation of Supportive Measurer(s); and
- Corrections of scrivener errors.

TEXT OF REGULATION: The full text of the Proposed Amendment to Regulation can be viewed below and on the website of The Florida International University Board of Trustees, <http://regulations.fiu.edu>. If you would like a copy of the proposed Regulation, please contact Eli Deville, Departmental Administrator, Office of the General Counsel, devillee@fiu.edu (305) 348-2103.

AUTHORITY: Board of Governors Regulation 1.001(5)(a).

NAME OF PERSON INITIATING PROPOSED REGULATION: Dr. Elizabeth Bejar, Senior Vice President for Academic & Student Affairs.

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED AMENDMENT TO REGULATION MUST SUBMIT COMMENTS IN WRITING TO THE CONTACT PERSON LISTED BELOW. ALL WRITTEN COMMENTS MUST BE RECEIVED BY THE CONTACT PERSON WITHIN 14 CALENDAR DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE.

THE CONTACT PERSON REGARDING THIS REGULATION IS:

Eli Deville, Departmental Administrator, Office of the General Counsel, Florida International University, 11200 SW 8th Street, PC 511, Miami, FL 33199
Email: devillee@fiu.edu | Phone: 305.348.2103 | Fax: 305.348.3272

DATE OF PUBLICATION: October 20, 2020

THE FULL TEXT OF THE PROPOSED REGULATION IS PROVIDED BELOW:

FIU-105 ~~Sexual Harassment (Title IX) and Sexual Misconduct (Title IX)~~

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

Responsible Office: ~~Equal Opportunity Programs and Diversity (EOPD)~~

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I. POLICY STATEMENT

Florida International University (the University) is committed to encouraging and sustaining a learning and living environment that is free from ~~harassment, violence, and prohibited~~ discrimination based on sex ~~including~~, gender, gender expression, gender identity, ~~and~~ sexual orientation. ~~Discrimination based on sex encompasses~~, Sexual Misconduct, ~~Sexual Harassment, Gender-Based Harassment, Domestic Violence, and Dating Partner Violence, and/or Stalking. The~~ University has developed this regulation applicable to the entire University Community (i.e., students, student organizations, faculty, staff, affiliated third parties, and visitors) ~~prohibiting discrimination based on sex~~
~~In that regard and consistent with This policy is in compliance with applicable legal requirements including Title IX of the Education Amendments of 1972 (Title IX), relevant provisions of the Violence against Women Reauthorization Act of 2013 (VAWA), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), along with all applicable implementing regulations, and other applicable federal and state laws.~~

~~The University has identified two areas that are under the purview of this Regulation: Sexual Harassment as defined by Title IX and Sexual Misconduct. Sexual Harassment applies to alleged harassment, violence, and/or prohibited discrimination that occurs in an University education program or activity in the United States. This refers to locations, events, or circumstances over which the University had substantial control over both the Respondent and the context in which such incidents occurred, and also includes buildings owned by or controlled by a student organization that is officially recognized by the University. Sexual Misconduct applies to alleged harassment, violence, and/or prohibited discrimination that occurs in or outside an University education program or activity regardless of location. SH~~

~~federal law addressing these areas (e.g., Title IX of the Education Amendments of 1972 and the Violence against Women Act (VAWA), that portion of the Title VII of the Civil Rights Act addressing sexual misconduct), the University has developed this regulation applicable to~~

~~members of the University Community (i.e., students, faculty, staff, affiliated third parties, and visitors). Nothing in this Regulation shall be construed as preventing the University President from taking any action which may be deemed necessary to meet the goals of this Regulation. The President may change the outcome and/or sanctions for any matter under the jurisdiction of this Regulation as outlined in Section XV.~~

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

~~The Regulation is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom or the First Amendment, would the Fifth and Fourteenth Amendments, or any other rights guaranteed by the U. S. Constitution.~~

~~The University emphasizes the importance of treating Complainants and Respondents equitably upon receipt of a Formal Complaint. There is a presumption the Respondent is Not Responsible for the alleged conduct until Final Agency Action. This is to discuss all relevant matters in the classroom, to explore all avenues of scholarship, research, and creative expression, to speak freely on all matters of university governance, and to speak, write, or act as a public citizen without institutional discipline or restraint.~~

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

II. — PURPOSE & INTENT

~~The University is committed to establishing and maintaining a safe learning, living, and working environment where healthy, respectful, and consensual conduct represents the campus cultural norm. This Regulation prohibits discrimination and harassment based on sex, gender, gender expression, gender identity, or sexual orientation, Sexual Misconduct, Domestic and Dating Partner Violence, and/or Stalking. It also prohibits Retaliation against an individual for making a report of conduct prohibited under this Regulation or for participating in an investigation of an alleged violation of this Regulation. It also defines prohibited relationships of a sexual or~~

~~intimate nature between individuals where one individual has power or authority over another. These prohibited forms of conduct undermine the character and purpose of the University and will not be tolerated.~~

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

III. TITLE IX COORDINATORS

The *Title IX Coordinator* is:

- knowledgeable and trained in University policies and procedures and relevant state and federal laws;
- ~~available to advise any individual, including a Complainant, the Reporting Party, the Respondent, or a third party about the University resources and those found within and outside of the University. Resources include, but are not limited to, health care options, counselling or support, and reporting;~~
- ~~available to provide assistance to any University employee regarding how to respond appropriately to a report of a possible violation of this Regulation; responsible for coordinating the effective implementation of Supportive Measures;~~
- ~~responsible for responding to concerns raised by the Deputy Title IX Coordinator(s), University Police, or Responsible Employees;~~
- ~~—~~
- responsible for ~~conducting and/or~~ overseeing investigations of alleged violations of this Regulation;
- responsible for ~~participating in~~ ensuring the effective implementation of this Regulation, including monitoring compliance with all procedural requirements, recordkeeping, and timeframes;
- responsible for overseeing training, prevention, ~~and~~ education efforts, and periodic reviews of climate and culture; and
- ~~responsible for maintaining all reports of possible violations of this Regulation and reviews such reports and complaints for systemic patterns that need to be addressed.~~

The University's Title IX Coordinator is:

~~Shirlyon McWhorter~~Courtney McHenry

Office of Inclusion, Diversity, Equity, ~~and~~ & Access (IDEA)

Office number: 305-348-2785

Email: ~~shirlyon.mewhorter@fiu.edu~~cmchenry@fiu.edu

Address: 11200 S.W. 8th Street, PC 321
Miami, FL 33199

• ~~—~~

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

- ~~Courtney McHenry, Assistant Director, Office of Inclusion, Diversity, Equity & Access (IDEA)~~
Office number: 305-348-2785 email: ~~idea@fiu.edu eopd@fiu.edu~~
- ~~Michelle R. Horvath, Deputy Title IX Coordinator and Assistant Dean of Students~~ Director, Office of Student Conduct and ~~Conflict Resolution~~ Academic Integrity
Office number: 305-348-3939 email: conduct@fiu.edu
- Julie Berg-McGraw, Sr. Associate Athletic Director, [Athletics Department](#)
Office number: 305-348-2352 email: julie.berg-mc_graw@fiu.edu
- Joann Cuesta-Gomez, Director, Office of Employee & Labor Relations
Office number: 305-348-41866 email: elr@fiu.edu

The Title IX Coordinator, Deputy Title IX Coordinators, investigators, Hearing Officer(s), and the Hearing Body are properly trained based on their roles. Training includes what constitutes Sexual Misconduct and Sexual Harassment, the scope of the University's education programs and activities, how this Regulation operates is implemented, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially including by avoiding pre-judgment of the facts at issue, conflicts of interest and bias, any technology to be used at a live hearing, issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, and relevance to create an investigative report that fairly summarizes relevant evidence.

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

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

Title IX Coordinator

FIU Office of University Compliance and Integrity	U.S. Depart. of Education Office for Civil Rights	Equal Opportunity Commission
(305) 348-2216	(800) 421-3481	(800) 669-4000
Email: compliance@fiu.edu		

~~U.S. Depart. of Education Equal Opportunity
Shirlyon McWhorter Office for Civil Rights Commission~~
305-348-2785 (800) 421-3481 (800) 669-4000
Email: ~~shirlyon.mcwhorter@fiu.edu~~ Email: ~~[REDACTED]~~

III.V. DEFINITIONS

Actual knowledge – Verbal or written notice of Sexual Harassment or Sexual Misconduct or allegations of Sexual Harassment or Sexual Misconduct to the Title IX Coordinator or

Responsible Employee.

Advisor - Any person chosen by the Complainant or Respondent to assist throughout the Sexual Harassment or Sexual Misconduct process (e.g. faculty, staff, parent/guardian, attorney, friend, alumni, or any other person who is not a Witness in the process).

Appellate Officer - The Senior Vice President for Academic and Student Affairs or designee for student Respondents or the Vice President for Human Resources or designee for non-student Respondents.

Business Day: A day when the University is open for regular business operations from 8:30 am to 5:00 pm Eastern Time. For emailed correspondence, the day of delivery is not included in a designated time period. In computing any time period specified in this [Regulation-Code](#), the day of the event, act, or default that initiates the period shall be excluded.

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

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

~~**Complainant** - Any individual who may have been the subject of any Sexual Misconduct, Dating or Domestic Partner Violence, and/or Stalking by the Respondent regardless of whether the individual makes a report is alleged to be a victim of conduct that could constitute behavior prohibited by this Regulation.~~

Consent - A clear, knowing, and voluntary agreement to engage in specific sexual activity at the time of the activity. Consent can be communicated by words or actions as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity. Consent must be ongoing throughout the sexual activity and can be withdrawn at any time. Sexual contact must cease immediately once withdrawal of consent is clearly communicated.

- Consent must be active, not passive.
- Lack of protest or resistance does not mean consent has been granted, nor does silence mean consent has been granted.
- Within each sexual encounter, there may be separate individual sexual acts involved, and consent to one act and/or person(s) by itself does not constitute consent to another act and/or person(s).
- The existence of a dating relationship between the persons involved, or the fact of past sexual relations, should never, by itself, be assumed to be an indicator of consent for any current or future sexual encounter even in the context of a relationship, there must be mutual consent.
- If coercion or force is used, there is no consent.

- If a person is incapacitated so that the person cannot understand the fact, nature or extent of the sexual situation, there is no consent. This may be affected by conditions due to age, alcohol or drug consumption, unconsciousness, being asleep, physical or developmental disabilities.
- Whether one has taken advantage of a position of influence over another can be a factor in determining whether there was consent.
- In order to give consent, one must be of legal age.
- The question of what the Respondent should have known as to whether the Complainant was incapacitated is objectively based on what a reasonable person, sober and/or exercising good judgment, would have known about the condition of the Complainant.

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

~~• **Physical Violence or Abuse:**~~

- ~~i. Occurs when one intentionally or recklessly (1) causes bodily harm to another person; (2) attempts to cause bodily harm to another person; or (3) puts another in fear of imminent bodily harm. No Respondent may knowingly or recklessly touch any other person without that person's consent. Punching, slapping, scratching, or otherwise striking any person, including a Dating or Domestic Partner, with any part of one's body or with any object constitutes physical violence.~~
- ~~— Occurs when there is a pattern of engaging in physical violence or abuse as described above.~~

~~• **Psychological Abuse:**~~

- ~~— Occurs when a Respondent intimidates, dominates, terrorizes, humiliates, or isolates any other person, especially a Dating or Domestic Partner.~~
- ~~— Occurs when there is a pattern of engaging in psychological abuse as described above.~~

~~• **Verbal Abuse:**~~

- ~~— Occurs when a Respondent uses extreme or excessive language that is in the form of insults, name-calling, or criticism, designed to mock, shame, or humiliate another person, especially a Dating or Domestic Partner. Verbal behavior must be: (1) objectively endangering and (2) sufficiently severe, persistent, or pervasive to constitute verbal abuse. Singular statements and isolated incidents may fall short of this sufficiency standard.~~

~~Occurs when there is a pattern of engaging in verbal abuse as described above~~

~~**Deputy Title IX Coordinator** – The Deputy Title IX Coordinator is an individual(s) designated by the Title IX Coordinator to support the Title IX Coordinator with respect to the University's efforts to comply with this Regulation.~~

~~**Final Agency Action** - Notice that the University has made a final determination has occurred and, as such, may be appealed to an external judicial forum.~~

~~**Formal Complaint**– A document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment or Sexual Misconduct against a Respondent and requesting an~~

investigation of alleged Sexual Harassment or Sexual Misconduct.

- A document filed by a Complainant means a document or electronic submission that contains the Complainant's physical or electronic signature or otherwise indicates the Complainant is the person filing the complaint.

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

Hearing Body – Members of the University community responsible for determining the merits and sanctions of alleged conduct violating this Regulation. The Hearing Body for Sexual Harassment and Sexual Misconduct shall consist of an University Official or panel of University Officials except, if requested by a student Respondent and no objection is raised by the Complainant, a Hearing Body may be comprised of compromise at least one-half of students.

Hearing Officer – The University official responsible for chairing the Hearing Body. &–The Hearing Officer will not be the same person as the Title IX Coordinator or investigator.

Impact Statement– An oral or written statement that describes how the Complainant or Respondent is impacted by the alleged conduct.

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

Interim Suspension or Administrative Leave – An immediate separation or leave from the University.

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

Responsible Employee - Any employee with authority to institute corrective ~~measures~~measures; who has been given the duty of reporting incidents of Sexual Harassment or Sexual Misconduct or any other misconduct by students or employees to the Title IX Coordinator or other appropriate University designee; or an individual who a student or employee could reasonably believe has this authority or responsibility.

Student employees are only –Responsible Employees if they are employed in the following positions:

- Graduate Teaching Assistants and Graduate Research Assistants;
- The Athletics Department; or
- Housing and Residential Life.

TheThis definition of Responsible Employee does not absolve -anyone with the knowledge of or reason to suspect child abuse, abandonment, or neglect of the responsibility to report such

relevant information to the Department of Children and Families in accordance with FIU Policy # 140.130 Mandatory Reporting of Child Abuse, Abandonment and Neglect Board of Governors Regulation 3.002.

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Obstruction —~~Any~~ Any action, individually or working with others, which the Respondent knew or should have known would impede an investigation by the University into possible violations of this Regulation committed by the Respondent, including, but not limited to, failing to participate in a University investigation or grievance process if not the Respondent, making false statement or submitting false information during the grievance process, or destroying potentially relevant evidence.

Preponderance of the Evidence – Based on the evidence provided, it is more likely than not that the actions alleged occurred. Grievance proceedings are conducted to take into account the totality of all evidence available from all relevant sources. The burden of proof rests with the University.

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

Respondent - Any individual or group, including student organization, who has been accused of violating this ~~policy~~Regulation.

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

Retaliation —~~Acts or words taken against an individual because of the individual's participation in a protected activity that would discourage a reasonable person from engaging in protected activity. Protected activity includes an individual's good faith (i) participation in the reporting, investigation, and/or resolution of an alleged violation of this Code; and/or (ii) opposition to policies, practices, and/or actions that the individual reasonably believes are in violation of the Code. Retaliation may include intimidation, threats, Coercion, physical harm, and/or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated.~~ Any words or behavior made to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this Regulation, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Regulation. Retaliation may be committed by the Respondent, the Complainant, the Reporting Party, or any other individual or group of individuals.

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

Sexual Harassment – Conduct on the basis of sex which occurs in the United States in an University activity or program that satisfies one or more of the following:

- An employee, including faculty, staff, or contractor, conditioning the provision of aid, benefit, or service on an individual's participation in unwelcome sexual conduct; or

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity;
- Sexual Assault is defined as penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration (regardless of whether it includes penetration) by a sex organ of another person, without the consent of the Complainant. Attempts or assaults to commit Sexual Assault are also included; however, statutory Sexual Assault and incest are excluded;
- Dating Violence which means violence committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship;
- Domestic Violence is defined as violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the 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, by a person similarly situated to a spouse of the victim or by any other person against an adult or youth victim; or
- Stalking defined as a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

Sexual Misconduct — Conduct, regardless of geographic location, that includes:~~involves failure to comply with this regulation and includes:~~

- Coercion - Conduct, intimidation, and/or express or implied threats of physical, emotional, financial, or any other type of harm that would reasonably place an individual in fear of immediate or future harm and that is employed to force or compel someone to engage in sexual contact or any other type of involuntary conduct, especially conduct which would endanger or be detrimental to the Complainant. Examples of Coercion include:
 - Causing the deliberate incapacitation of another person;
 - Conditioning an academic benefit or employment advantage;
 - Threatening to harm oneself if the other party does not engage in sexual contact;
 - or
 - Threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personal or sensitive information if the other party does not engage in the sexual contact or takes actions involuntarily.
- Domestic Violence - violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the 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, by a person similarly situated to a spouse of the victim or by any other person against an adult or youth victim

- Dating Violence - violence committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - Gender-based Harassment - harassment based on gender, sexual orientation, gender identity, or gender expression, including acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve contact of a sexual nature.
 - *Non-Consensual Sexual Touching* – any sexual touching without ~~C~~consent. Sexual touching is any intentional touching of a person’s body, including the breasts, buttocks, groin, genitals, or other intimate parts. Touching may be over or under clothing and may include the Respondent touching the Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant’s own body.
 - *Obscene or Indecent Behavior*
 - i. Exposure of one’s sexual organs or the display of sexual behavior that would reasonably be obscene or indecent to others. Other forms of obscene or indecent behavior include sexual exhibitionism, engaging in prostitution, or the facilitation or solicitation of a prostitute.
 - ii. Observing another individual’s nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved.
 - iii. Recording, photographing, transmitting, showing, viewing, streaming, or distributing intimate or sexual images, audio recordings, or sexual information of another person in any form without the knowledge and Consent of all parties involved.
 - iv. Publishing a sexually explicit image of a person that contains or conveys the personal identification or information of the depicted person to an internet website, text, email, and/or social media without the depicted person’s Consent.
- Revenge Porn - to publish a sexually explicit image of a person, including any depiction that contains or conveys the personal identification or information of the depicted person by any electronic, digital or other means, including to an internet website, by text, by email, and/or by or through social media without the depicted person’s Consent.
- ~~Sexual~~Sex-based Harassment ~~Harassment~~ — any unwelcome sexual advance, request for sexual favors, and/or other verbal or physical conduct of a sexual nature:
 - i. Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person’s instruction, academic standing, or participation in any University program, activity, or benefit;
 - ii. Submission to, or rejection of, such conduct by an individual is used as a basis for academic or work evaluation;
 - iii. Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably

interferes with, limits, or deprives an individual from participating in or benefiting from the University's educational, and/or campus-residential experience when viewed both from a reasonable person in similar circumstances and the person in question.

- ~~Gender-based Harassment—harassment based on gender, sexual orientation, gender identity, or gender expression, including acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve contact of a sexual nature.~~
- ~~Sexual Coercion—the act of using pressure or force to have sexual contact with someone who has already refused.~~
- ~~Sexual Battery—any sexual intercourse by any person upon another without Consent. Sexual intercourse includes vaginal or anal penetration, however slight, by a person's penis, finger, other body part, or an object, or any oral-genital contact (regardless of whether it involves penetration).~~

Sexual Assault — Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration (regardless of whether it includes penetration) by a sex organ of another person, without the consent of the Complainant. Attempts or assaults to commit Sexual Assault are also included; however, statutory Sexual Assault and incest are excluded the threat to commit sexual battery with the immediate capacity to do so.

- Sexual Coercion – the act of using pressure or force to have sexual contact with someone who has already refused.
- Sexual Exploitation - Knowingly or recklessly transmitting a sexually transmitted disease or sexually transmitted infection (such as HIV) to another individual without the knowledge and consent of the person exposed.
- Stalking - A course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.
- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress. For the purposes of this definition—(A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

Supportive Measures – Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge, to the Complainant or Respondent. The Title IX Coordinator is responsible for coordinating effective implementation of Supportive Measures.

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

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

University Community - Any student, faculty, staff, other person currently employed by the University, or working on University premises, or any participant in a University program or activity regardless of the location of the program or activity.

Violation of Supportive Measure(s): Failure to comply with a Supportive Measure(s) imposed pursuant to this Regulation.

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

IV. JURISDICTION

Jurisdiction applies to University educational program or activities, including locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University. For Sexual Misconduct matters, jurisdiction applies to respondents who are members of the University community regardless of location.

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

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

- ~~• The off-campus conduct is specifically prohibited by law or the Regulation;~~
- ~~• The off-campus conduct demonstrates that the continued presence of the employee and/or the student on campus presents a danger to the health, safety, or welfare of the University community, is disruptive to the orderly conduct, processes and functions of the University, is contrary to the University’s mission, or is intimidating or threatening to the University community or member of the University community;~~
- ~~• The off-campus conduct is of such a serious nature that it adversely affects the employee’s and/or student’s suitability to remain a part of the University community; or~~
- ~~• The off-campus conduct has continuing effects on the campus.~~

• ~~The University Regulation proceeding is not a criminal or judicial proceeding and is designed to address employee and/or student behavior, whether on or off campus; therefore, alleged violations of the Regulation will be addressed independently of any criminal or judicial proceeding and regardless of whether the criminal charges have been dismissed or reduced.~~

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

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

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

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

CONFIDENTIAL ASSISTANCE*

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

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

MAKING A REPORT TO THE UNIVERSITY

Means University Officials must take appropriate action

CONTACT:

CONTACT:

On-campus professionals who can provide Confidential Assistance:

Victim Empowerment Program

24 hour crisis: 305-348-2277

MMC: SHC 270

vep.fiu.edu

Counseling & Psychological Services (CAPS)

MMC: SHC 270, 305-348-2277

BBC: WUC 320, 305-919-5305

caps.fiu.edu

Student Health Services

MMC: SHC, 305-348-3336

BBC: SHC, 305-919-5620

Office of Employee Assistance

MMC: 305-348-2469 • BBC: ACII 246B

Title IX Coordinator

Deputy Title IX Coordinators

Mandatory Reporters

Campus Security Authorities

Dean of Students

Student Conduct and Academic Integrity (SCAI) Staff

Faculty

Police

**Off-campus professionals
who can provide Confidential Assistance:**

**Roxcy Bolton Rape Treatment Center at
Jackson Memorial Hospital**

305-585-5185

1611 N.W. 12th Avenue, Miami, FL 33136

<http://www.jacksonhealth.org/services-rape-treatment.asp>

**Florida Council Against Sexual Violence
Information Line**

1-888-956-RAPE

Florida Domestic Violence Hotline

1-800-500-1119; Florida Relay 711

Florida Victim Assistance

1-800-266-6667

**Miami Coordinated Victim Assistance
Center (CVAC)**

305-285-5900

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

**University Officials to Contact for Making a
Report to the University**

Courtney McHenry

Interim Title IX Coordinator

Assistant Director, Office of Inclusion, Diversity,
Equity & Access

PC 321

Phone: 305-348-2785

Email: idea@fiu.edu

Michelle Horvath

Director, Student Conduct and Academic Integrity
(SCAI)

GC 311A

Phone: 305-348-3939

Email: conduct@fiu.edu

Joann Cuesta Gomez

Director, Employee & Labor Relations (ELR)

PC 236

Phone: 305-348-4186

Email: elr@fiu.edu

Julie Berg-McGraw

Deputy Title IX Coordinator

Senior Associate Athletic Director

OBCC 202A | Phone: 305-348-2352

Email: julie.berg-Mc_Graw@fiu.edu

OR FILE ONLINE:

Silent Witness Form provides a method to
report on an anonymous basis to the FIU
Police Department:

http://police.fiu.edu/Silent_Witness.php

FIU Ethical Panther Line provides a
method to report on an anonymous basis to
the University Compliance Office at
<https://fiu.i-sight.com/portal/reportonline>

Incident Reporting Form provides a
method to report on an anonymous basis to
Student Affairs:

<https://publicdocs.maxient.com/incidentreport.php?FloridaIntlUniv>

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

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

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

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

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

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

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

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

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

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

~~support for all parties and enables an effective and consistent institutional response.~~

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

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

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

VII. INTERIM PROTECTIVE SUPPORTIVE MEASURES AVAILABLE THROUGH THE UNIVERSITY

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

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

avoiding punishing the Respondent prior to the conclusion of the grievance process. The range of ~~interim protective~~Supportive mMeasures ~~may~~ includes, but is not limited to:

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

All individuals are encouraged to report concerns about the adequacy of the ~~interim protective~~Supportive mMeasures or the failure of another individual to abide by any ~~interim protective~~Supportive mMeasure to the Title IX Coordinator or designee. ~~The Title IX Coordinator will take appropriate, responsive, and prompt action to enforce interim protective measures and/or to respond to **Retaliation** by another party or witness. Any violation of a Supportive Measure will be investigated and adjudicated under this Regulation.~~

VII. ADVISORS

During the grievance process, the Complainant and Respondent may have an advisor of their choice accompany them to any related meeting or proceeding. Advisors have no active role in any meetings or the grievance process except as explicitly provided in this Regulation. Meetings or proceedings may not be unreasonably delayed due to the selection or schedule of an Advisor, and it is the responsibility of the Complainant or Respondent to communicate relevant information to their Advisor and ensure that their Advisor comports themselves in a manner which respects this educational-administrative process. After an appropriate warning, the University reserves the right to stop a meeting or proceeding and remove an Advisor whose presence disrupts the meeting or proceedings, and then begin the meeting or proceedings without the Advisor. During a hearing held pursuant to this Regulation, an advisor will be provided by the University for cross-examination purposes only if the Complainant or Respondent does not already have an Advisor.

VIII.VIII. FORMAL COMPLAINTS

A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or electronic mail using the contact information listed for the Title IX Coordinator above. A Formal Complaint may also be filed through conduct.fiu.edu or <https://fiu.i-sight.com/portal/idea> <https://fiu.i-sight.com>.

If the Complainant files a Formal Complaint, the University will analyze whether it is to be dismissed. This analysis occurs prior to the investigation, and also at any point in the investigation or grievance process when the grounds for dismissal appear. In all cases, if the Formal Complaint is dismissed, the Title IX Coordinator will promptly and simultaneously provide the parties written notice of the dismissal, the reasons for the dismissal, and an opportunity to appeal.

Mandatory Dismissal of Formal Complaints of Sexual Harassment

The University must dismiss a Formal Complaint of Sexual Harassment to the extent the conduct alleged in the Formal Complaint:

- Would not constitute Sexual Harassment even if proved;
- Did not occur in the University's education program or activity; or
- Did not occur in the United States.

At the time a Formal Complaint is filed, a Complainant must be participating in or attempting to participate in an University educational program or activity. Even though a Formal Complaint must be dismissed for Sexual Harassment (Title IX) purposes, the University may continue to review the allegations as Sexual Misconduct or other violation of the University's regulations, rules, and policies.

Permissible Dismissal of Formal Complaints of Sexual Harassment or Sexual Misconduct

The University may dismiss a Formal Complaint in the following circumstances:

- The conduct would not constitute Sexual Misconduct even if proved;
- Upon completion of the investigation, the Title IX Coordinator concludes that there is not reasonable cause to believe that a violation of this Regulation occurred. Reasonable cause is a lower standard than preponderance of the evidence;
- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- The Respondent is no longer enrolled or employed by the University; or

- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

In determining whether to dismiss in these circumstances, the University will evaluate whether a dismissal would be clearly unreasonable in light of the known circumstances.

If dismissed, the University may continue to review the allegations as a violation of other University regulations, rules, and policies.

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

Consolidation of Formal Complainants

The Title IX Coordinator, Director of Student Conduct and Academic Integrity or the Director of Employee and Labor Relations or designee(s) may consolidate Formal Complaints against more than one (1) Respondent, or by more than one (1) Complainant against one (1) or more Respondents, or by one Party against another Party where the allegations arise out of the same facts or circumstances.

IX. INTERIM SUSPENSION AND ADMINISTRATIVE LEAVE

The University may remove a Respondent from some or all of the University's programs and activities or employment on an interim basis if it determines there is an immediate threat to the health, safety, or welfare of the University or University Community arising from allegations of violations of this Regulation. Prior to placing a Respondent on Interim Suspension or Administrative Leave, the University will conduct an individualized safety and risk analysis.

If a Respondent is removed pursuant to this section, the University will provide the Respondent with written notice and an opportunity to challenge the removal. The Respondent will have three (3) Business Days from the date of the notice of Interim Suspension or Administrative Leave to challenge the decision, in writing, stating the basis of their challenge to the removal. A copy of the challenge to the Interim Suspension or Administrative Leave will be provided to the Complainant. No later than three (3) Business Days after receipt of the challenge, the University will provide a written determination to the Respondent and Complainant.

If Interim Suspension or Administrative Leave is upheld, the Respondent retains all rights to an investigation and hearing as set forth in this Regulation prior to any ultimate finding of responsibility and sanctions.

X. INVESTIGATION OF FORMAL COMPLAINTS

Criminal Investigations

To initiate a criminal investigation, reports of Sexual Misconduct or Sexual Harassment should be made to the University Police Department, or local law enforcement. The criminal process is separate from this grievance process and the Rules of Civil or Criminal Procedure do not apply. The University has an obligation to promptly respond to allegations of Sexual Misconduct or Sexual Harassment and investigate all Formal Complaints while the criminal process is pending.

Therefore, the University in its sole discretion may proceed with an investigation under this Regulation before, during, or after any law enforcement investigation or criminal proceedings.

Notice of Allegation

Upon receipt of a Formal Complaint, the Title IX Coordinator or designee will provide the Complainant and Respondent with written notice stating:

- this Regulation and other applicable Regulations or policies;
- the allegations of Sexual Harassment or Sexual Misconduct including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved if known, the alleged conduct constituting Sexual Harassment or Sexual Misconduct, and the date and location of the alleged incident if known;
- the Respondent is presumed Not Responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence;
- any provision of the Student Conduct and Academic Honor Code or applicable regulations, policies, or procedures that prohibits knowingly making false statements or knowingly submitting false information during the grievance process; and
- an appointment date and time where they will, separately, meet with the Title IX Coordinator for an information session to discuss the grievance process, supportive measures, and any other concerns a party may have. Each party will be provided with at least fourteen (14) Business Days between receipt of the Notice of Allegation and the date of the initial interview except in cases or emergency or where waived by the party.

If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the original Notice of Investigation, the University will provide notice of the additional allegations to the parties.

Timeline for Investigation and Responsibility Determination

It is the University's intention to complete a Title IX investigation and reach a determination of responsibility within ninety (90) Business Days, although good-faith efforts to conduct a fair, impartial investigation in a timely manner may require a different timeline depending on the circumstances.

Any deadline set forth in this Regulation or imposed during the grievance process may be temporarily modified or given a limited extension of time for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the modification. Good cause may include considerations such as the absence of a party, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

The University may act on its own in modifying deadlines, or the parties may request an extension in writing by contacting the Title IX Coordinator, Director of Student Conduct and Academic Integrity or Director of Employee Labor Relations or designee(s) as applicable.

Appointment of an Investigator

The Title IX Coordinator may designate one or more properly trained individuals to investigate a Formal Complaint, including University or third-party investigators.

In the event of a conflict or bias, the University will appoint an alternate individual so that the process is free of conflicts of interest and bias.

Concurrent Processes

If the Respondent is a student and portions of the Formal Complaint include allegations that violate the Student Conduct and Honor Code but are not alleged violations of this Regulation, those allegations may be investigated and/or addressed separately by Student Conduct and Academic Integrity before, during, or after the investigation coordinated by the Title IX Coordinator described herein.

Similarly, if the Respondent is an employee or member of the University Community and portions of the Formal Complaint include allegations that violate University regulations, policies, and procedures applicable to personnel, but are not alleged violations of this Regulation, then those allegations may be investigated and/or addressed separately by Human Resources before, during, or after the investigation coordinated by the Title IX Coordinator described herein.

The Collection of Evidence

Investigators will gather information from the Complainant, Respondent, and other individuals who have information relevant to the Formal Complaint. The parties will have an equal opportunity to present facts and evidence, identify witnesses, and other inculpatory and exculpatory evidence. The investigator may also interview relevant third parties who, throughout the course of the investigation, are determined to have information that may assist in the review of the formal complaint. The investigator has the discretion to determine the relevance of any witnesses provided by either party, and will determine which witnesses to interview. The investigator will not consider relevant any witnesses who are offered solely for the purpose of providing evidence of a party's character. If a party declines to provide relevant information, the University's ability to conduct a prompt, thorough, and equitable investigation may be impaired.

The University will provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all investigative interviews at least seven (7) Business Days prior to the investigative meetings, or other meetings except in cases of emergency or unless waived by the Respondent.

Exclusion of Certain Forms of Evidence

The University cannot access, consider, disclose, or otherwise use a party's records that contain information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

If a party chooses to provide evidence that would otherwise be excluded under this subsection, it will be considered directly related evidence subject to the parties' inspection.

Review of Collected Evidence & Investigatory Report

The Title IX Coordinator, Director of Student Conduct and Academic Integrity, or Director of Employee and Labor Relations, or designee as appropriate will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the University must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will be given at least ten (10) Business Days to submit a written response. The investigator will consider any written responses prior to completion of the investigative report.

The University will also make all directly related evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

The Title IX Coordinator or designee will send the parties and their advisors the final investigative report that fairly summarizes relevant evidence, with at least 10 (ten) Business Days prior to a hearing or determination of responsibility.

XI. INFORMAL RESOLUTION

If a Formal Complaint has been filed, the University has the discretion at any time prior to reaching a determination regarding responsibility to choose to offer and facilitate informal resolution options so long as the parties give voluntary, informed written consent to attempt informal resolution. Informal resolution is not available when a Complainant is a student alleging that a University employee has engaged in Sexual Harassment or Sexual Misconduct.

In offering an informal resolution process, the University will provide the parties written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which, upon reaching an agreed resolution, it precludes the parties from resuming a formal complaint arising from the same allegations; provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint. The University will also explain any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The Informal Resolution process must be completed within fifteen (15) Business Days of the parties agreeing to pursue such a process. If not completed by that deadline, in the absence of

any approved extensions, the Formal Complaint will continue to be investigated and processed for a live hearing as described in this Regulation.

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

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

~~INVESTIGATION PROCEDURES~~

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

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

information, the University's ability to conduct a prompt, thorough, and equitable investigation may be impaired.

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

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

XII. HEARINGS

The Hearing Process

Live hearings may be conducted with all parties physically present in the same geographic location or with any (or all) parties, witnesses, and other participants appearing virtually utilizing technology that enables participants to simultaneously see and hear each other. At the request of either party, the University will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-makers and parties to simultaneously see and hear the party or the witness answering questions.

At the live hearing, the Hearing Officer will explain each Party's rights and options and assure that fairness and procedural due process are observed throughout the hearing. The Hearing Officer will permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor. Only relevant cross-examination and other questions may be asked of a party or witness. To ensure this, before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

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 alleged conduct 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.

If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer and Hearing Body will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Office and Hearing Body will not 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.

The University will create an audio or audiovisual recording, or transcript, of any live hearing. Live hearings will be closed to the public.

The Written Determination Regarding Responsibility

The University will provide a written determination regarding the Respondent's responsibility simultaneously to the Parties within fourteen (14) Business Days from the conclusion of the hearing. The Decision-Maker will also provide a copy of the written determination to the Title IX Coordinator. Unless an appeal is filed, this written determination shall constitute Final Agency Action. ~~for determinations that result in suspension or expulsion of student Respondents. For employee or other University Community Respondents, unless an appeal is filed the written determination is Final Agency Action.~~ The written determination regarding responsibility will include the following:

- Identification of the allegations potentially constituting Sexual Misconduct or Sexual Harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the University's regulations to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant (without disclosing the nature of those remedies except to the extent a remedy also imposes requirements on the Respondent); and
- The grounds for appeal.

XIII. DISCIPLINARY SANCTIONS

In reaching a determination regarding sanctions, consideration will be given to any aggravating and mitigating circumstances. The sanctions described below are a description of the range of sanctions available, and not an exhaustive list of all sanctions that may be imposed.

Student Conduct and Academic Integrity will oversee disciplinary sanctions for students and student organizations. Students or student organizations who are found to have violated this Regulation will be subject to disciplinary sanctions as set forth in the Student Conduct and Academic Code, FIU- Regulation 2501. Any sanctions will be proportionate to the severity of the violation and the student's cumulative conduct history. Sanctions include, but are not limited to, reprimand, educational sanctions, counseling assessment, restitution, disciplinary probation, restrictions, exclusion from university housing, suspension, loss of university recognition, or expulsion.

Human Resources will oversee disciplinary sanctions for non-students. Faculty and staff who are found to have violated this Regulation will be subject to disciplinary action pursuant to applicable collective bargaining agreements or applicable personnel regulation, policies, or procedures. Sanctions include, but are not limited to letters of reprimand, training, performance improvement plans, reassignment, demotion, suspension with or without pay, and termination. Third parties (including contractors and visitors) who are found to have violated this Regulation may be barred from the campus and/or conducting business with the University.

XIV. REMEDIES

In some cases, the Hearing Official or Hearing Panel may find that remedies are needed for a Complainant when a Respondent is found responsible for violating this Regulation. Remedies are designed to restore or preserve the Complainant's equal access to the University's education program or activities. As an example of the range of remedies available, remedies may include similar individualized services as defined in Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. Remedies do not include damages or other financial awards, or other relief that would impose an undue hardship on the University.

The Title IX Coordinator is responsible for the effective implementation of any remedies. When a determination indicates that remedies will be offered to the Complainant, the Complainant should contact the Title IX Coordinator to arrange for appropriate remedies.

XV. PROCESS OF PRESIDENTIAL REVIEW

The President will notify the Appellate Officer within three (3) Business Days of notification of a disciplinary outcome if he/she wishes to review the underlying disciplinary matter. This review will serve as the appeal process for the Respondent and Complainant. Any other appeal process will immediately cease.

No later than one (1) Business Day after the President notifies the Appellate Officer, the Appellate Officer shall notify the Respondent and Complainant of the President's decision to review the underlying disciplinary matter including sanctions. The Respondent and Complainant may provide the President with any information (including any documents supporting an appeal if not previously submitted) within three (3) Business Days of the Appellate Officer's notification.

The President may only consider the information previously provided in this disciplinary matter, any appeals submitted by the Respondent and Complainant, and any information that meets the grounds for appeal as outlined in Section XVI.

The President shall issue a written decision, including the results of the appeal and rationale, to the Respondent, Complainant, Appellate Officer, and Title IX Coordinator within fourteen (14) Business Days of notification of a disciplinary outcome. The President's decision constitutes Final Agency Action and will include notice of the Respondent's right to appeal to an external judicial forum.

XVI. APPEALS

Both parties will be notified and provided with the opportunity to appeal a determination or dismissal based on the following grounds only:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or Hearing Official 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; or
- The sanctions are extraordinarily disproportionate to the violation committed.

An appeal must be submitted in writing to the Appellate Officer within seven (7) Business Days of the date of the Hearing Official or Hearing Body's written determination and identify the grounds and arguments for challenging the outcome. If the appeal is based on newly discovered evidence, the evidence must be submitted with the written appeal.

Upon receipt of an appeal, the University will notify the other party in writing when an appeal is filed and provide them with seven (7) Business Days to submit a written statement in support of or challenging the outcome.

After both parties have had an opportunity to present their arguments challenging or supporting the outcome, the Appellate Officer will issue a written decision within fourteen (14) Business Days simultaneously to both Parties with the result of the appeal and the rationale. The Appellate Officer will also provide a copy of the appellate decision to the Title IX Coordinator. The University's decision shall constitute Final Agency Action.

XVII. PRIVACY AND CONFIDENTIALITY

The University will keep information and actions taken in accordance with this Regulation confidential to the extent possible under the law, meaning it will only disclose information to individuals with a legitimate need to know in order to review, investigate, and resolve reports of Sexual Misconduct or Sexual Harassment, or as permitted or required by law.

The University may release information about Sexual Misconduct or Sexual Harassment in certain circumstances without permission in order to warn and protect the University Community.

RESOLUTION OF THE INVESTIGATION WHEN THE RESPONDENT IS AN EMPLOYEE

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

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

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

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

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

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

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

Upon completion of the investigation, a report shall be prepared which includes a description of the investigation, a summary of the complaint and the witness statements. The Director of Student Conduct and Conflict Resolution/Deputy Title IX Coordinator will review the report in order to determine whether there is a potential violation(s) of the Student Conduct Code.

If the Director determines that there has been a violation(s), the Director will follow the process that is described in the Student Conduct Code. See FIU Regulation 2501 at <http://regulations.fiu.edu/regulation>.

~~IX. RETALIATION~~

XVIII. RETALIATION AND OBSTRUCTION

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

Retaliation and Obstruction are prohibited during any portion of the grievance process. If a member of the University community believes that Retaliation or Obstruction may have been

taken against them ~~or others as a result of filing a grievance, complaint or report of a violation of law, rule, regulation or policy~~, they should report the ~~behavior retaliation~~ to the ~~EOPD~~ Title IX Coordinator or investigator-Office. The situation will be reviewed and a response will be provided to the employee or student who alleged the Retaliation ~~or Obstruction~~. Charging an individual with a violation for making a materially false statement in bad faith in the grievance process under this Regulation does not constitute Retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. Exercising any rights secured by the First Amendment does not constitute Retaliation.

Specific Authority: Board of Governors Regulation 1.001 (5)(a). History-- Formerly FIU-104 (repealed) and FIU-103 (repealed). New April 15, 2015, Amended June 8, 2018, Amended 8-13-20, Amended _____.

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES FLORIDA
BOARD OF GOVERNORS**

NOTICE OF CHANGE TO PROPOSED AMENDMENT TO REGULATION

REGULATION TITLE: Sexual Misconduct (Title IX)

REGULATION NO.: FIU-105

SUMMARY: On May 6, 2020, the United States Department of Education Office for Civil Rights (OCR) issued regulations on Title IX of the Education Amendments of 1972 (Title IX) which prohibits discrimination based on sex. In response substantive revisions, summarized in the chart below, were made to ensure the University's compliance with the new regulations. Additional revisions, for the Board's approval, are:

- Updating the name and contact information for the Interim Title IX Coordinator;
- Addition of the Presidential Review Process that permits the President to review and make a determination on Sexual Misconduct and Sexual Harassment cases to meet the goals of this Regulation. This process mirrors language currently in Regulation 2501 Student Conduct and Honor Code;
- Including a definition of Violation of Supportive Measures(s); and
- Corrections of scrivener errors.

TEXT OF REGULATION: The full text of the Proposed Amendment to Regulation can be viewed below and on the website of The Florida International University Board of Trustees, <http://regulations.fiu.edu>. If you would like a copy of the proposed Regulation, please contact Eli Deville, Departmental Administrator, Office of the General Counsel, devillee@fiu.edu (305) 348-2103.

AUTHORITY: Board of Governors Regulation 1.001(5)(a).

NAME OF PERSON INITIATING PROPOSED REGULATION: Dr. Elizabeth Bejar, Senior Vice President for Academic & Student Affairs.

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED AMENDMENT TO REGULATION MUST SUBMIT COMMENTS IN WRITING TO THE CONTACT PERSON LISTED BELOW. ALL WRITTEN COMMENTS MUST BE RECEIVED BY THE CONTACT PERSON WITHIN 14 CALENDAR DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE.

THE CONTACT PERSON REGARDING THIS REGULATION IS:

Eli Deville, Departmental Administrator, Office of the General Counsel, Florida International University, 11200 SW 8th Street, PC 511, Miami, FL 33199
Email: devillee@fiu.edu | Phone: 305.348.2103 | Fax: 305.348.3272

DATE OF PUBLICATION: October 20, 2020

THE FULL TEXT OF THE PROPOSED REGULATION IS PROVIDED BELOW:

FIU-105 Sexual Harassment (Title IX) and Sexual Misconduct

I. POLICY STATEMENT

Florida International University (the University) is committed to encouraging and sustaining a learning and living environment that is free from discrimination based on sex including gender, gender expression, gender identity, and sexual orientation. Discrimination based on sex encompasses Sexual Misconduct, Sexual Harassment, Gender-Based Harassment, Domestic Violence, Dating Violence, and/or Stalking. The University has developed this regulation applicable to the entire University Community (i.e., students, student organizations, faculty, staff, affiliated third parties, and visitors) prohibiting discrimination based on sex consistent with Title IX of the Education Amendments of 1972 (Title IX), relevant provisions of the Violence against Women Reauthorization Act of 2013 (VAWA), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), along with all applicable implementing regulations, and other applicable federal and state laws.

The University has identified two areas that are under the purview of this Regulation: Sexual Harassment as defined by Title IX and Sexual Misconduct. Sexual Harassment applies to alleged harassment, violence, and/or prohibited discrimination that occurs in an University education program or activity in the United States. This refers to locations, events, or circumstances over which the University had substantial control over both the Respondent and the context in which such incidents occurred, and also includes buildings owned by or controlled by a student organization that is officially recognized by the University. Sexual Misconduct applies to alleged harassment, violence, and/or prohibited discrimination that occurs in or outside an University education program or activity regardless of location. Nothing in this Regulation shall be construed as preventing the University President from taking any action which may be deemed necessary to meet the goals of this Regulation. The President may change the outcome and/or sanctions for any matter under the jurisdiction of this Regulation as outlined in Section XV.

All members of the University community are expected to conduct themselves in a manner that does not infringe upon the rights of others and is consistent with this regulation. The Regulation is not meant to inhibit or prohibit educational content or discussions protected by academic freedom or the First Amendment, the Fifth and Fourteenth Amendments, or any other rights guaranteed by the U. S. Constitution.

The University emphasizes the importance of treating Complainants and Respondents equitably upon receipt of a Formal Complaint. There is a presumption the Respondent is Not Responsible for the alleged conduct until Final Agency Action.

II. TITLE IX COORDINATORS

The *Title IX Coordinator* is:

- knowledgeable and trained in University policies and procedures and relevant state and federal laws;
- responsible for coordinating the effective implementation of Supportive Measures;
- responsible for responding to concerns raised by the Deputy Title IX Coordinator(s),

- University Police, or Responsible Employees;
- responsible for overseeing investigations of alleged violations of this Regulation;
- responsible for ensuring the effective implementation of this Regulation, including monitoring compliance with all procedural requirements, recordkeeping, and timeframes;
- responsible for overseeing training, prevention, education efforts, and periodic reviews of climate and culture; and
- responsible for maintaining all reports of possible violations of this Regulation and reviews such reports and complaints for systemic patterns that need to be addressed.

The University's Title IX Coordinator is:

Courtney McHenry
Office of Inclusion, Diversity, Equity, & Access (IDEA)
 Office number: 305-348-2785
 Email: cmchenry@fiu.edu
 Address: 11200 S.W. 8th Street, PC 321
 Miami, FL 33199

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

- Michelle R. Horvath, Assistant Dean of Students, Office of Student Conduct and Academic Integrity
 Office number: 305-348-3939
 email: conduct@fiu.edu
- Julie Berg-McGraw, Sr. Associate Athletic Director, Athletics Department
 Office number: 305-348-2352
 email: julie.bergmc_graw@fiu.edu
- Joann Cuesta-Gomez, Director, Office of Employee & Labor Relations
 Office number: 305-348-4186
 email: elr@fiu.edu

The Title IX Coordinator, Deputy Title IX Coordinators, investigators, Hearing Officer(s), and the Hearing Body are properly trained based on their roles. Training includes what constitutes Sexual Misconduct and Sexual Harassment, the scope of the University's education programs and activities, how this Regulation is implemented, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially including by avoiding pre-judgment of the facts at issue, conflicts of interest and bias, any technology to be used at a live hearing, issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, and relevance to create an investigative report that fairly summarizes relevant evidence.

The Title IX Coordinator, investigators, and Hearing Officer(s), and Hearing Body will be free of actual or reasonably perceived conflicts of interest and biases for or against any party.

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

FIU Office of University U.S. Depart. of Education Equal Opportunity Compliance and Integrity Office for Civil Rights Commission

(305) 348-2216

(800) 421-3481

(800) 669-4000

Email: compliance@fiu.edu

III. DEFINITIONS

Actual knowledge – Verbal or written notice of Sexual Harassment or Sexual Misconduct or allegations of Sexual Harassment or Sexual Misconduct to the Title IX Coordinator or Responsible Employee.

Advisor - Any person chosen by the Complainant or Respondent to assist throughout the Sexual Harassment or Sexual Misconduct process (e.g. faculty, staff, parent/guardian, attorney, friend, alumni, or any other person who is not a Witness in the process).

Appellate Officer - The Senior Vice President for Academic and Student Affairs or designee for student Respondents or the Vice President for Human Resources or designee for non-student Respondents.

Business Day: A day when the University is open for regular business operations from 8:30 am to 5:00 pm Eastern Time. For emailed correspondence, the day of delivery is not included in a designated time period. In computing any time period specified in this Regulation, the day of the event, act, or default that initiates the period shall be excluded.

Complainant - Any individual who is alleged to be a victim of conduct that could constitute behavior prohibited by this Regulation.

Consent - A clear, knowing, and voluntary agreement to engage in specific sexual activity at the time of the activity. Consent can be communicated by words or actions as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity. Consent must be ongoing throughout the sexual activity and can be withdrawn at any time. Sexual contact must cease immediately once withdrawal of consent is clearly communicated.

- Consent must be active, not passive.
- Lack of protest or resistance does not mean consent has been granted, nor does silence mean consent has been granted.
- Within each sexual encounter, there may be separate individual sexual acts involved, and consent to one act and/or person(s) by itself does not constitute consent to another act and/or person(s).
- The existence of a dating relationship between the persons involved, or the fact of past sexual relations, should never, by itself, be assumed to be an indicator of consent for any current or future sexual encounter even in the context of a relationship, there must be

mutual consent.

- If coercion or force is used, there is no consent.
- If a person is incapacitated so that the person cannot understand the fact, nature or extent of the sexual situation, there is no consent. This may be affected by conditions due to age, alcohol or drug consumption, unconsciousness, being asleep, physical or developmental disabilities.
- Whether one has taken advantage of a position of influence over another can be a factor in determining whether there was consent.
- In order to give consent, one must be of legal age.
- The question of what the Respondent should have known as to whether the Complainant was incapacitated is objectively based on what a reasonable person, sober and/or exercising good judgment, would have known about the condition of the Complainant.

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

Final Agency Action - Notice that the University has made a final determination and, as such, may be appealed to an external judicial forum.

Formal Complaint– A document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment or Sexual Misconduct against a Respondent and requesting an investigation of alleged Sexual Harassment or Sexual Misconduct.

- A document filed by a Complainant means a document or electronic submission that contains the Complainant’s physical or electronic signature or otherwise indicates the Complainant is the person filing the complaint.

Hearing Body – Members of the University community responsible for determining the merits and sanctions of alleged conduct violating this Regulation. The Hearing Body for Sexual Harassment and Sexual Misconduct shall consist of a University Official or panel of University Officials except, if requested by a student Respondent and no objection is raised by the Complainant, a Hearing Body may be comprised of at least one-half of students.

Hearing Officer – The University official responsible for chairing the Hearing Body. The Hearing Officer will not be the same person as the Title IX Coordinator or investigator.

Impact Statement- An oral or written statement that describes how the Complainant or Respondent is impacted by the alleged conduct.

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

Interim Suspension or Administrative Leave – An immediate separation or leave from the University.

Responsible Employee - Any employee with authority to institute corrective measures; who has

been given the duty of reporting incidents of Sexual Harassment or Sexual Misconduct or any other misconduct by students or employees to the Title IX Coordinator or other appropriate University designee; or an individual who a student or employee could reasonably believe has this authority or responsibility.

Student employees are only Responsible Employees if they are employed in the following positions:

- Graduate Teaching Assistants and Graduate Research Assistants;
- The Athletics Department; or
- Housing and Residential Life.

The definition of Responsible Employee does not absolve anyone with the knowledge of or reason to suspect child abuse, abandonment, or neglect of the responsibility to report such relevant information to the Department of Children and Families in accordance with FIU Policy # 140.130 Mandatory Reporting of Child Abuse, Abandonment and Neglect.

Obstruction – Any action, individually or working with others, which the Respondent knew or should have known would impede an investigation by the University into possible violations of this Regulation committed by the Respondent, including, but not limited to, failing to participate in a University investigation or grievance process if not the Respondent, making false statement or submitting false information during the grievance process, or destroying potentially relevant evidence.

Preponderance of the Evidence – Based on the evidence provided, it is more likely than not that the actions alleged occurred. Grievance proceedings are conducted to take into account the totality of all evidence available from all relevant sources. The burden of proof rests with the University.

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

Respondent - Any individual or group, including student organization, who has been accused of violating this Regulation.

Retaliation – Any words or behavior made to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this Regulation, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Regulation. Retaliation may be committed by the Respondent, the Complainant, the Reporting Party, or any other individual or group of individuals.

Sexual Harassment – Conduct on the basis of sex which occurs in the United States in an University activity or program that satisfies one or more of the following:

- An employee, including faculty, staff, or contractor, conditioning the provision of aid, benefit, or service on an individual's participation in unwelcome sexual conduct; or

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity;
- Sexual Assault is defined as penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration (regardless of whether it includes penetration) by a sex organ of another person, without the consent of the Complainant. Attempts or assaults to commit Sexual Assault are also included; however, statutory Sexual Assault and incest are excluded;
- Dating Violence which means violence committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship;
- Domestic Violence is defined as violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the 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, by a person similarly situated to a spouse of the victim or by any other person against an adult or youth victim; or
- Stalking defined as a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

Sexual Misconduct –Conduct, regardless of geographic location, that includes:

- *Coercion* - Conduct, intimidation, and/or express or implied threats of physical, emotional, financial, or any other type of harm that would reasonably place an individual in fear of immediate or future harm and that is employed to force or compel someone to engage in sexual contact or any other type of involuntary conduct, especially conduct which would endanger or be detrimental to the Complainant. Examples of Coercion include:
 - Causing the deliberate incapacitation of another person;
 - Conditioning an academic benefit or employment advantage;
 - Threatening to harm oneself if the other party does not engage in sexual contact; or
 - Threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personal or sensitive information if the other party does not engage in the sexual contact or takes actions involuntarily.
- *Domestic Violence* - violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the 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, by a person similarly situated to a spouse of the victim or by any other person against an adult or youth victim

- *Dating Violence* - violence committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- *Gender-based Harassment* - harassment based on gender, sexual orientation, gender identity, or gender expression, including acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve contact of a sexual nature.
- *Non-Consensual Sexual Touching* – any sexual touching without consent. Sexual touching is any intentional touching of a person’s body, including the breasts, buttocks, groin, genitals, or other intimate parts. Touching may be over or under clothing and may include the Respondent touching the Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant’s own body.
- *Obscene or Indecent Behavior*
 - i. Exposure of one’s sexual organs or the display of sexual behavior that would reasonably be obscene or indecent to others. Other forms of obscene or indecent behavior include sexual exhibitionism, engaging in prostitution, or the facilitation or solicitation of a prostitute.
 - ii. Observing another individual’s nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved.
 - iii. Recording, photographing, transmitting, showing, viewing, streaming, or distributing intimate or sexual images, audio recordings, or sexual information of another person in any form without the knowledge and Consent of all parties involved.
 - iv. Publishing a sexually explicit image of a person that contains or conveys the personal identification or information of the depicted person to an internet website, text, email, and/or social media without the depicted person’s Consent.
- *Revenge Porn* - to publish a sexually explicit image of a person, including any depiction that contains or conveys the personal identification or information of the depicted person by any electronic, digital or other means, including to an internet website, by text, by email, and/or by or through social media without the depicted person’s Consent.
- *Sex-based Harassment* – any unwelcome sexual advance, request for sexual favors, and/or other verbal or physical conduct of a sexual nature:
 - i. Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person’s instruction, academic standing, or participation in any University program, activity, or benefit;
 - ii. Submission to, or rejection of, such conduct by an individual is used as a basis for academic or work evaluation;

- iii. Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's educational, and/or campus-residential experience when viewed both from a reasonable person in similar circumstances and the person in question.
- *Sexual Assault* – Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration (regardless of whether it includes penetration) by a sex organ of another person, without the consent of the Complainant. Attempts or assaults to commit Sexual Assault are also included; however, statutory Sexual Assault and incest are excluded
- *Sexual Coercion* – the act of using pressure or force to have sexual contact with someone who has already refused.
- *Sexual Exploitation* - Knowingly or recklessly transmitting a sexually transmitted disease or sexually transmitted infection (such as HIV) to another individual without the knowledge and consent of the person exposed.
- *Stalking* - A course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

Supportive Measures – Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge, to the Complainant or Respondent. The Title IX Coordinator is responsible for coordinating effective implementation of Supportive Measures.

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

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

University Community - Any student, faculty, staff, other person currently employed by the University, or working on University premises, or any participant in a University program or activity regardless of the location of the program or activity.

Violation of Supportive Measure(s): Failure to comply with a Supportive Measure(s) imposed pursuant to this Regulation.

IV. JURISDICTION

Jurisdiction applies to University educational program or activities, including locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University. For Sexual Misconduct matters, jurisdiction applies to respondents who are members of the University community regardless of location.

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

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

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

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

CONFIDENTIAL ASSISTANCE*

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

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

MAKING A REPORT TO THE UNIVERSITY

Means University Officials must take appropriate action

CONTACT:

CONTACT:

On-campus professionals who can provide Confidential Assistance:

Victim Empowerment Program

24 hour crisis: 305-348-2277

MMC: SHC 270

vep.fiu.edu

Counseling & Psychological Services (CAPS)

MMC: SHC 270, 305-348-2277

BBC: WUC 320, 305-919-5305

caps.fiu.edu

Student Health Services

MMC: SHC, 305-348-3336

BBC: SHC, 305-919-5620

Office of Employee Assistance

MMC: 305-348-2469 • BBC: ACII 246B

Title IX Coordinator

Deputy Title IX Coordinators

Mandatory Reporters

Campus Security Authorities

Dean of Students

Student Conduct and Academic Integrity (SCAI) Staff

Faculty

Police

**Off-campus professionals
who can provide Confidential Assistance:**

**Roxcy Bolton Rape Treatment Center at
Jackson Memorial Hospital**

305-585-5185

1611 N.W. 12th Avenue, Miami, FL 33136

<http://www.jacksonhealth.org/services-rape-treatment.asp>

**Florida Council Against Sexual Violence
Information Line**

1-888-956-RAPE

Florida Domestic Violence Hotline

1-800-500-1119; Florida Relay 711

Florida Victim Assistance

1-800-266-6667

**Miami Coordinated Victim Assistance
Center (CVAC)**

305-285-5900

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

**University Officials to Contact for Making a
Report to the University**

Courtney McHenry

Interim Title IX Coordinator

Assistant Director, Office of Inclusion, Diversity,
Equity & Access

PC 321

Phone: 305-348-2785

Email: idea@fiu.edu

Michelle Horvath

Director, Student Conduct and Academic Integrity
(SCAI)

GC 311A

Phone: 305-348-3939

Email: conduct@fiu.edu

Joann Cuesta Gomez

Director, Employee & Labor Relations (ELR)

PC 236

Phone: 305-348-4186

Email: elr@fiu.edu

Julie Berg-McGraw

Deputy Title IX Coordinator

Senior Associate Athletic Director

OBCC 202A | Phone: 305-348-2352

Email: julie.berg-Mc_Graw@fiu.edu

OR FILE ONLINE:

Silent Witness Form provides a method to
report on an anonymous basis to the FIU
Police Department:

http://police.fiu.edu/Silent_Witness.php

FIU Ethical Panther Line provides a
method to report on an anonymous basis to
the University Compliance Office at
<https://fiu.i-sight.com/portal/reportonline>

Incident Reporting Form provides a
method to report on an anonymous basis to
Student Affairs:

<https://publicdocs.maxient.com/incidentreport.php?FloridaIntlUniv>

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

Reports of conduct believed to be prohibited by this Regulation (or that left unchecked may rise to the level of prohibited Sexual Misconduct or Sexual Harassment) are encouraged even if the reporter is not sure that the conduct violates this Regulation or does not want the University to take action against a Respondent. The University will make every effort to respect a Reporting Party's autonomy if that is the Reporting Party's desire. Making a report to the University does not mean that the Reporting Party cannot also seek confidential assistance.

VI. SUPPORTIVE MEASURES

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

Supportive measures may be afforded to the Complainant, the Reporting Party, the Respondent, and/or other involved individuals as appropriate to ensure their safety and/or well-being. Supportive measures may be requested by the parties at any time regardless of whether any particular course of action is sought by the Complainant while avoiding punishing the Respondent prior to the conclusion of the grievance process. The range of Supportive Measures includes, but is not limited to:

- Arranging for medical services
- Access to counseling services either provided by the University and/or through community resources
- Providing crisis intervention, case management, emotional and/or practical support, and/or safety planning through the Victim Empowerment Program for students and through the Office of Employee Assistance for faculty and staff
- Imposition of a University "No-Contact Directive" for all or some of the parties involved in the incident
- Rescheduling of exams and assignments
- Providing alternative course completion options
- Change in class schedule, including the ability to drop a course without penalty or to

transfer sections

- Change in work schedule or job assignment
- Change in campus housing assignment
- Assistance from University support staff in completing housing relocation, if feasible
- Voluntary leave of absence from work in accordance with University policies
- Providing an escort to assure safe movement between classes and activities
- Providing academic support services, such as tutoring
- University-imposed leave or suspension for the Respondent.
- Any other feasible measure(s), which can be tailored to the involved individuals to achieve the goals of this Regulation.

All individuals are encouraged to report concerns about the adequacy of the Supportive Measures or the failure of another individual to abide by any Supportive Measure to the Title IX Coordinator or designee. Any violation of a Supportive Measure will be investigated and adjudicated under this Regulation.

VII. ADVISORS

During the grievance process, the Complainant and Respondent may have an advisor of their choice accompany them to any related meeting or proceeding. Advisors have no active role in any meetings or the grievance process except as explicitly provided in this Regulation. Meetings or proceedings may not be unreasonably delayed due to the selection or schedule of an Advisor, and it is the responsibility of the Complainant or Respondent to communicate relevant information to their Advisor and ensure that their Advisor comports themselves in a manner which respects this educational-administrative process. After an appropriate warning, the University reserves the right to stop a meeting or proceeding and remove an Advisor whose presence disrupts the meeting or proceedings, and then begin the meeting or proceedings without the Advisor. During a hearing held pursuant to this Regulation, an advisor will be provided by the University for cross-examination purposes only if the Complainant or Respondent does not already have an Advisor.

VIII. FORMAL COMPLAINTS

A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or electronic mail using the contact information listed for the Title IX Coordinator above. A Formal Complaint may also be filed through conduct.fiu.edu or <https://fiu.i-sight.com/portal/idea> .

If the Complainant files a Formal Complaint, the University will analyze whether it is to be dismissed. This analysis occurs prior to the investigation, and at any point in the investigation or grievance process when the grounds for dismissal appear. In all cases, if the Formal Complaint is dismissed, the Title IX Coordinator will promptly and simultaneously provide the parties written notice of the dismissal, the reasons for the dismissal, and an opportunity to appeal.

Mandatory Dismissal of Formal Complaints of Sexual Harassment

The University must dismiss a Formal Complaint of Sexual Harassment to the extent the conduct alleged in the Formal Complaint:

- Would not constitute Sexual Harassment even if proved;
- Did not occur in the University's education program or activity; or
- Did not occur in the United States.

At the time a Formal Complainant is filed, a Complainant must be participating in or attempting to participate in a University educational program or activity. Even though a Formal Complaint must be dismissed for Sexual Harassment (Title IX) purposes, the University may continue to review the allegations as Sexual Misconduct or other violation of the University's regulations, rules, and policies.

Permissible Dismissal of Formal Complaints of Sexual Harassment or Sexual Misconduct

The University may dismiss a Formal Complaint in the following circumstances:

- The conduct would not constitute Sexual Misconduct even if proved;
- Upon completion of the investigation, the Title IX Coordinator concludes that there is not reasonable cause to believe that a violation of this Regulation occurred. Reasonable cause is a lower standard than preponderance of the evidence;
- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- The Respondent is no longer enrolled or employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

In determining whether to dismiss in these circumstances, the University will evaluate whether a dismissal would be clearly unreasonable in light of the known circumstances.

If dismissed, the University may continue to review the allegations as a violation of other University regulations, rules, and policies.

Consolidation of Formal Complainants

The Title IX Coordinator, Director of Student Conduct and Academic Integrity or the Director of Employee and Labor Relations or designee(s) may consolidate Formal Complaints against more than one (1) Respondent, or by more than one (1) Complainant against one (1) or more Respondents, or by one Party against another Party where the allegations arise out of the same facts or circumstances.

IX. INTERIM SUSPENSION AND ADMINISTRATIVE LEAVE

The University may remove a Respondent from some or all of the University's programs and activities or employment on an interim basis if it determines there is an immediate threat to the health, safety, or welfare of the University or University Community arising from allegations of

violations of this Regulation. Prior to placing a Respondent on Interim Suspension or Administrative Leave, the University will conduct an individualized safety and risk analysis.

If a Respondent is removed pursuant to this section, the University will provide the Respondent with written notice and an opportunity to challenge the removal. The Respondent will have three (3) Business Days from the date of the notice of Interim Suspension or Administrative Leave to challenge the decision, in writing, stating the basis of their challenge to the removal. A copy of the challenge to the Interim Suspension or Administrative Leave will be provided to the Complainant. No later than three (3) Business Days after receipt of the challenge, the University will provide a written determination to the Respondent and Complainant.

If Interim Suspension or Administrative Leave is upheld, the Respondent retains all rights to an investigation and hearing as set forth in this Regulation prior to any ultimate finding of responsibility and sanctions.

X. INVESTIGATION OF FORMAL COMPLAINTS

Criminal Investigations

To initiate a criminal investigation, reports of Sexual Misconduct or Sexual Harassment should be made to the University Police Department, or local law enforcement. The criminal process is separate from this grievance process and the Rules of Civil or Criminal Procedure do not apply. The University has an obligation to promptly respond to allegations of Sexual Misconduct or Sexual Harassment and investigate all Formal Complaints while the criminal process is pending. Therefore, the University in its sole discretion may proceed with an investigation under this Regulation before, during, or after any law enforcement investigation or criminal proceedings.

Notice of Allegation

Upon receipt of a Formal Complaint, the Title IX Coordinator or designee will provide the Complainant and Respondent with written notice stating:

- this Regulation and other applicable Regulations or policies;
- the allegations of Sexual Harassment or Sexual Misconduct including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved if known, the alleged conduct constituting Sexual Harassment or Sexual Misconduct, and the date and location of the alleged incident if known;
- the Respondent is presumed Not Responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence;
- any provision of the Student Conduct and Academic Honor Code or applicable regulations, policies, or procedures that prohibits knowingly making false statements or knowingly submitting false information during the grievance process; and
- an appointment date and time where they will, separately, meet with the Title IX Coordinator for an information session to discuss the grievance process, supportive measures, and any other concerns a party may have. Each party will be provided with at

least fourteen (14) Business Days between receipt of the Notice of Allegation and the date of the initial interview except in cases of emergency or where waived by the party.

If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the original Notice of Investigation, the University will provide notice of the additional allegations to the parties.

Timeline for Investigation and Responsibility Determination

It is the University's intention to complete a Title IX investigation and reach a determination of responsibility within ninety (90) Business Days, although good-faith efforts to conduct a fair, impartial investigation in a timely manner may require a different timeline depending on the circumstances.

Any deadline set forth in this Regulation or imposed during the grievance process may be temporarily modified or given a limited extension of time for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the modification. Good cause may include considerations such as the absence of a party, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

The University may act on its own in modifying deadlines, or the parties may request an extension in writing by contacting the Title IX Coordinator, Director of Student Conduct and Academic Integrity or Director of Employee Labor Relations or designee(s) as applicable.

Appointment of an Investigator

The Title IX Coordinator may designate one or more properly trained individuals to investigate a Formal Complaint, including University or third-party investigators.

In the event of a conflict or bias, the University will appoint an alternate individual so that the process is free of conflicts of interest and bias.

Concurrent Processes

If the Respondent is a student and portions of the Formal Complaint include allegations that violate the Student Conduct and Honor Code but are not alleged violations of this Regulation, those allegations may be investigated and/or addressed separately by Student Conduct and Academic Integrity before, during, or after the investigation coordinated by the Title IX Coordinator described herein.

Similarly, if the Respondent is an employee or member of the University Community and portions of the Formal Complaint include allegations that violate University regulations, policies, and procedures applicable to personnel, but are not alleged violations of this Regulation, then those allegations may be investigated and/or addressed separately by Human Resources before, during, or after the investigation coordinated by the Title IX Coordinator described herein.

The Collection of Evidence

Investigators will gather information from the Complainant, Respondent, and other individuals who have information relevant to the Formal Complaint. The parties will have an equal opportunity to present facts and evidence, identify witnesses, and other inculpatory and exculpatory evidence. The investigator may also interview relevant third parties who, throughout the course of the investigation, are determined to have information that may assist in the review of the formal complaint. The investigator has the discretion to determine the relevance of any witnesses provided by either party, and will determine which witnesses to interview. The investigator will not consider relevant any witnesses who are offered solely for the purpose of providing evidence of a party's character. If a party declines to provide relevant information, the University's ability to conduct a prompt, thorough, and equitable investigation may be impaired.

The University will provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all investigative interviews at least seven (7) Business Days prior to the investigative meetings, or other meetings except in cases of emergency or unless waived by the Respondent.

Exclusion of Certain Forms of Evidence

The University cannot access, consider, disclose, or otherwise use a party's records that contain information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

If a party chooses to provide evidence that would otherwise be excluded under this subsection, it will be considered directly related evidence subject to the parties' inspection.

Review of Collected Evidence & Investigatory Report

The Title IX Coordinator, Director of Student Conduct and Academic Integrity, or Director of Employee and Labor Relations, or designee as appropriate will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the University must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will be given at least ten (10) Business Days to submit a written response. The investigator will consider any written responses prior to completion of the investigative report.

The University will also make all directly related evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

The Title IX Coordinator or designee will send the parties and their advisors the final investigative report that fairly summarizes relevant evidence, with at least 10 (ten) Business Days prior to a hearing or determination of responsibility.

XI. INFORMAL RESOLUTION

If a Formal Complaint has been filed, the University has the discretion at any time prior to reaching a determination regarding responsibility to choose to offer and facilitate informal resolution options so long as the parties give voluntary, informed written consent to attempt informal resolution. Informal resolution is not available when a Complainant is a student alleging that a University employee has engaged in Sexual Harassment or Sexual Misconduct.

In offering an informal resolution process, the University will provide the parties written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which, upon reaching an agreed resolution, it precludes the parties from resuming a formal complaint arising from the same allegations; provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint. The University will also explain any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The Informal Resolution process must be completed within fifteen (15) Business Days of the parties agreeing to pursue such a process. If not completed by that deadline, in the absence of any approved extensions, the Formal Complaint will continue to be investigated and processed for a live hearing as described in this Regulation.

XII. HEARINGS

The Hearing Process

Live hearings may be conducted with all parties physically present in the same geographic location or with any (or all) parties, witnesses, and other participants appearing virtually utilizing technology that enables participants to simultaneously see and hear each other. At the request of either party, the University will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-makers and parties to simultaneously see and hear the party or the witness answering questions.

At the live hearing, the Hearing Officer will explain each Party's rights and options and assure that fairness and procedural due process are observed throughout the hearing. The Hearing Officer will permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor. Only relevant cross-examination and other questions may be asked of a party or witness. To ensure this, before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

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 alleged conduct 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.

If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer and Hearing Body will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Office and Hearing Body will not 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.

The University will create an audio or audiovisual recording, or transcript, of any live hearing. Live hearings will be closed to the public.

The Written Determination Regarding Responsibility

The University will provide a written determination regarding the Respondent's responsibility simultaneously to the Parties within fourteen (14) Business Days from the conclusion of the hearing. The Decision-Maker will also provide a copy of the written determination to the Title IX Coordinator. Unless an appeal is filed, this written determination shall constitute Final Agency Action. The written determination regarding responsibility will include the following:

- Identification of the allegations potentially constituting Sexual Misconduct or Sexual Harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the University's regulations to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant (without disclosing the nature of those remedies except to the extent a remedy also imposes requirements on the Respondent); and
- The grounds for appeal.

XIII. DISCIPLINARY SANCTIONS

In reaching a determination regarding sanctions, consideration will be given to any aggravating and mitigating circumstances. The sanctions described below are a description of the range of sanctions available, and not an exhaustive list of all sanctions that may be imposed.

Student Conduct and Academic Integrity will oversee disciplinary sanctions for students and student organizations. Students or student organizations who are found to have violated this Regulation will be subject to disciplinary sanctions as set forth in the Student Conduct and

Academic Code, FIU- Regulation 2501. Any sanctions will be proportionate to the severity of the violation and the student's cumulative conduct history. Sanctions include, but are not limited to, reprimand, educational sanctions, counseling assessment, restitution, disciplinary probation, restrictions, exclusion from university housing, suspension, loss of university recognition, or expulsion.

Human Resources will oversee disciplinary sanctions for non-students. Faculty and staff who are found to have violated this Regulation will be subject to disciplinary action pursuant to applicable collective bargaining agreements or applicable personnel regulation, policies, or procedures. Sanctions include, but are not limited to letters of reprimand, training, performance improvement plans, reassignment, demotion, suspension with or without pay, and termination. Third parties (including contractors and visitors) who are found to have violated this Regulation may be barred from the campus and/or conducting business with the University.

XIV. REMEDIES

In some cases, the Hearing Official or Hearing Panel may find that remedies are needed for a Complainant when a Respondent is found responsible for violating this Regulation. Remedies are designed to restore or preserve the Complainant's equal access to the University's education program or activities. As an example of the range of remedies available, remedies may include similar individualized services as defined in Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. Remedies do not include damages or other financial awards, or other relief that would impose an undue hardship on the University.

The Title IX Coordinator is responsible for the effective implementation of any remedies. When a determination indicates that remedies will be offered to the Complainant, the Complainant should contact the Title IX Coordinator to arrange for appropriate remedies.

XV. PROCESS OF PRESIDENTIAL REVIEW

The President will notify the Appellate Officer within three (3) Business Days of notification of a disciplinary outcome if he/she wishes to review the underlying disciplinary matter. This review will serve as the appeal process for the Respondent and Complainant. Any other appeal process will immediately cease.

No later than one (1) Business Day after the President notifies the Appellate Officer, the Appellate Officer shall notify the Respondent and Complainant of the President's decision to review the underlying disciplinary matter including sanctions. The Respondent and Complainant may provide the President with any information (including any documents supporting an appeal if not previously submitted) within three (3) Business Days of the Appellate Officer's notification.

The President may only consider the information previously provided in this disciplinary matter, any appeals submitted by the Respondent and Complainant, and any information that meets the grounds for appeal as outlined in Section XVI.

The President shall issue a written decision, including the results of the appeal and rationale, to the Respondent, Complainant, Appellate Officer, and Title IX Coordinator within fourteen (14) Business Days of notification of a disciplinary outcome. The President's decision constitutes Final Agency Action and will include notice of the Respondent's right to appeal to an external judicial forum.

XVI. APPEALS

Both parties will be notified and provided with the opportunity to appeal a determination or dismissal based on the following grounds only:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or Hearing Official 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; or
- The sanctions are extraordinarily disproportionate to the violation committed.

An appeal must be submitted in writing to the Appellate Officer within seven (7) Business Days of the date of the Hearing Official or Hearing Body's written determination and identify the grounds and arguments for challenging the outcome. If the appeal is based on newly discovered evidence, the evidence must be submitted with the written appeal.

Upon receipt of an appeal, the University will notify the other party in writing when an appeal is filed and provide them with seven (7) Business Days to submit a written statement in support of or challenging the outcome.

After both parties have had an opportunity to present their arguments challenging or supporting the outcome, the Appellate Officer will issue a written decision within fourteen (14) Business Days simultaneously to both Parties with the result of the appeal and the rationale. The Appellate Officer will also provide a copy of the appellate decision to the Title IX Coordinator. The University's decision shall constitute Final Agency Action.

XVII. PRIVACY AND CONFIDENTIALITY

The University will keep information and actions taken in accordance with this Regulation confidential to the extent possible under the law, meaning it will only disclose information to individuals with a legitimate need to know in order to review, investigate, and resolve reports of Sexual Misconduct or Sexual Harassment, or as permitted or required by law.

The University may release information about Sexual Misconduct or Sexual Harassment in certain circumstances without permission in order to warn and protect the University Community.

XVIII. RETALIATION AND OBSTRUCTION

Retaliation and Obstruction are prohibited during any portion of the grievance process. If a member of the University community believes that Retaliation or Obstruction may have been taken against them or others , they should report the behavior to the Title IX Coordinator or investigator. The situation will be reviewed and a response will be provided to the employee or student who alleged the Retaliation or Obstruction. Charging an individual with a violation for making a materially false statement in bad faith in the grievance process under this Regulation does not constitute Retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. Exercising any rights secured by the First Amendment does not constitute Retaliation.

Specific Authority: Board of Governors Regulation 1.001 (5)(a). History-- Formerly FIU-104 (repealed) and FIU-103 (repealed). New April 15, 2015, Amended June 8, 2018, Amended 8-13-20, Amended ____.

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THE FLORIDA INTERNATIONAL UNIVERSITY
BOARD OF TRUSTEES
Academic Policy and Student Affairs Committee

October 28, 2020

Subject: Proposed Amendment to Regulation FIU-2501 Student Conduct and Honor Code

Proposed Committee Action:

Recommend that the Florida International University Board of Trustees approve the revisions to Regulation FIU-2501 Student Conduct and Honor Code, and delegate authority to the University President to approve any subsequent non-material amendments based on comments to the Regulation received from the Florida Board of Governors (BOG).

Background information:

Florida Board of Governors Regulations 1.001(4)(a)(10), University Board of Trustees Powers and Duties, and 6.0105, Student Conduct and Discipline, grant university boards of Trustees authority to establish a student disciplinary system, including a code of conduct.

Florida Board of Governors Regulation 1.001(4)(a)(10), states, in part, as follows: “Each board of trustees shall adopt university regulations or policies, as appropriate, in areas including, but not limited to: ... uniform student code of conduct and related penalties.”

Florida Board of Governors Regulation 6.0105 states, in part, as follows: “In furtherance of the educational mission of the universities, each university board of trustees shall establish a student disciplinary system, including a code of conduct...”

On August 12, 2020, pursuant to the Emergency Regulation Promulgation Procedures, the Board of Trustees approved the following changes to Regulation FIU-2501 Student Conduct and Honor Code: remove all matters related to sexual misconduct and sexual harassment to be adjudicated under Regulation FIU-105 Sexual Misconduct (Title IX); editorial changes; expanding the amnesty provisions under the Code; expanding the interim measures under the Code and adding the specific process of petitioning for review of an interim suspension; changing the restrictions related to probation under to Code to better align with the educational and developmental aims of the document; adding (and in some instances incorporating existing language from the Code) the following as distinct violations under the Code: assisting, failure to comply, harassment, and social host responsibility; and revising the length of the notation of suspension on a Respondent's academic transcript.

The following changes are now presented for approval:

- Clarifying that when a case is ceded to adjudication under Regulation 105 because of an overlap of facts between Regulations 2501 and 105, such a case may be resolved by an informal resolution or formal proceeding;

- Clarifying that if the University President exercises authority deemed necessary to meet the goals of this Code regarding sexual misconduct or stalking, that authority is being exercised under Regulation 105;
- Fixing scrivener errors such as updating violation numbers and letters which were changed, alphabetizing violations which were not in alphabetical order, adding missing conjunctions, and, replacing “charged student” with “respondent”;
- Editorial changes such as fixing formatting issues that include spacing and sub-lettering and adding page numbers to the document; and
- Incorporating language to the hazing definition to ensure compliance with Board of Governors Regulation 6.021.

Supporting Documentation: Regulation FIU-2501 Student Conduct and Honor Code
Executive Summary of Revisions to FIU-2501 Student
Conduct and Honor Code

Facilitator/Presenter: Elizabeth M. Bejar



THE FLORIDA INTERNATIONAL UNIVERSITY

BOARD OF TRUSTEES

Proposed Changes to Regulation

FIU-2501 Student Conduct and Honor Code

October 28, 2020

Overview

In response to the updated regulations to Title IX of the Education Amendments of 1972 (Title IX) promulgated by the Office of Civil Rights early this summer, and reflective of the direction which those with subject-matter expertise have provided, to best serve the interests of the Florida International University (FIU) Community, the proposed changes to FIU Regulation 2501: Student Conduct and Honor Code (Code) are submitted for your review and approval.

Executive Summary

On August 12, 2020, the Board approved the following:

- All matters related to gender or sex-based misconduct, including violations prohibited by Title IX, be encompassed under Regulation 105: Sexual Misconduct (Title IX).
- Editorial changes: Such changes included rearranging portions of the Code to ensure that related information was included in the same or most relevant area of the Code, removing and consolidating redundant information, and working to promote readability of the regulation;
- Expanding the amnesty provisions under the Code;
- Expanding the interim measures under the Code and adding the specific process of petitioning for review of an interim suspension;
- Changing the restrictions related to probation under the Code to better align with the educational and developmental aims of the document;
- Adding (and in some instances incorporating existing language from the Code) the following as distinct violations under the Code: assisting, failure to comply, harassment, and social host liability; and,
- Revising the length of the notation of suspension on a Respondent's academic transcript.

The following changes are presented now for approval:

- Clarifying that when a case is ceded to adjudication under Regulation 105 because of an overlap of facts between Regulation 2501 and 105, such a case may be resolved by an informal resolution or formal proceeding;
- Clarifying that if the University President exercises authority deemed necessary to meet the goals of this Code regarding sexual misconduct or stalking, that authority is being exercised under Regulation 105;

- Fixing scrivener errors such as updating violation numbers and letters which were changed alphabetizing violations which were not in alphabetical order; adding missing conjunctions; and, replacing “charged student” with “Respondent”;
- Editorial changes such as fixing formatting issues such as spacing and sub-lettering and adding page numbers to the document; and,
- Incorporating language to the hazing definition to ensure compliance with Board of Governors’ Regulation 6.021.

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES
FLORIDA BOARD OF GOVERNORS**

NOTICE OF CHANGE TO PROPOSED AMENDMENT TO REGULATION

REGULATION NO.: FIU-2501

REGULATION TITLE: Student Conduct and Honor Code

SUMMARY: Regulation FIU-2501 Student Conduct and Honor Code is amended as follows:

- Clarifying that when a case is ceded to adjudication under Regulation FIU-105 Sexual Harassment (Title IX) and Sexual Misconduct because of an overlap of facts between Regulation FIU-2501 and FIU-105, such a case may be resolved by an informal resolution or formal proceeding
- Clarifying that if the University President exercises authority deemed necessary to meet the goals of this Code regarding sexual misconduct or stalking, that authority is being exercised under Regulation FIU-105;
- Incorporating language to the hazing definition to ensure compliance with Board of Governors' Regulation 6.021; and
- Fixing scrivener and editorial errors.

TEXT OF REGULATION: The full text of the Proposed Regulation can be viewed below and on the website of The Florida International University Board of Trustees, <http://regulations.fiu.edu>. If you would like a copy of the Proposed Regulation, please contact Eli Deville, Departmental Administrator, Office of the General Counsel at (305) 348-2103.

AUTHORITY: Article IX, section 7(d), Florida Constitution; Florida Board of Governors 1.001; Florida Board of Governors Regulation 6.010; and Florida Board of Governors Regulation 6.0105.

NAME OF PERSON INITIATING PROPOSED REGULATION: Dr. Elizabeth Bejar, Senior Vice President for Academic & Student Affairs.

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED REGULATION MUST SUBMIT COMMENTS IN WRITING TO THE CONTACT PERSON LISTED BELOW. ALL WRITTEN COMMENTS MUST BE RECEIVED BY THE CONTACT PERSON WITHIN 14 CALENDAR DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE.

CONTACT PERSON REGARDING THE PROPOSED REGULATION:

Eli Deville, Departmental Administrator, Office of the General Counsel, Florida International University, 11200 SW 8th Street, PC 511, Miami, FL 33199, Email: devillee@fiu.edu
Phone: (305) 348-2103, Fax: (305) 348-3272.

DATE OF PUBLICATION: October 19, 2020

THE FULL TEXT OF THE REGULATION IS PROVIDED BELOW.

FIU-2501 Student Conduct and Honor Code

As an academic community, Florida International University (FIU) fosters the intellectual exchange of ideas, knowledge, and experience. It is the responsibility of the University to provide a safe and stimulating environment in which scholarship and personal growth may occur. The desired effect is that Students will take advantage of this environment to develop intellectually as well as to participate as responsible, contributing citizens of our community.

Being a contributing Student also comes with responsibility to adhere to the Student Conduct and Honor Code (Code). The ultimate responsibility for knowing University requirements and regulations rests with the Student, regardless of institutional or program affiliation. Nothing in this Regulation should be interpreted to abridge the right of any member of the University community of rights granted under the United States or Florida Constitution and/or any other applicable law including, but not limited to, the freedom of expression protected by the First Amendment. Those charged with and found Responsible for violations of the Code will be subject to appropriate action as outlined herein. For the most updated Code, please refer to the website of Student Conduct and Academic Integrity (SCAI) at conduct.fiu.edu.

Undergraduate, Graduate, and Professional Students at FIU are expected to adhere to the highest standards of integrity in every aspect of their lives. Honesty in academic matters is part of this obligation. Each Student shall be responsible for their conduct from the time that they have been notified of admission through the actual awarding of a degree, including the academic year and during periods between terms of actual enrollment. The Code shall apply to a Student's conduct even if the Student withdraws from the University, while a conduct matter is pending, or if the conduct is not discovered until after a Student has withdrawn or a degree has been awarded. Academic integrity is the adherence to those special values regarding life and work in an academic community. Code violations may lead to suspension or expulsion from the University if a determination of responsibility has been made. These sanctions will be determined based on severity of incident and prior violations of the Code.

The safety and well-being of our community is the University's foremost concern. ~~FIU has zero tolerance for acts that compromise the safety and well-being of members of the University community.~~ It is the policy of the University that acts of harassment and violence will not be tolerated. Any act of intimidation, threat of violence, or act of violence committed against other members of the University when committed within the jurisdiction of the Code is prohibited. Any Student or Student Organization found responsible for a violation of this standard will be subject to discipline up to and including expulsion pursuant to the Code. ~~Code violations in the following list may lead to suspension or expulsion from the University if a determination of responsibility has been made:~~

~~Drug distribution and/or sales (Section 5(g)(2))~~ ~~Endangerment (Section 5(h))~~
~~Hazing (Section 5(m))~~
~~Sexual misconduct (Section 5(s))~~ ~~Stalking (Section 5(u))~~
~~Weapons (Section 5(z))~~

Any Sexual Misconduct or Sexual Harassment, as defined pursuant to FIU-Regulation 105, will be handled in accordance with FIU-Regulation 105.

1. DEFINITIONS

a. Academic Misconduct: Any act or omission by a Student, which violates the concept of academic integrity and undermines the academic mission of the University in violation of the Code.

~~a. **b. Advisor:** Any person chosen by the Charged Student, Charged Student Organization, or the Complainant~~**Respondent** to assist throughout the Student Conduct and/or Academic Misconduct processes (e.g., faculty, staff, parent/guardian, attorney, friend, alumni, or any other person who is not a Witness in the process). Proceedings may not be unreasonably delayed due to the selection of schedule of an advisor, and it is the responsibility of the Respondent to communicate relevant information to their advisor and to ensure that their advisor comports themselves in a manner which respects the educational-administrative conduct process. After an appropriate warning, the University reserves the right to stop a proceeding and remove an advisor whose presence disrupts the conduct proceedings.

~~b. **c. Business Day:** A day when the University is open for regular business operations from 8:00~~**30** a.m. up to 5:00 p.m. Eastern Standard Time. ~~For emailed correspondence~~In computing any time period specified in this Code, the day of delivery is not included in a designated time period~~the event, act, or default that initiates the period shall be excluded.~~

~~c. **d. Character Witness Statement:** A statement relating to the general character and reputation of the person.~~

~~d. **e. Charge:** The written statement of the alleged violations of the Code.~~

~~e. **Charged Student:** Any Student who has been charged with an alleged violation of the Code.~~

~~f. **f. Coercion:** Conduct, intimidation, and/or expressed or implied threats of physical, emotional, financial, or any other type of harm that would reasonably place an individual in fear of immediate or future harm and that is employed to force or compel someone to engage in any sexual contact or any other type of involuntary conduct not covered by FIU Regulation 105, especially conduct which would endanger or be detrimental to the Complainant. Examples of Coercion include:~~

- Causing the deliberate Incapacitation (see below for definition) of another person; and
 - Conditioning an academic benefit or employment advantage;
 - ~~Conditioning an academic benefit or employment advantage;~~
 - ~~Threatening to harm oneself if the other party does not engage in sexual contact; or~~
 - ~~Threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personal or sensitive information if the other party does not engage in the sexual contact or takes actions involuntarily.~~
- ~~f. **Complainant:** Any individual who may have been the subject of any Sexual~~

~~Misconduct, Dating or Domestic Partner Violence, and/or Stalking by the Charged Student regardless of whether the individual makes a report.~~

~~g. **Consent:** A clear, knowing, and voluntary agreement to engage in specific sexual activity at the time of the activity. Consent can be communicated by words or actions as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity. Consent must be ongoing throughout the sexual activity and can be withdrawn at any time. Sexual contact must cease immediately once withdrawal of consent is clearly communicated.~~

~~• Consent must be active, not passive.~~

~~• Lack of protest or resistance does not mean consent has been granted, nor does silence mean consent has been granted.~~

~~• Within each sexual encounter, there may be separate individual sexual acts involved, and consent to one act and/or person(s) by itself does not constitute consent to another act and/or person(s).~~

~~• The existence of a dating relationship between the persons involved, or the fact of past sexual relations, should never, by itself, be assumed to be an indicator of consent for any current or future sexual encounter even in the context of a relationship, there must be mutual consent.~~

~~• If coercion or force is used, there is no consent.~~

~~• If a person is incapacitated so that the person cannot understand the fact, nature or extent of the sexual situation, there is no consent. This may be affected by conditions due to age, alcohol or drug consumption, unconsciousness, being asleep, physical or developmental disabilities.~~

~~• Whether one has taken advantage of a position of influence over another can be a factor in determining whether there was consent.~~

~~• In order to give consent, one must be of legal age.~~

~~• The question of what the Charged Student should have known as to whether the Complainant was Incapacitated is objectively based on what a reasonable person, sober and/or exercising good judgment, would have known about the condition of the Complainant.~~

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

~~g. **Consent:** Incorporated as defined by FIU Regulation 105~~

~~g. **h. Final Agency Action:** The written decision resulting from the Student Conduct and/or Academic Misconduct processes which finally determines the rights or obligations of the Respondent. Decisions of the Hearing Body constitute Final Agency Action unless there is a timely appeal. If a decision is timely appealed, the decision of the appellate body constitutes Final Agency ActionCharged Student or Student Organization.~~

~~g. **i. Hazing:** Any action or situation that recklessly or intentionally endangers the mental or physical health or safety of a Student for purposes including, but not limited to, initiation or admission into, affiliation with, or the perpetuation or furtherance of a tradition or ritual of any Student Organization operating under the sanction of the University or other organization or group not officially recognized by the University.~~

~~Although hazing is typically related to a person's initiation or admission into, or affiliation with~~

a Student Organization, athletic team (intramural, club or intercollegiate), extracurricular activity or any other University group or organization, it is not necessary to have direct proof that a person's initiation or continued membership is contingent upon participation in the activity for a charge of hazing to be upheld.

~~, and one cannot consent to hazing activities.~~ The actions of active, prospective, former, or associate members (pledges) of a Student organization may be considered hazing. Organizational leaders who plan a hazing event will be held Responsible even if not in attendance at an event where the hazing occurs. Hazing does not include customary athletic events or similar contests or competitions or any activity or conduct that furthers a legal and legitimate objective.

~~h.~~ **j. Hearing Body:** Student Conduct hearings consist of a Hearing Officer (Administrative Hearing) or, if a Student Conduct Committee, two (2) Students, a faculty/staff member, and a ~~non-voting~~nonvoting Hearing Officer. Academic Misconduct hearings consist of a Hearing Officer (Administrative Hearing) or, if a Student Conduct Committee, three (3) Students, and two (2) ~~full-time~~fulltime faculty members, and a non-voting Hearing Officer. The Hearing Body is authorized by the Senior Vice President for Academic & Student Affairs or designee to conduct Student Conduct hearings as set forth in this Code. ~~Title IX hearings shall be conducted by a University official or panel of University officials, except a committee or panel where students comprise at least one half of the membership may be provided if requested by the Charged Student and no objection is raised by the Complainant.~~

~~i.~~ **k. Hearing Officer:** The SCAI Director, ~~the Director of Residential Life, or or~~ respective designee(s). For cases involving Academic Misconduct, representatives from Housing and Residence Life may not serve as a Hearing Officer.

~~i.~~ **l. Immediate Medical Assistance:** Aid that includes, but is not be limited to, calling or seeking additional assistance, rendering cardiopulmonary resuscitation (CPR) to a victim, clearing an airway for the victim to breathe, using a defibrillator (AED) to assist the victim, or rendering any other assistance to the victim which the Student intended in good faith to stabilize or improve the victim's condition while waiting for medical assistance or law enforcement to arrive.

~~j.~~ **m. Impact Statement:** A statement (oral or in writing) that describes how the ~~Complainant~~Reporting Party or ~~Charged Student, or Student Organization~~Respondent has been impacted by the incident that is the basis for the Charge.

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

~~l.~~ **o. Instructor:** The Instructor of record for a course in which a violation(s) of Academic Misconduct is alleged.

~~m.~~ **p. Interim Suspension:** An immediate temporary (i.e., a limited period of time) separation from the University.

~~n.~~ **Member of the q. University Community:** ~~Any person who is a Student, faculty or staff, any other person currently employed by the University, or third party working on University Premises or within On-Campus Housing (i.e. contractor, vendor), or any participant in a University sponsored program or activity regardless of the location of the program or activity.~~

~~o.~~ **On-Campus Housing:** Such housing owned, controlled, and operated by the University to include, but not limited to, the following: Everglades Hall, Lakeview Halls (North & South), Panther Hall, Parkview Hall, University Apartments, and University Towers. On-Campus

Housing also includes Bayview Student Living (BBC), or any fraternity or sorority houses located on University Premises.

~~p.~~ **r. Policy:** The written procedures, policies, or regulations of the University (as they may be amended from time to time) as found in, but not limited to, the Florida International University Board of Trustees regulations, the Code, FIU Regulation 105, the Undergraduate/Graduate/Professional Catalogs, the Student Handbook, the University Housing Resident Handbook, and/or Campus Life/Wellness & Recreation Center policies.

~~q.~~ **s. Preponderance of the Evidence:** When the information that is presented supports a finding that it is more likely than not that a violation occurred.

~~r.~~ **t. Receipt of Written Notice:** When Written Notice (see below for definition) has been sent electronically to the official University email address.

~~s.~~ **u. Reporting Party:** Any person (~~including the Complainant~~) who reports an alleged violation of the Code ~~by a Student.~~

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

~~aav.~~ **Respondent:** A student or student organization ~~changed~~ charged with violating the Student Conduct and Honor Code.

~~w.~~ **SCAI Director:** The Director of Student Conduct and Academic ~~Integrity~~ Academic Integrity (SCAI) or designee.

~~bbx.~~ **Student:** Any person who participates in any course or program of the University, either full-time or part-time, in-person or online, and whether degree-seeking or non-degree seeking. Persons who withdraw after allegedly violating the Code, persons who are not officially enrolled at the University for a particular term but who have a continuing relationship with the University, persons who have been notified of being accepted for admission, and persons who are living in the residence halls but are not enrolled at the University are also considered Students.

~~ee.~~ **Student Organization:** A Student group that is officially registered or recognized by the University, including, but not limited to, political groups, social groups, honor & professional societies, fraternities & sororities, and sport clubs. Membership in a student organization does not affect an individual Student's status with the University or attendance at classes unless the individual Student has been charged and sanctioned independently.

~~z.~~ **Title IX Coordinator:** The individual University official with the primary responsibility for coordinating the University's compliance with Title IX. The Deputy Title IX Coordinator is an individual(s) designated by the Title IX Coordinator to support the Title IX Coordinator with respect to the University's efforts to comply with Title IX. ~~dd. Title IX Coordinator: The individual University official with the primary responsibility for coordinating the University's compliance with Title IX. The Deputy Title IX Coordinator is an individual(s) designated by the Title IX Coordinator to support the Title IX Coordinator with respect to the University's efforts to comply with Title IX.~~

~~ee~~

~~aa.~~ **University:** Florida International University.

~~t.~~ **bb. University Community:** Any person who is a Student, faculty or staff, any other person currently employed by the University, or third party working on University Premises or within On-Campus Housing (i.e. contractor, vendor), or any participant in a University-sponsored program or activity regardless of the location of the program or activity.

ffcc. University Official: Any person employed by the University to perform assigned teaching, research, administrative, professional or other responsibilities (e.g., faculty, staff, administrators, residence hall staff, FIU Police).

ggdd. University Premises: Any building or property owned or controlled by the University within the same reasonably contiguous geographic area and used by the University in direct support of, or in a manner related to, the University's educational purposes, including residence halls; and any building or property that is within or reasonably contiguous to that previously described in this paragraph that is owned by the University, but that is controlled by another person, is frequently used by students, and supports University purposes (e.g., a food or other retail vendor). This definition is designed to conform to the Clery Act definition which can be amended from time to time.

hhee. Witness: A person(s) who has factual knowledge about the incident which forms the basis of the Charge.

iff. Written Notice: A notification of the charges against the ~~Charged Student~~Respondent sent via email to the ~~Charged Student's~~Respondent's official University email address. A notification to a Student Organization Respondent sent via email to the official University email address of the Student Organization's President.

2. JURISDICTION

~~Each Student shall be responsible for their conduct from the time that he/she has been notified of admission through the actual awarding of a degree, including the academic year and during periods between terms of actual enrollment. The Code shall apply to a Student's conduct even if the Student withdraws from the University, while a conduct matter is pending, or if the conduct is not discovered until after a Student has withdrawn or a degree has been awarded.~~

~~Jurisdiction under the Code applies to the conduct of any Student or Student Organization that occurs on University Premises or On-Campus Housing, at University-related activities/events, on all locations where a University course, program, or activity is being conducted, including foreign locations, such~~ while the student meets the definition of "student" as study abroad programs articulated in 1.x and the student organization meets the definition of "student organization" as articulated in 1.y, regardless of the geographic or electronic location. For allegations regarding accusations of hazing, jurisdiction extends to a student organization or group whether or not officially recognized by the University as required by Florida Board of Governors Regulation 6.02.1.

~~a. The University reserves the right to impose discipline based on off-campus conduct, including Academic Misconduct. Discipline for off-campus conduct may be pursued under the Code if:~~

- ~~• The off-campus conduct is specifically prohibited by law or the Code;~~
- ~~• The off-campus conduct demonstrates that the continued presence of the Student on campus presents a danger to the health, safety, or welfare of the University community, is disruptive to the orderly conduct, processes and functions of the University, is contrary to the University's mission, or is intimidating or threatening to the University community or member of the University community; or~~
- ~~• The off-campus conduct has continuing adverse effects on the campus.~~

~~e. b. A conduct proceeding is not a criminal or judicial proceeding. It is designed to address the Charged Student's~~Respondent's behavior, ~~whether on or off campus; therefore. Therefore,~~

alleged violations of the Code will be addressed independently of any criminal or judicial proceeding and regardless of whether the criminal charges have been dismissed or reduced to a lesser offense. In extra-ordinary situations, and at the request of external law enforcement or prosecutor's office, the University may delay its application of this Code.

~~e.~~ c. The Code does not address:

- Issues related to research misconduct or violations of FIU Regulation 105. Resolutions of issues related to research misconduct must be addressed using the University Research Misconduct policy; or,

- Issues issues related to professional misconduct. Resolutions of issues related to professional misconduct must be addressed at the school or college level. Violations of FIU Regulation 105 will be addresses in accordance to that Regulation.

d. Filing Time: Anyone may report an alleged Code violation within ninety (90) calendar days of the incident or obtaining knowledge about the incident, whichever is later. In addition, the SCAI Director may extend the filing time where the delay may be related to issues of victimization or beyond the control of the University.

3. 3. AUTHORITY

~~a.~~ a. The Board of Trustees of Florida International University has been charged with the responsibility of, and authority for, providing a Student conduct system. Authority for Student discipline and the Student conduct system rests with the University President. Although the University President holds the ultimate authority for Student discipline, this authority is delegated to the Senior Vice President for Academic & Student Affairs, who is responsible for implementing the Student disciplinary system. The Senior Vice President for Academic & Student Affairs delegates authority for the execution and implementation of the Code to the SCAI Director.

~~a.~~ b. The requirements and procedures in the Code may be revised. Those revisions may occur in order to serve the needs of the University Students, faculty and/or staff where safety and security issues so demand. In addition, those revisions may occur in circumstances where, in the University's sole discretion, the requirements and procedures described herein are deemed insufficient to meet the objectives of educating and protecting the members of the University community and/or to respond to changes in the law. Nothing in this Code shall be construed as preventing the University President from taking any action which may be deemed necessary to meet the goals of this Code. In matters involving charges for drug distribution and/or sales (Section 5(~~ig~~)(2)), endangerment (Section 5(~~jh~~)), hazing (Section 5(~~pm~~)), ~~sexual misconduct (Section 5(s))~~, stalking (Section 5(~~yv~~)), and weapons (Section 5(~~ddz~~)) the President may change the outcome and/or sanctions to fulfill requirements of the Code as outlined in Section 178.

~~a.~~ c. ~~The Hearing Body is authorized by the Senior Vice President for Academic & Student Affairs or designee to conduct Student Conduct hearings as set forth in this Code.~~

~~a.~~ Decisions of the Hearing Body constitute Final Agency Action unless there is a timely appeal. If a decision is timely appealed, the decision of the appellate body constitutes Final Agency Action.

~~a.~~ The Hearing Body is authorized to conduct Student Conduct hearings as follows:

- SCAI may conduct Summary Resolutions, Administrative Hearings and

~~Student Conduct Committee Hearings as set forth in this Code.~~

- The Department of Housing and Residential Life (HRL) may conduct both Summary Resolutions and Administrative Hearings regarding cases involving Conduct violations arising in On-Campus Housing. HRL is not authorized to conduct Summary Resolutions and Administrative Hearings regarding cases involving Academic Misconduct violations or Student Conduct Committee hearings. HRL cases may be referred to SCAI.

- ~~In cases where conduct involves both potential Conduct and Academic Misconduct violations, the SCAI Director (or designee) has the authority to handle both matters simultaneously through a joint hearing. If a Student is found Responsible for simultaneous Conduct and Academic Misconduct violations, sanctions from both processes may be imposed.~~

~~4.~~ **4. AMNESTY**

~~a.~~ Medical Amnesty for Alcohol or Drug Use: The University encourages Students to seek medical assistance ~~and/or report sexual misconduct and hazing~~, but it recognizes that ~~they~~ students may be hesitant to make a call or report when they:

~~a.~~ i. Need ~~i~~Immediate ~~m~~Medical ~~a~~Assistance due to their own use of alcohol/drugs; ~~or~~,

~~b.~~ ii. Witness another Student who needs ~~i~~Immediate ~~m~~Medical ~~a~~Assistance due to alcohol/drugs ~~and they may have used alcohol/drugs themselves;~~

~~a.~~ ~~Want to report sexual misconduct, but they themselves (or Witnesses they identify) may have used alcohol/drugs, or~~

~~b.~~ ~~Were present at an event where, as a result of hazing, a person appeared to be in need of Immediate Medical Assistance.~~

~~a.~~ Alcohol/Drugs

~~4.~~ Students~~Thus, students~~ involved in an incident involving alcohol/drugs ~~may~~will not be charged under the Code with ~~possession or~~ consumption if:

i. ~~Acting in good faith,~~ they ~~render or~~ call for ~~i~~Immediate ~~m~~Medical ~~a~~Assistance for themselves and/or others who have participated in or witnessed the incident, ~~and;~~

ii. ~~The~~the Student calling for ~~i~~Immediate ~~m~~Medical ~~a~~Assistance remains at the scene with the person in need of ~~i~~Immediate ~~m~~Medical ~~A~~assistance until such assistance ~~or law enforcement~~ arrives, and then cooperates with such personnel on the scene; ~~and,~~

~~5.~~ ~~Amnesty for alcohol/drugs will be granted only one (1) time for a Student.~~

~~6.~~iii. the student timely completes the appropriate educational intervention for the incident as determined by SCAI. Other charges related to the incident (e.g., alcohol distribution, drug distribution, or other non-alcohol/drug charges) may be determined at the discretion of the SCAI Director.

~~7.~~ ~~Amnesty is not granted to Student Organizations.~~

While student organizations are not eligible for amnesty, calling for medical assistance will be a mitigating factor, while failing to call or removing a person in need of medical assistance will be an aggravating factor at any sanctioning stage.

~~b.~~ Reporting Amnesty: The University encourages Students to report allegations of the Code, including allegations of FIU Regulation 105, but ~~it~~recognizes that students may be hesitant to make a report when they were using alcohol/drugs. Thus, students involved in an incident involving alcohol/drugs will not be charged under the Code with consumption if they are

reporting a violation of the Code or FIU Regulation 105. Any other charge(s) related to the incident may be determined at the discretion of the SCAI Director, but the reporting will be a mitigating factor at any sanctioning stage.

While student organizations are not eligible for reporting amnesty, reporting and self-reporting will be a mitigating factor, while failing to report will be an aggravating factor at any sanctioning stage.

c. Investigatory Amnesty: As part of an investigatory process, and conditioned on being truthful and providing complete information, a witness or party may be asked to provide information which would self-disclose a Code violation. Without abridging the right of any member of the University community of rights granted under the United States or Florida Constitution and/or any other applicable law including, but not limited to, the Fifth Amendment, disclosing a Code violation such as alcohol/drugs use related to during an incident being investigated and outlined in the investigation will not be charged under the Code. All other charges related to the incident may be determined at the discretion of the SCAI Director, but additional amnesty may be provided under e of this provision.

b. ——— d. Hazing

Amnesty: A Student may not be charged under the Code if the Student establishes that, before medical assistance or law enforcement arrived on the scene of a hazing event, the Student rendered aid to the hazing victim and establishes all of the following:

1. The i. the Student was present at an event where, as a result of hazing, a person appeared to be in need of iImmediate mMedical aAssistance; and
2. — ii. The Student was the first person to call 911 or FIU Police to report the need for iImmediate mMedical aAssistance; and
3. — The iii. the Student provided their own name, the address where iImmediate mMedical aAssistance was needed, and a description of the medical issue to the 911 operator or FIU Police at the time of the call; and
4. — The, iv. the Student remained at the scene with the person in need of iImmediate mMedical aAssistance until such medical assistance or law enforcement arrived and that the Student cooperated with such personnel on the scene.

d. Amnesty at the SCAI Director's Discretion: The SCAI Director may grant amnesty from proceedings within the conduct system, contingent on a student providing complete and accurate information during an investigation or conduct proceeding.

5. ——— 5. CONDUCT VIOLATIONS

The following conduct is prohibited by this Code. It is a violation of this Code for any Student or Student Organization to engage in behavior that aids, attempts, assists, promotes, condones, encourages, induces, requires, conceals, or facilitates any act prohibited by this Code. Allowing, permitting, or providing an opportunity for a guest to violate University policy is also prohibited. These violations are included in each section below and need not be cited separately. Lack of familiarity with University policy is not a defense to a violation of this Code. Unless specifically noted, intent is not a required element to establish a policy violation. Additionally, intoxication

or impairment caused by use or consumption of alcohol, drugs, or other substances is not a defense to a violation of this Code.

The following conduct violations or any attempt to violate the Code will be used in charging all Students or Student Organizations.

a. Any conduct prohibited by FIU Regulation 105.

b. Assisting: Any affirmative act which aids, attempts, promotes, conceals, or facilitates any act prohibited by this Code

c. Attempt: Attempt or intent to commit any violation outlined in the Code.

~~c. Assisting: Any affirmative act which aids, attempts, promotes, conceals, or facilitates any act prohibited by this Code.~~

~~a.~~ **d. Alcohol**

Students who choose to drink will be held fully responsible for their behavior while under the influence of alcohol. Loss of control due to intoxication does not excuse or justify a violation of the state law, University Policy, or the rights of others.

~~1.~~ 1. Possession, use and/or consumption of alcohol when under the legal drinking age as provided by Florida Law.

~~2.~~ 2. Dispensing, selling or supplying alcoholic beverages to an individual who is under the legal drinking age as provided by Florida Law.

~~3.~~ 3. Any violations of FIU Policy governing alcohol usage. See, FIU-Regulation 2505 Alcoholic Beverages.

~~4.~~ 4. Use and/or possession of beer kegs and party balls or other common sources of alcohol.

~~5.~~ 5. Possession of open containers of alcohol or consumption of alcoholic beverages in public areas, such as balconies, courtyards or hallways.

~~6.~~ 6. Public intoxication (e.g., appearing in a state of intoxication) and/or excessive drinking.

~~7.~~ 7. Use and/or possession of devices designed for the rapid or excessive consumption of alcohol, including, but not limited to, funnels, ice luges, and beer bongs.

~~8.~~ 8. Hosting or sponsoring a gathering where underage individuals are drinking alcohol.

~~9.~~ 9. Unlawful manufacture, trade, and/or intent to sell alcohol.

~~10.~~ 10. Reporting to classes, work, or related assignments “under the influence” of alcohol.

~~11.~~ 11. Violating any other University Policy while under the influence of alcohol.

~~b.~~ **e. Animals**

The University allows individuals to bring animals on University Premises in accordance with federal laws. A service animal is permitted on campus grounds and within University buildings, including the University housing assignment provided to an individual with a disability. An emotional support animal is permitted on campus to accompany an individual into his or her University assigned residence in accordance with the U.S. Department of Housing and Urban Development.

~~1.~~ 1. Failing to obtain approval from Housing and the Disability Resource Center (DRC) for the Student’s emotional support animal (as defined by federal law) in a residence hall.

~~2.~~ 2. Having an approved emotional support animal beyond authorized areas (i.e., within the residence halls and immediate access to outdoor areas).

~~3.~~ 3. Failing to register the Student's service animal (as defined by federal law) with the DRC if the Student resides on campus.

~~4.~~ 4. Failing to properly control the service animal and/or emotional support animal such that the animal is disruptive, is not housebroken, or poses a safety or health concern.

~~5.~~ 5. Bringing pet dogs, cats, or other animals (except non-dangerous fish) to campus or being in possession of stray animals.

~~e.~~ f. **Bribery**

Knowingly making an offer, gift, receipt, or solicitation of money, materials, goods, services or anything of value for the Student or others for the purpose of procuring or providing an advantage to which they are not otherwise legally entitled.

~~d.~~ g. **Computer Misuse**

~~1.~~ 1. Unauthorized access, entry or use of a computer, computer system, network, software, password, account or data.

~~2.~~ 2. Unauthorized alteration or degradation of computer equipment, software, network, data or system performance.

~~3.~~ 3. Unauthorized copying or distribution of computer software or data.

~~4.~~ 4. Unauthorized use, taking, or theft of University computer resources for commercial purposes or personal financial or other gain. This includes, but is not limited to, advertising a product or service on personal web pages, fund-raising or advertising on behalf of unsanctioned non-University organizations, publicizing of unsanctioned non-University activities, resale of University resources to any non-University individuals or organizations, and the unauthorized use of the University's name or logos. Use of the University's network for any of these purposes, even if the user is using their own personal computer, constitutes an offense.

~~purposes, even if the user is using their own personal computer, constitutes an offense.~~

~~5.~~ 5. Allowing another person to use one's FIU username and password.

~~6.~~ 6. Any other violation of the University computer use and web page policies. The complete policies are available at <http://security.fiu.edu/policies>. The website also contains the civil and criminal penalties for distributing, without authority, copyrighted materials (including unauthorized peer-to-peer file sharing) and the penalties for violating federal copyright law.

~~7.~~ 7. Unauthorized distribution or downloading of copyrighted materials, including but not limited to, unauthorized peer-to-peer file sharing. This is a violation whether the user is using their own personal computer or the University's information technology system for the unauthorized distributions.

~~e.~~ **Dating or Domestic Partner Violence**

~~1.~~ **Physical Violence or Abuse:**

~~i. Occurs when one intentionally or recklessly (1) causes bodily harm to another person; (2) attempts to cause bodily harm to another person; or (3) puts another person in fear of imminent bodily harm. No Student may knowingly or recklessly touch any other person without that person's consent. Punching, slapping, scratching, or otherwise striking any person, including a Dating or Domestic Partner, with any part of one's body or with any object constitutes physical violence.~~

~~ii. Occurs when there is a pattern of engaging in physical violence or abuse as described above.~~

2. ~~Psychological Abuse:~~

- ~~i. Occurs when one intimidates, dominates, terrorizes, humiliates, or isolates any other person, especially a Dating or Domestic Partner.~~
- ~~ii. Occurs when there is a pattern of engaging in psychological abuse as described above.~~

3. ~~Verbal Abuse:~~

- ~~i. Occurs when one uses extreme or excessive language that is in the form of insults, name calling, or criticism, designed to mock, shame, or humiliate another person, especially a Dating or Domestic Partner. Verbal behavior must be: (1) objectively endangering and (2) sufficiently severe, persistent, or pervasive to constitute verbal abuse. Singular statements and isolated incidents may fall short of this sufficiency standard.~~
- ~~ii. Occurs when there is a pattern of engaging in verbal abuse as described above.~~

~~f.~~ h. Disruptive Conduct

~~1.~~ 1. Behavior that substantially and materially disrupts, disturbs, impairs, interferes with or obstructs the orderly conduct, processes and functions of the University or the rights of other Members of the University community.

~~2.~~ 2. Behavior that substantially and materially disrupts, disturbs, impairs, interferes with or obstructs the orderly conduct, processes, and functions of the classroom, or laboratory and/or immediate surrounding areas. This includes interfering with the academic mission of the University or individual classroom or interfering with a faculty member or instructor's role to carry out the normal academic or educational functions of their classroom laboratory and/or immediate surrounding areas.

~~educational functions of their classroom laboratory and/or immediate surrounding areas.~~

~~3.~~ 3. Behavior that substantially and materially disrupts, disturbs, impairs, interferes with or obstructs the Student Conduct process, including, but not limited to, harassment and/or intimidation of any member of the Student Conduct Committee, Witness or University personnel before, during or after a proceeding, or attempting to coerce or influence any person(s) in order to discourage their participation in any Student Conduct proceeding.

~~4.~~ 4. Any behavior that substantially and materially disturbs the peace.

~~g.~~ i. Drugs

Students who choose to use illegal drugs or use prescription drugs without a prescription will be held fully responsible for their behavior while under the influence. Loss of control due to being under the influence does not excuse or justify a violation of the state law, University Policy, or the rights of others.

1. Possession, use, the manufacture, creation and/or the cultivation of illegal drugs or prescription drugs without a prescription. Inhalable or ingestible substances (e.g., nitrous oxide, glue, paint) that will alter a Student's mental state.~~Students who choose to use illegal drugs or use prescription drugs without a prescription will be held fully responsible for their behavior while under the influence. Loss of control due to being under the influence does not excuse or justify a violation of the state law, University Policy, or the rights of others.~~

~~1. Possession, use, the manufacture, creation and/or the cultivation of illegal drugs or prescription drugs without a prescription. Inhalable or ingestible substances (e.g., nitrous oxide, glue, paint) that will alter a Student's mental state.~~

~~2.~~ 2. Distribute, dispense, deliver, trade, sell and/or attempt to sell drugs or prescription drugs.

~~3.~~ 3. In possession and/or use of drug paraphernalia (including, but not limited, to bongs, pipes, “hookahs,” spoofs, rolling papers, blunts, small plastic baggies). ~~In possession and/or use of drug paraphernalia (including, but not limited, to bongs, pipes, “hookahs,” spoofs, rolling papers, blunts, small plastic baggies).~~

~~4.~~ 4. Misuse and/or abuse of prescription drugs.

~~h.~~ j. **Endangerment**

~~1.~~ 1. Occurs when one intentionally or recklessly (~~a1~~) causes bodily harm to another person; (~~b2~~) attempts to cause bodily harm to another person; or (~~c3~~) puts another in fear of imminent bodily harm. ~~No Student may knowingly or recklessly touch any other person without that person’s consent. No Student may knowingly or recklessly touch any other person without that person’s consent.~~ Punching, slapping, scratching, or otherwise striking any person with any part of one’s body or with any object constitutes physical violence.

~~2.~~ 2. Engage in any action(s) that endangers the health, safety or welfare of others.

~~i.~~ k. **Failure to Comply**

~~1.~~ 1. Failure to comply with a request or directive of a University Official or non-University law enforcement official in the performance of their duty.

~~2.~~ ~~Taking action, individually or working with others, which the Student(s) knew or should have known would impede an investigation by the University into possible violations of the Code committed by a Student and/or Student Organization.~~

~~3.~~ 2. Failure to comply with the final decision and sanctions rendered by a Student Conduct hearing or appellate body.

~~4.~~ 3. Failure to comply when a University Official requests to identify oneself and/or produce FIU identification.

~~j.~~ l. **Falsification/Fraudulent Activity/False Testimony**

~~1.~~ 1. Withholding relevant information from any Hearing Body, University Officials, non-University law enforcement officers, faculty and/or staff.

~~2.~~ 2. Providing false or misleading information (whether oral or written) to any Hearing Body, University Officials, non-University law enforcement officers, faculty and/or staff. A good-faith report of prohibited conduct does not constitute a Code violation.

~~3.~~ 3. Misuse, reproduction, alteration or forgery of any identification, documents, keys or property.

~~4.~~ 4. Permitting another person to use one's identification information.

~~5.~~ 5. Misuse or possession of false identification information

~~6.~~ 6. Purporting to act on behalf of another person, group or the University without authorization or prior consent.

~~7.~~ 7. Providing a worthless check, money order or using a fraudulent credit card or a credit card without authorization.

~~8.~~ 8. Any other acts of falsification/fraud/false testimony or misrepresentation.

~~k.~~ m. **Fire and Safety**

~~1.~~ 1. Inappropriate activation of any emergency warning equipment or the false reporting of any emergency.

~~2.~~ 2. Removing, damaging, interfering and/or tampering with fire safety or other emergency warning equipment, including smoke detectors, sprinklers and/or fire alarms. Items may not be hung from or block sprinklers or smoke detectors.

~~3.~~ 3. Failure to evacuate University Premises or On-Campus Housing facility/unit when a fire alarm is activated.

~~4.~~ 4. Engaging in action(s) which cause or attempts to cause the release of chemicals or substances that can cause harm to another person's health or would start a fire or explosion.

~~l.~~ n. Gambling

~~1.~~ 1. Soliciting, placing or accepting a bet on any high school, intercollegiate or professional athletic contest on University Premises, On-Campus Housing, or at a University or Student Organization-sponsored activity or event.

~~2.~~ 2. Soliciting, facilitating or participating in any illegal gambling, bookmaking or illegal betting whether through a bookmaker, a parlay card, a pool or any other method of organized gambling on University Premises, On-Campus Housing, or at a University or Student Organization-sponsored activity or event.

o. Harassment—Severe or pervasive interactions aimed towards another or entity which is by objective measure threatening, abusive, or severely annoying and that is beyond the scope of free speech and which is not covered by FIU Regulation 105.

~~m.~~ p. Hazing

~~1.~~ 1. Any group ~~(whether or not officially recognized by the University)~~ or individual action or activity that inflicts or intends to inflict physical or mental harm or otherwise endanger or discomfort which may demean, disgrace and/or degrade any person, regardless of location, intent or consent of participant(s). Taking into consideration the aforementioned description, hazing includes, but is not limited to:

~~i.~~ Taking into consideration the aforementioned description, hazing includes, but is not limited to:

~~i.~~ i. Interference with a Student's academic performance;

~~ii.~~ ii. Forced consumption of any food, alcohol, controlled substances, drugs or any other substance;

~~iii.~~ iii. Forced physical activity (e.g., calisthenics, line-ups, walking or marching in formation);

~~iv.~~ iv. Deprivation of food, water or sleep;

~~v.~~ v. Not permitting individuals to speak for extended periods of time and/or forced exclusion from social contact;

~~vi.~~ vi. Engaging in activities which involve compelling an individual or group of individuals to remain at a certain location or transporting anyone anywhere within or outside the University (e.g., road trips, kidnaps, drops);

~~vii.~~ vii. Physical or mental abuse of any nature, including physical discomfort;

~~viii.~~ viii. Sexual misconduct of any nature;

~~ix.~~ ix. Theft, defacement or destruction of private or public property;

~~x.~~ x. Compelling the performance of personal chores or errands;

~~xi.~~ xi. Verbal abuse or degradation, including yelling or demands;

~~xii.~~ xii. Assigning or endorsing pranks (e.g., stealing, harassing other organizations);

~~xiii.~~ xiii. Conducting activities designed to deceive or convince a member that they will not be initiated or that they will be hurt;

- ~~xiv.~~ xiv. Compelling scavenger hunts, treasure hunts, quests, road trips, big brother/little brother hunts, big sister/little sister hunts;
- ~~xv.~~ xv. Any action or threatened action that would subject the individual to embarrassment, humiliation or mental distress, including the use of demeaning names; or
- xvi. Any other acts or attempted acts which would constitute hazing pursuant to Section 1006.63 of the Florida Statutes.

2. The following shall not constitute a defense to Hazing:

- i. The consent of the victim was obtained;
- ii. The conduct or activities that resulted in death or injury to the victim was not part of any official organizational event or otherwise sanctioned or approved by a Student Organization or group; or
- iii. The conduct of activity that resulted in death or injury to the victim was not done as a condition or membership into a Student Organization or group.

~~n.~~ q. Motorcycles, Bicycles, Pocket Bikes, Rollerblades, or Skateboards

- ~~1.~~ 1. Failure to comply with FIU Regulation 115 Skateboards, Skates, Scooters, Ripstiks, Hoverboards and other similar devices and high-risk activities on University Premises or in On-Campus Housing.

r. Obstruction:

1. Taking action, individually or working with others, which the Respondent knew or should have known would impede an investigation by the University into possible violations of the Code committed by a Student and/or Student Organization, including failing to participate in a University investigation or proceeding if not the Respondent.

~~o.~~ s. On-Campus Housing Violations

- ~~1.~~ 1. Violation(s) of any HRL policies published in hard copy or available electronically via the HRL website (~~<https://studentaffairs.fiu.edu/campus-services/housing-and-residential-life/explore-housing/housing-policies/index.php>~~)(<https://studentaffairs.fiu.edu/campus-services/housing-and-residential-life/explore-housing/housingpolicies/index.php>).

~~p.~~ t. Personal Abuse

- ~~1.~~ 1. Verbal or written abuse, threats, intimidation, and/or Coercion that objectively endangers the health, safety or well-being of others and which is not covered by FIU Regulation 105. Using fighting words or statements which reasonably endanger the health and safety of any person that are not protected speech may result in University action. Conduct directed at any person, including a Member of the University community, which is intended to, or would reasonably, cause fear, distress, injury or intimidation to a person, or would place a reasonable person in fear of injury or death.
2. 2. Conduct that is based on race, color, religion, ethnicity, national origin, disability, age, marital status, ~~gender, gender identity, gender expression, pregnancy~~, genetic information, veteran status or any group/class protected by federal or Florida law sufficiently severe, pervasive or persistent (when viewed both from a reasonable person in similar circumstances and the person in question) that a person would be adversely affected to a degree that interferes with or limits their ability to participate in or benefit from the services, activities or opportunities offered by the University.

~~3.~~ **3.** Interference with the freedom of another person or group to move about in a lawful manner.

~~q.~~ **u. Promotions/Posting**

~~1.~~ **1.** Solicitation of commercial speech on campus, including On-Campus Housing facilities, without prior approval from the appropriate University Officials. This includes, but is not limited to, the distribution of any forms of promotional/informational commercial speech material on University Premises or On-Campus Housing or objects (e.g., motor vehicles).

~~2.~~ **2.** Posting of flyers, posters, banners, cards or any promotional/informational material on University Premises or On-Campus Housing, including, but not limited to, the exterior and interior of On-Campus Housing facilities, buildings, trees, walls, sidewalks, vehicles, windows, stairwells, stairs, display cases, vending machines, doors, classrooms, departmental and unauthorized bulletin boards, railings, elevators, bathrooms, art and/or sculptures without prior approval from the appropriate University Officials.

~~r.~~ **v. Retaliation**

~~1.~~ **1.** Acts or words taken against an individual because of the individual's participation in a protected activity that would discourage a reasonable person from engaging in protected activity. Protected activity includes an individual's good faith

- **a.** Participation in the reporting, investigation, and/or resolution of an alleged violation of this Code; and/or

- **b.** Opposition to policies, practices and/or actions that the individual reasonably believes are in violation of the Code. Retaliation may include intimidation, threats, coercion, physical harm and/or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated. Retaliation may be committed by the Charged Student, the Complainant, Respondent, the Reporting Party, or any other individual or group of individuals.

~~s.~~ **Sexual Misconduct**

~~Sexual misconduct involves failure to comply with FIU Regulation 105 Sexual Misconduct (Title IX) and includes:~~

~~1. **Non-Consensual Sexual Touching**—any sexual touching without Consent. Sexual touching is any intentional touching of a person's body, including the breasts, buttocks, groin, genitals or other intimate parts. Touching may be over or under clothing and may include the Charged Student touching the Complainant, the Charged Student making the Complainant touch the Charged Student or another person, or the Charged Student making the Complainant touch the Complainant's own body.~~

~~2. **Obscene or Indecent Behavior**~~

~~i. **Exposure of one's sexual organs or the display of sexual behavior that would reasonably be obscene or indecent to others. Other forms of obscene or indecent behavior include sexual exhibitionism, engaging in prostitution or the facilitation or solicitation of a prostitute.**~~

~~ii. **Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved.**~~

~~iii. **Recording, photographing, transmitting, showing, viewing, streaming or distributing intimate or sexual images, audio recordings or sexual information of another person in any form without the knowledge and Consent of all parties involved.**~~

~~iv. **Publishing a sexually explicit image of a person that contains or conveys**~~

~~the personal identification or information of the depicted person to an internet website, text, email and/or social media without the depicted person's Consent.~~

~~3. **Sexual Harassment**—any unwelcome sexual advance, request for sexual favors and/or other verbal or physical conduct of a sexual nature:~~

~~i. Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing or participation in any University program, activity or benefit;~~

~~ii. Submission to, or rejection of, such conduct by an individual is used as a basis for academic or work evaluation;~~

~~iii. Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent or pervasive that it unreasonably interferes with, limits or deprives an individual from participating in or benefiting from the University's educational and/or campus residential experience when viewed both from a reasonable person in similar circumstances and the person in question.~~

~~4. **Gender-based Harassment**—any harassment based on gender, sexual orientation, gender identity or gender expression, including acts of aggression, intimidation or hostility, whether verbal or non-verbal, graphic, physical or otherwise, even if the acts do not involve contact of a sexual nature.~~

~~5. **Sexual Coercion**—the act of using pressure or force to have sexual contact with someone who has already refused.~~

~~6. **Sexual Assault**—the threat to commit sexual battery with the immediate capacity to do so.~~

~~7. **Sexual Battery**—any sexual intercourse by any person upon another without Consent. Sexual intercourse includes vaginal or anal penetration, however slight, by a person's penis, finger, other body part or an object, or any oral-genital contact (regardless of whether it involves penetration).~~

~~t.~~ w. **Smoking and Use of Tobacco-Related Products**

~~1.~~ 1. Failure to comply with FIU Regulation 113 Smoke and Tobacco-Free Campus by smoking in or on any University Premises or On-Campus Housing. Smoking means possession of a lighted cigarette, cigar, pipe, water pipe or hookah, or the use of an electronic cigarette, cigar, pipe, vape or any other device intended to simulate smoked tobacco.

~~2.~~ 2. Use of smokeless tobacco, snuff, chewing tobacco, smokeless pouches and any other form of loose-leaf or smokeless tobacco.

x. Social Host Responsibility:

1. Allowing, permitting, or providing an opportunity for a guest to violate University policy.

~~u.~~ y. **Stalking**

~~1.~~ 1. Engaging in a course of conduct directed at a specific person, not covered under FIU Policy 105, that would cause a reasonable person to (a) fear for the person's safety or the safety of others; or (b) suffer substantial emotional distress. For the purposes of this conduct violation,

~~(a) Course~~ course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens or communicates to or about a person, or interferes with a person's property.

~~communicates to or about a person, or interferes with a person's property; (b) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.~~

~~v.~~ **z. Student Organization Policies**

- ~~1.~~ **1.** Members of the Student Organization acting together to violate University Policy.
- ~~2.~~ **2.** More than one Student working together to impede an investigation by the University into possible violations of the Code committed by a Student Organization.
- ~~3.~~ **3.** Acting to protect from official action one or more alleged individual offenders who are members, former members or guests of the Student Organization.
- ~~4.~~ **4.** Leaders of the Student Organization who fail to report and/or take reasonable action against guests and/or members responsible for alleged violations.
- ~~5.~~ **5.** Violation(s) of any Campus Life/Fraternity and Sorority Life/Sports Club Policies published in hard copy or available electronically via the appropriate website. See <https://studentaffairs.fiu.edu/get-involved/campus-life/index.php>, <https://studentaffairs.fiu.edu/get-involved/sorority-and-fraternity-life/index.php>, or <https://studentaffairs.fiu.edu/health-and-fitness/recreation/index.php> ~~https://studentaffairs.fiu.edu/health-and-fitness/recreation/index.php~~ <https://studentaffairs.fiu.edu/health-and-fitness/recreation/index.php>.

~~w.~~ **aa. Theft and Theft-Related Conduct**

- ~~1.~~ **1.** Taking, or use of, the property or services of another person or of the University without prior written consent or authorization of the person or of the appropriate authority.
- ~~2.~~ **2.** Possession and/or sale of property or services of another person or of the University without prior written consent or authorization.

~~x.~~ **bb. Trespassing/Unauthorized Use**

- ~~1.~~ **1.** Unauthorized presence in or unauthorized use of University Premises or On-Campus Housing, facility or restricted area.

~~y.~~ **cc. Vandalism/Damage/Littering**

- ~~1.~~ **1.** Damage, destruction or defacing property of another person, group or the University.
- ~~2.~~ **2.** Dispersing litter in any form on University grounds or facilities, including, but not limited to, cigarette butts, flyers, cans, and bottles.

~~z.~~ **dd. Weapons, Firearms, Explosives**

- ~~1.~~ **1.** Possession, storage or use of firearms, except as provided in below, explosives, ammunition or other weapons or dangerous articles or substances, including, but not limited to tasers, switchblade knives and non-lethal weapons such as fireworks, paintball guns, air guns, BB guns, any dangerous chemical or biological agents, corrosive agents, compressed gas, sling shots, brass knuckles, Chinese stars, or any other item used as a weapon.
 - **a.** In accordance with Florida Statutes section 790.115, possession of firearms on University Premises or On-Campus Housing (except as provided by Florida Statutes section 790.25(5)).
 - **b.** Possession of a concealed weapon or firearm on University Premises or On-Campus Housing even if the Student possesses a concealed weapon license.
- ~~2.~~ **2.** Notwithstanding the foregoing, weapons, including non-functioning antique display weapons, may be used for classroom instructional purposes or other

University sanctioned activities (e.g., firearms under the direct supervision of ROTC, a diver's knife for a scuba divers' class) but only with prior approval by the appropriate University Official.

~~3.~~ 3. Threat of the use of a weapon or weapons that could, or would, cause distress or injury to a member or members of the University community or damage to University Premises or On-Campus Housing.

~~aaee.~~ **Other Violations**

~~1.~~ 1. ~~Attempt or intent to commit any violation outlined in the Code.~~

~~2.~~ 2. ~~Involvement in any violation outlined in the Code. This includes prompting, facilitating, or encouraging others to commit acts prohibited by this Code and/or the failure to remove oneself from the area/incident where the offense is being committed or attempted.~~

~~3.~~ 1. Aids or abets another in any violation of federal law, state law, local ordinance, and/or Policy not already listed above.

~~4.~~ 2. Violations of federal and/or state laws, local ordinance, and/or Policy: not already listed above.

~~6.~~ **6. ACADEMIC MISCONDUCT VIOLATIONS**

~~a.~~ **a. Academic Dishonesty**

~~1.~~ 1. In general, by any act or omission not specifically mentioned in the Code and which is outside the customary scope of preparing and completing academic assignments and/or contrary to the above stated policies concerning academic integrity.

~~b.~~ **b. Bribery**

~~1.~~ 1. The offering of money or any item or service to a member of the faculty, staff, administration, Student or any other person in order to commit academic misconduct.

~~c.~~ **c. Cheating**

~~1.~~ 1. The unauthorized use of any materials, information, study aids or assistance from another person on any academic assignment or exercise, unless explicitly authorized by the course Instructor.

~~2.~~ 2. Assisting another Student in the unauthorized use of any materials, information, study aids, unless explicitly authorized by the Instructor.

~~3.~~ 3. Having a substitute complete any academic assignment or completing an academic assignment for someone else, either paid or unpaid.

~~d.~~ **d. Commercial Use**

~~1.~~ 1. The selling of course material to another person, Student, and/or uploading course material to a third-party vendor without authorization or without the express written permission of the University and the Instructor. Course materials include but are not limited to class notes, Instructor's PowerPoints, tests, quizzes, labs, instruction sheets, homework, study guides and handouts.

~~e.~~ **e. Complicity**

~~1.~~ 1. The planning or acting with one or more fellow Students, any member of the faculty, staff or administration, or any other person to commit any form of academic misconduct together.

~~f.~~ **f. Falsification of Records**

~~1.~~ 1. The tampering with or altering in any way of any academic record used or maintained by the University.

~~g.~~ **g. Plagiarism**

~~1.~~ **1.** The deliberate use and appropriation of another's work without any indication of the source and the representation of such work as the Student's own.

~~2.~~ **2.** Assisting another Student in the deliberate use and appropriation of another's work without any indication of the source and the representation of such work as the student's own.

~~7.~~ **7. INVESTIGATION AND PRE-HEARING ADJUDICATION PROCEDURES**

~~a.~~ **a. Initiating Charges for Conduct Violations:** Any person or entity (including University departments, offices, officials, community members) may report an alleged violation(s) of the Code for review by SCAI by:

~~1.~~ **1.** Submitting a police report that has been filed with any police department;

~~2.~~ **2.** Providing a SCAI incident report (see ~~http://conduct.fiu.edu~~<http://conduct.fiu.edu> for report) along with accompanying documentation; or

~~3.~~ **3.** Making an oral report to SCAI.

~~b.~~ **b. Initiating Charges for Academic Misconduct Violations:** Any person or entity (including University departments, offices, officials, community members) may report an alleged violation(s) of the Code for review by the SCAI by:

~~1.~~ **1.** Submitting the alleged violation(s) through the Academic Misconduct Report Form (AMR) along with any accompanying documentation (see

~~http://conduct.fiu.edu~~<http://conduct.fiu.edu> for report). Instructors are encouraged to discuss the allegations with the Student prior to referral to SCAI.

~~2.~~ **2.** If a Student, staff member, or a person not affiliated with the University observes a Student committing an Academic Misconduct violation, they may report the alleged violation to SCAI via the standard incident reporting form (see ~~http://conduct.fiu.edu~~<http://conduct.fiu.edu> for report). SCAI will then communicate with the appropriate faculty member, chair, or College/School Dean.

~~3.~~ **3.** All matters relating to Academic Misconduct among undergraduate, graduate, and professional Students are referred to the SCAI Director or designee. In matters where there is a conflict of interest with the SCAI Director, the case will be referred to the Senior Vice President for Academic & Student Affairs or designee.

~~c.~~ **c. Preliminary Review:** The SCAI Director will determine, at their discretion, whether further fact-finding is needed and whether there is sufficient information to file charges ~~or refer to another University office~~ regardless of the participation of any party in the proceedings.

~~1.~~ **1.** Upon receiving an alleged violation of Academic Misconduct, the SCAI Director ~~or designee~~ may review relevant information and consult with relevant parties regarding the incident in question. In addition, Instructors can request an intake meeting with SCAI staff to review allegations, the Charges, possible Sanctions, and to be explained the Student conduct process, and any available forms of resolution. Reasonable efforts will be made to hold this intake meeting at least ten ~~(10) Business Days before any scheduled hearing.~~

~~(10) Business Days before any scheduled hearing.~~

~~d.~~ ~~Filing Time: Anyone may report an alleged Code violation within ninety (90) calendar days of the incident or obtaining knowledge about the incident, whichever is later. For conduct under Section 5.e (Dating or Domestic Partner Violence), 5.s (Sexual~~

Misconduct) and 5.u (Stalking), there is no time limit for reporting. In addition, the SCAI Director may extend the filing time where the delay may be related to issues of victimization or beyond the control of the University. **d. Interim Measures:** Until final agency action or there is a such a change in circumstances that the decision-maker for each action below no longer supports such an action, the following interim measures may be implemented as follows:

1. No-Contact Directive: In cases involving allegations of, hazing, personal abuse, retaliation, stalking, or other menacing activity or concerning behavior, the SCAI Director, after making a reasonable effort to meet with the Respondent if appropriate to do so, may issue a No-Contact Directive.

2. Restriction of Privilege or Access Directive: In cases involving allegations of hazing, personal abuse, retaliation, stalking, trespassing, or other menacing activity or concerning behavior, the SCAI Director, after making a reasonable effort to meet with the Respondent if appropriate to do so, may issue a Restriction of Privileges or Access Directive.

Interim Suspension

3. _____

a. Where the Senior Vice President for Academic & Student Affairs or designee determines that the health, safety or welfare of University community are in jeopardy or in danger, an interim (temporary) suspension will be imposed. This includes, but is not limited to, physical assault, hazing, possession of a firearm or explosives, illegal drug possession and other acts of a similar nature. A Respondent under Interim Suspension is considered not in good standing with the University, resulting in applicable restrictions on privileges and/or activities. The Respondent may neither attend nor participate in any classes, including any online components, during this time. The Respondent is also banned from being on or in any University Premises and/or On-Campus Housing, and from participation in any University-sponsored/related event or activity. The Charged Student-Respondent, except with the permission of the SCAI Director.

b. The Respondent may petition the Student Conduct Committee (SCC), in writing, for a review of the decision; the University will submit to the SCC, in writing, relevant information related to the decision to impose an interim suspension. The SCC shall meet to consider the petition as soon as possible, but typically no later than five business days after it receives the petition. If the SCC determines that the suspension was improper or is no longer necessary, it shall lift the suspension immediately and the underlying matter shall proceed. The SCC may implement any alternative interim measures if it lifts the interim suspension.

c. The Respondent's transcript will remain notated during the interim suspension.

d. If a Respondent's privileges are temporarily revoked through an Interim Suspension and the Respondent is subsequently found not responsible for the violation, the University must, to the extent possible:

i. Correct any record of the change in enrollment status in the Respondent's permanent records and reports in a manner compliant with state and federal laws; and

ii. Refund to the Respondent a pro rata portion of any charges for tuition, and out-of-state fees, as appropriate, relating to the temporary revocation or suspension which affected the Respondent's ability to attend classes for more than ten (10) school days.

e. Investigations: The SCAI Director retains the discretion to determine whether an investigation should be conducted, and the scope of such investigation based on the alleged violations under the Code. The investigation will be a neutral fact-finding process used to determine if there is sufficient information to warrant action by the University. If the SCAI Director directs an investigation to another office to act on behalf of SCAI, including the Department of Housing and Residence Life or the Office of Inclusion, Diversity, Equity & Access (IDEA), the Director of such office, or designee, shall conduct the investigation in accordance to the Code and relevant processes and procedures, so long as such procedures do not conflict with this Code or applicable University Policy which has jurisdiction over the reported behavior. For cases in which there is an overlap of charges between the Code and FIU Regulation 105, a joint investigation will commence, and the details of the Code investigation will be included in the FIU Regulation 105 final report or considered as part of the informal resolution. The Code behaviors will cede to adjudication and appeal under the process set forth in FIU Regulation 105.

e. In cases where conduct involves both potential Conduct and Academic Misconduct violations, the Hearing Officer or Hearing Body has the authority to handle both matters simultaneously through a joint hearing. If a Student is found Responsible for simultaneous Conduct and Academic Misconduct violations, sanctions from both processes may be imposed.

f. **f. Charge Letter:** The ~~Charged Student or Student Organization~~ Respondent will be given a written notice of the Charges. The Charge Letter will include the following:

1. 1. Notice of the charge(s), including specific code section(s) which constitutes the alleged violation(s) of the Code, an allegations statement and any other detail in order to prepare for a Student Conduct proceeding; and

2. ~~An appointment to attend an information session.~~

g. ~~**Consolidation:** When two or more Charged Students are charged in the same incident, the Hearing Body, in their discretion, may hold a separate hearing for each Charged Student or may hold a joint hearing if all Charged Students agree.~~

2. Information regarding next steps.

g. Joint Hearings: Cases that present common questions of conduct ~~law~~ or fact and that would come before a panel of like composition may be joined for hearing.

1. For a joint hearing, the individual who conducted the information sessions must affirm, in writing, to the Hearing Officer that each Respondent performed acts sufficiently similar that the facts presented in evidence would not differ materially from one Respondent to another. In such case, the Hearing Officer may order joinder of such cases for hearing.

2. Any Respondent, whose case is joined may request, in writing, to the Hearing Officer to be excluded from the joint hearing on the ground that (i) they are not charged with the same offense, at the same time and place, or (ii) that the facts relevant to them would differ materially from the facts relevant to the Respondent(s). The Hearing Officer's decision regarding whether any requesting Respondent be severed from the joint hearing in final.

3. All decisions regarding responsibility under this Code, and any applicable sanctions or remedies will be rendered individually, and each Respondent remains entitled their own advisor.

~~h.~~ **h. Information Session:** An information session is designed to provide the Charged Student or Student Organization Respondent with information about the hearing adjudication process, as well as giving access to the information supporting the charge(s) available at that time.

~~1.~~ ~~_____ The Charged Student or Student Organization will have an opportunity to review all information in the Student Conduct file at the information session with their Advisor, including the names of Witnesses to be called and the information to be used in the matter.~~

~~i.~~ 1. Subsequent to the information session, the Hearing Officer may conduct further fact-finding regarding the incident that is subject to the charge. This information will be communicated to the Charged Student/Student Organization Respondent prior to the hearing; or at a subsequent meeting before a hearing.

~~2.~~ 2. If a Charged Student or Student Organization Respondent fails to attend a scheduled information session, the Charged Student or Student Organization Respondent will be deemed to have waived their right to an information session. Under those circumstances, a hearing will be scheduled. Failure to attend an information session will result in the Hearing Officer determining the type of hearing. The hearing type will be determined based on the severity of the possible sanctions (e.g., suspension/expulsion cases may be referred to the Student Conduct Committee).

~~3.~~ 3. If the Charged Student Respondent fails to attend the information session, the Hearing Officer may place a hold/service indicator on the Charged Student's Respondent's record until the conclusion of the hearing. If sanctions are imposed as a result of the hearing, the hold/service indicator will be retained until the Charged Student Respondent fulfills all of the sanctions.

~~i.~~ _____ Student Academic Status Pending the Code Process: The Student's academic status will remain unchanged pending the outcome of the Code process, except where the Senior Vice President for Academic & Student Affairs or designee determines that the safety, health, or welfare of the University community is involved has implemented an interim suspension. When a final grade for a course may be involved, a grade of IN should be assigned, pending the University's final decision in the matter. A Charged Student's Respondent's ability to register for future semesters may be temporarily placed on hold.

8. RESOLUTION OPTIONS

A Charged Student Respondent is entitled to a resolution of any alleged violation of the Code through a disciplinary proceeding unless waived as set forth below. Two (2) types of resolution options are provided by the Code.

a. Summary Resolution

~~1.~~ 1. A summary resolution is available when the Charged Student or Student Organization Respondent waives the right to a hearing and requests that the Hearing Officer conducting the information session determine the findings and sanctions if applicable. The Hearing Officer reserves the right to conduct fact-finding to make an informed decision.

~~2.~~ 2. The following apply to a summary resolution:

~~i.~~ i. The meeting(s) will not be recorded.

~~ii.~~ ii. The written decision will serve as the official record of the Summary Resolution.

~~iii.~~ iii. The written decision will be sent to the ~~Charged Student or Student Organization Respondent~~ within fourteen (14) Business Days from the date of the Summary Resolution. For Academic Misconduct violations, the written decision will also be sent to the Instructor.

~~3.~~ 3. If the ~~Charged Student or Student Organization Respondent~~ does not choose the Summary Resolution (or the option is unavailable), the ~~Charged Student or Student Organization Respondent~~ may indicate their preference for one of the two (2) types of hearings.

~~b.~~ b. Hearings: ~~Hearings include~~ Two hearing types are available under the Code: 1) an ~~Administrative H~~hearing, or 2) a Student Conduct Committee (SCC) hearing. All procedures described in the Hearing Procedures section apply to these types of hearings.

~~1.~~ 1. Administrative ~~hearing~~Hearing - ~~C~~onducted by a Hearing Officer who serves as the Hearing Body.

~~2.~~ 2. SCC ~~H~~hearing - ~~C~~onducted by a committee which serves as the Hearing Body. SCC committees for Conduct violations consist of two (2) Students, one (1) faculty or staff member, and a non-voting Hearing Officer. SCC committees for Academic Misconduct violations consist of three (3) Students, two (2) full-time faculty members, and a non-voting Hearing Officer. The non-voting Hearing Officer will moderate the hearing.

~~3.~~ 3. For SCC Hearings, members of any particular committee will vary, but will come from a pool of qualified faculty, staff and Students. Faculty members can be recommended annually by the Faculty Senate. Undergraduate, graduate, and professional Student members will be recruited and selected through SCAI's formal SCC recruitment and selection process. All members of the SCC will be trained by SCAI. In cases where the ~~Charged Student Respondent~~ is an undergraduate, every effort will be made to select undergraduate ~~Student~~student representatives for the SCC. In cases where the ~~Charged Student Respondent~~ is a graduate or professional ~~Student~~student, every effort will be made to select graduate or professional student representatives for the SCC. For Academic Misconduct violations, the committee must include two full-time faculty members, and if the ~~Charged Student is a graduate or Respondent is a graduate or professional student~~ faculty representatives must have at least Graduate Faculty status. For cases in which there is an overlap of charges under only the Code (Academic misconduct and a non-FIU Regulation 105 violation), the Hearing Body shall meet the requirements of the Academic Misconduct hearing.

~~professional Student faculty representatives must have at least Graduate Faculty status.~~

~~3. For cases in which there is an overlap of charges between the Code and FIU Regulation 105, the Code behaviors will cede the adjudication processes to Hearing Process under that Regulation.~~

~~e.~~ c. The SCAI Director retains the discretion to ultimately determine which hearing forum is appropriate.

~~d.~~ d. All hearing(s) will be conducted in private or in accordance with applicable law.

9. HEARING NOTIFICATION AND INFORMATION EXCHANGE

~~a.~~ a. Scheduling: Hearings may be scheduled during class periods. Every effort will be made to avoid a class conflict; however, due to availability of persons involved in the hearing and meeting room, it may not be possible.

~~b.~~ b. Hearing Notice: The notice of a hearing, including date, time and location will be sent to the official University email address of the ~~Charged Student Respondent~~, or to the official

University email address of the President of the Student Organization, at least five (5) Business Days prior to the hearing. The Instructor will also be notified in Academic Misconduct cases. The Hearing Officer has the discretion to provide notice through additional means (e.g., overnight or hand delivery). The delivery notification of the hearing notice through the official University email will constitute full and adequate notice under the Code. The ~~Charged Student or Student Organization~~Respondent may waive the notice period by indicating the waiver in writing.

~~1.~~ 1. The notice will include the names of ~~w~~Witnesses to be called by the University and a list of information to be used in the ~~h~~Hearing, which may be different from what was presented in the information session or subsequent meetings.

~~2.~~ 2. The notice will also indicate the name(s) of the Hearing Body member(s):

~~3. The notice may include information related to additional evidence, witnesses, or change) if known at the time, but will be provided before the start of charge(s) different from what was presented in the information session.~~the hearing.

~~e.~~ c. Witnesses and Evidence Information

~~1.~~ 1. Witnesses: In addition to ~~Witnesses~~witnesses to be called by the University, the ~~Charged Student or Student Organization~~Respondent may request the presence of additional ~~Witnesses~~witnesses to voluntarily present relevant information on their behalf.

~~i.~~ i. ~~The Charged Student or Student Organization~~i. The Respondent must provide the Hearing Officer with the names of all additional ~~Witnesses~~witnesses in writing at least three (3) Business Days prior to the hearing.

~~ii.~~ ii. The Hearing Officer will determine the admissibility of testimony from additional ~~Witnesses~~witnesses. Character ~~Witnesses~~witnesses or ~~Witnesses~~witnesses to other incidents outside the specific incident in question will not be allowed to testify at a hearing. The ~~Charged Student or Student Organization~~Respondent may provide the Hearing Body with ~~Character Witness Statements~~character witness statements (which will only be considered during the sanctioning phase, if any).

~~iii.~~ iii. The ~~Charged Student or Student Organization~~Respondent is responsible for contacting and notifying the additional ~~Witnesses~~witnesses they wish to call for the hearing.

~~iv.~~ iv. The proceedings shall not be delayed due to scheduling conflicts of ~~Witnesses~~witnesses. Failure of any ~~Witness~~witness to appear shall not require a delay or affect the validity of the proceedings. If called ~~Witnesses~~witnesses do not appear, their written statements, if they exist, will be considered by the Hearing Body. Witnesses can appear in person or by contemporaneous alternative means (e.g., Skype, phone).

~~v.~~ v. The Hearing Officer has the discretion to limit the number of ~~Witnesses~~witnesses whose testimony may be duplicative, redundant or not in dispute.

~~vi.~~ vi. The Hearing Officer may place limits on the length of testimony and also may advise to the scope, direction or tone of questioning.

~~2.~~ 2. The Instructor of the course in which the alleged Academic Misconduct violation(s) have occurred will always be requested to attend the hearing. The Instructor is strongly encouraged to participate in the hearing procedure.

~~i.~~ i. ~~The Charged Student or Student Organization~~i. The Respondent may inspect all of the information that will be presented at the Hearing at least three (3) Business Days before the hearing.

~~3.~~ 3. ~~The Charged Student or Student Organization~~3. The Respondent must submit any information they intend to use at a hearing at least three (3) Business Days before the hearing.

Relevant records, exhibits, and statements may be accepted at the discretion of the Hearing Officer. The University will not consider polygraph reports.

~~4.~~ 4. Acceptance or denial of witnesses and/or ~~evidence~~evidence~~information~~ is within the discretion of the Hearing Officer.

~~5.~~ 5. ~~Evidence~~Information and/or the names of ~~Witnesses~~witnesses will be provided to the Hearing Body prior to the Hearing.

~~d.~~ **d. Challenging a Member of the Hearing Body/Change of a Hearing Body Member**

~~1.~~ 1. The ~~Charged Student or Student Organization~~Respondent may challenge the inclusion of any member at least three (3) ~~Business Days~~business days prior to the scheduled hearing. The challenge must be in writing and must show actual bias (such as a conflict of interest, animosity, pressure or influence) that would preclude a fair and impartial hearing. The Hearing Officer will determine whether to grant such challenge in their discretion, and such decision is final and not appealable.

~~2.~~ 2. If a Hearing Body member is unable to serve due to an emergency or unforeseeable occurrence, the Hearing Officer will appoint a new ~~Hearing Body~~hearing body member prior to the scheduled hearing and notify the ~~Charged Student~~Respondent as soon as possible. The ~~Charged Student or Student Organization~~Respondent may challenge the inclusion of this member at the time of the hearing. The challenge must be on the basis outlined above.

~~e.~~ e. **Request for a Postponement:** Any request to postpone a hearing must be submitted in writing or by email and must be received by the SCAI Director at least two (2) ~~Business Days~~business days prior to the hearing. The request must state the reason(s) for the postponement. The granting of such requests shall be at the discretion of the SCAI Director. The University is not required to postpone a ~~Student Conduct~~ proceeding pending the outcome of a criminal prosecution. The University may postpone the hearing, at any time, for extraordinary situations (e.g. hurricane, emergency personnel matters).

10. 10. ADVISOR FOR THE CHARGED STUDENT OR STUDENT ORGANIZATIONRESPONDENT

~~a.~~ a. The ~~Charged Student or Student Organization~~Respondent may be accompanied by an ~~Advisor~~advisor of their choosing and at their expense at any time during the Code process.

~~1.~~ 1. It is the responsibility of the ~~Charged Student or Student Organization~~Respondent to make appropriate arrangements for the ~~Advisor~~advisor to attend the proceeding. The proceedings shall not be delayed due to scheduling conflicts of the chosen ~~Advisor~~advisor. If the ~~Advisor~~advisor is an attorney, the attorney must comply with the same restrictions imposed on any other ~~Advisor~~advisor.

~~2.~~ 2. The ~~Charged Student or Student Organization~~Respondent ~~a~~ is responsible for presenting their own information, and therefore, ~~Advisors~~advisors are not permitted to speak or to participate directly in any ~~Student Conduct~~ process. under this Code.

~~3.~~ 3. Although the ~~Charged Student or Student Organization~~Respondent may consult with their ~~ir~~ Advisor during the hearing, this consultation must take place in a manner that does not disrupt the proceedings.

~~4.~~ 4. The Advisor chosen by the ~~Charged Student or Student Organization~~Respondent cannot be a ~~Witness~~witness in the matter.

~~5.~~ 5. SCAI can provide the ~~Charged Student or Student Organization~~Respondent with a list of Advisors who can provide assistance in preparing a response to the reported Code violation.

~~11.~~ **11. DUE PROCESS RIGHTS OF THE CHARGED STUDENT OR STUDENT ORGANIZATION**

RESPONDENT The ~~Charged Student or Student Organization~~ Respondent has the following rights:

- ~~a.~~ **a.** Reasonable, written notice of the Code charge(s) and the allegations upon which the charge(s) is/are based.
- ~~b.~~ **b.** A fair and impartial hearing.
- ~~c.~~ **c.** Accompanied by an Advisor of their choice and expense at any time during the Code process.
- ~~d.~~ **d.** The opportunity to review all relevant information or evidence to be used in the hearing prior to the hearing.
- ~~e.~~ **e.** The ability to participate in the Student Conduct hearing either physically or by contemporaneous alternative means (e.g., Skype, phone).
- ~~f.~~ **f.** The opportunity to present relevant ~~Witnesses~~witnesses and information at the hearing.
- ~~g.~~ **g.** The opportunity to question ~~Witnesses~~witnesses in accordance with the Hearing Procedures.
- ~~h.~~ **h.** Not to provide self-incriminating testimony. (This right does not apply to Student Organizations.) Invoking the right against self-incrimination will not be considered as a negative factor in the decision of the Hearing Officer or Hearing Body.
- ~~i.~~ **i.** Receive notification of the decision of the Hearing Body in writing within fourteen (14) Business Days of the hearing.
- ~~j.~~ **j.** Appeal the decision via the process established by the University.

~~12.~~ **12. PRINCIPLES OF GROUP RESPONSIBILITY**

- ~~a.~~ **a.** Any Student Organization can be held responsible under the Code for its actions or those of its members acting together. Misconduct on the part of the organization will be addressed when one or more of the following circumstances occur:
 - ~~1.~~ **1.** An alleged violation arises out of a Student Organization-sponsored, financed or otherwise supported activity.
 - ~~2.~~ **2.** An alleged violation occurs on University Premises or On-Campus Housing and/or transportation owned, operated or rented exclusively by the Student Organization.
 - ~~3.~~ **3.** A pattern of individual alleged violations has occurred and/or continues to occur without adequate control, response or sanction on the part of the Student Organization or its leaders.
 - ~~4.~~ **4.** The Student Organization or its related activities provided the context for the alleged violation.
 - ~~5.~~ **5.** The action resulting in the alleged violation has received either the implied or overt consent of the Student Organization and/or its leaders.
 - ~~6.~~ **6.** The Student Organization overtly places or implicitly allows active members of the Student Organization to be in a position to act on behalf or with the authority of the Student Organization.
- ~~b.~~ **b.** The actions of active, prospective, or associate members (pledges) of a Student Organization may be considered hazing. Refer to Section 5-~~m~~ for full details on Hazing.

~~e.~~ c. It is the responsibility of the Student Organization's President or Student-member designee to represent the organization through the conduct process.

13. HEARING PROCEDURES

~~a.~~ a. During the hearing, the Hearing Officer presides over the Code hearing and makes all procedural decisions.

~~b.~~ b. The burden of proof in a hearing rests with the University and Respondents are presumed Not Responsible. The standard of proof is a Preponderance of the Evidence. The determination of "Responsible" or "Not Responsible" will be based solely on the information and/or testimony presented.

~~c.~~ c. Formal rules of process, procedure and/or technical rules of evidence (including hearsay rules) applicable in the criminal or civil court process are not used in Code proceedings.

~~d.~~ d. Witnesses only participate in the hearing to the degree that a question is posed to them. They may not speak or otherwise participate in the Hearing.

~~e.~~ e. In Code hearings involving Academic Misconduct violations, the Instructor can choose to be present in the hearing in its entirety and to ask questions of the Respondent Charged Student and wWitnesses when prompted. The Hearing Officer has the discretion to require the Instructor to step out of a hearing if non-academic sStudent cConduct issues are being discussed.

~~f.~~ f. The hearing will be recorded. The recording will serve as the only official record of the proceedings. No other recordings are permitted.
~~The hearing will be recorded. The recording will serve as the only official record of the proceedings. No other recordings are permitted.~~

~~g.~~ g. If the Charged Student, Student Organization Respondent, or Instructor fails to appear at the scheduled hearing, the hearing will be held, and a decision will be rendered in their absence.

~~h.~~ h. Upon request by the Charged Student, the Complainant Respondent or Witnesses witnesses, the Hearing Officer may permit the individual to provide relevant information during the hearing in a manner that avoids direct contact with the Charged Student, the Complainant or Witnesses Respondent.

~~i.~~ i. For Code hearings involving Conduct Violations, the Hearing Officer has the discretion to determine the order of the hearings which may involve, but is not limited to, the following:

1. Introductory statement by Hearing Officer including a reading of the allegations and charge(s), introduction of information that is the basis for the charges, and identification of the hearing participants.

2. Statement by the Respondent and submission of any previously submitted relevant written information (e.g., records, exhibits, written statements) except for witness statements (see below) for consideration by the Hearing Body.

3. Questions directed to the Respondent by the Hearing Body.

4. Presentation of witnesses and any results of fact-finding conducted prior to the hearing.

5. The Respondent may pose questions directly to the witness. In certain circumstances to be determined by the Hearing Officer, questions may be presented in writing to the Hearing Officer who will then ask the witness the question(s).

6. Submission by the Respondent of written statements (if any) of witnesses who are not present.

7. Follow-up questions (if any) directed to the Respondent by the Hearing Body.

8. Final statement by the Respondent.

9. Hearing Officer brings hearing to closure.

j. For Code hearings involving Academic Misconduct Violations, the Hearing Officer has the discretion to determine the order of the hearings which may involve, but is not limited to, the following:

1. 1. Introductory statement by Hearing Officer including a reading of the allegations and charge(s), introduction of information that is the basis for the charges and identification of the hearing participants.

2. ~~Statement by the Charged Student or Student Organization and submission of any previously submitted relevant written information (e.g., records, exhibits, written statements) except for Witness statements (see below) for consideration by the Hearing Body.~~

3. ~~Questions directed to the Charged Student or Student Organization by the Hearing Body.~~

4. ~~Presentation of Witnesses and any results of fact-finding conducted prior to the hearing.~~

5. ~~The Charged Student or Student Organization may pose questions directly to the Witness. In certain circumstances to be determined by the Hearing Officer, questions may be presented in writing to the Hearing Officer who will then ask the Witness the question(s).~~

6. ~~Submission by the Charged Student or Student Organization of written statements (if any) of Witnesses who are not present.~~

7. ~~Follow up questions (if any) directed to the Charged Student or Student Organization by the Hearing Body.~~

8. ~~Final statement by the Charged Student or Student Organization.~~

9. ~~Hearing Officer brings hearing to closure.~~

j. 2. For Code hearings involving Academic Misconduct Violations, the Hearing Officer has the discretion to determine the order of the hearings which may involve, but is not limited to, the following:

1. ~~Introductory statement by Hearing Officer including a reading of the allegations and charge(s), introduction of information that is the basis for the charges and identification of the hearing participants.~~

2. Statement by the Instructor and submission of any previously submitted relevant written information (e.g., records, exhibits, written statements) except for Witness statements (see below) for consideration by the Hearing Body.

3. 3. Statement by the ~~Charged Student~~Respondent and submission of any previously submitted relevant written information (e.g., records, exhibits, written statements) except for Witness statements (see below) for consideration by the Hearing Body.

4. 4. Questions directed to the Instructor by the Hearing Body and the ~~Charged Student~~Respondent.

5. 5. Questions directed to the ~~Charged Student~~Respondent by the Hearing Body and the Instructor.

6. 6. Presentation of ~~Witnesses~~witnesses and any results of fact-finding conducted prior to the hearing.

7. 7. The ~~Charged Student~~Respondent may pose questions directly to the ~~Witness~~witness(es).

8. 8. The Instructor may pose questions directly to the ~~Witness~~witness(es).

9. 9. Submission by the ~~Charged Student~~Respondent written statements (if any) of ~~Witnesses~~witnesses who are not present.

- ~~10.~~ 10. Submission by the Instructor of written statements (if any) of ~~Witnesses~~witnesses who are not present.
- ~~11.~~ 11. Follow-up questions (if any) directed to the Instructor by the Hearing Body and ~~Charged Student~~Respondent.
- ~~12.~~ 12. Follow-up questions (if any) directed to the ~~Charged Student~~Respondent by the Hearing Body and the Instructor.
- ~~13.~~ 13. Final statement by the Instructor.
- ~~14.~~ 14. Final statement by the ~~Charged Student~~Respondent.
- ~~15.~~ 15. Hearing Officer brings hearing to closure.
- ~~k.~~ k. Deliberation by the Hearing Body is held outside the presence of the ~~Charged Student~~Respondent for all ~~hearing~~hearings, and Instructor, for hearings involving Academic Misconduct violations.
- ~~l.~~ l. Prior Student Conduct and Academic Misconduct records, Character Witness Statements and/or Impact Statements are considered only in determining the appropriate sanction(s).
- ~~m.~~ m. In Code hearings, the SCC will make a recommendation of the decision and sanctions to the Hearing Officer. The Hearing Officer may take one of these actions with respect to the recommendation:
- a. Adopt
 - b. Modify
 - c. Reject the findings and sanctions, or
 - d. Remand for a rehearing.
- If the Committee decision is not adopted, the Hearing Officer will include the reasons for any differences between the recommendations of the Committee and the Hearing Officer's final decision as part of the decision letter.~~If the Committee decision is not adopted, the Hearing Officer will include the reasons for any differences between the recommendations of the Committee and the Hearing Officer's final decision as part of the decision letter.~~
- ~~n.~~ n. A decision letter will be sent to the ~~Charged Student or Student Organization~~Respondent within fourteen (14) Business Days from the conclusion of the Hearing Body's deliberation. The hearing decision will include the decision, sanctions imposed (if applicable) and the explanation of the right to appeal. For Academic Misconduct violations, the written decision will also be sent to the Instructor.
- ~~o.~~ o. This Regulation acknowledges the Instructor authority to award Student grades. If the Student is found "Not Responsible" for alleged violations of Academic Misconduct, the faculty member should reinstate the grade the Student would have received if the misconduct charges were not submitted and any reduction in grade should be based on the Student's quality of work and not an allegation of Academic Misconduct.

14. TITLE IX PROCEDURES

~~The University's Title IX Coordinator has designated the SCAI Director to serve as Deputy Title IX Coordinator. It is the responsibility of the Title IX Coordinator and Deputy Title IX Coordinator to ensure that the process relating to alleged Title IX/ Violence Against Women Act (VAWA) violations is reliable, impartial, thorough, prompt and conducted in an equitable~~

manner. The general Code procedures are tailored for the investigation and resolution of reported violations of the University prohibitions against Sexual Misconduct, Dating or Domestic Partner Violence, Stalking and/or Retaliation. These tailored procedures require equitable access for both a Complainant and Charged Student as well as notice requirements and other considerations.

a. ~~—————~~ **Prohibited Conduct:** Title IX cases include prohibited conduct listed in Section 5.e (Dating or Domestic Partner Violence), 5.f (Retaliation), 5.g (Sexual Misconduct), and 5.h (Stalking).

b. ~~—————~~ **Pre-Hearing Procedures**

1. ~~—————~~ **Investigations:** If the SCAI Director determines that an investigation is necessary into the alleged violations, the procedures below will be followed. All fact finding will occur during the investigation stage prior to the hearing. There will be no additional documents or testimony presented at the hearing.

i. ~~—————~~ The SCAI Director will select a trained investigator(s) to gather sufficient evidence to reach a fair, impartial determination as to whether there is enough information to move forward with charging a student with a violation of the

Code based on the preponderance of the evidence. The investigator(s) will be trained to gather and document the available evidence to support reliable decisions, synthesize all available evidence (including both supportive and non-supportive evidence) and take into account the unique and complex circumstances of each case.

ii. ~~—————~~ The SCAI Director will select investigator(s) who are free of actual or reasonably perceived conflicts of interest and biases for or against any party. The Charged Student or Complainant may raise any concerns about bias or conflict of interests within three (3) business days to the SCAI Director.

2. ~~—————~~ **The Notice of Investigation:** Prior to the initial investigation meeting, the SCAI Director will send to the Charged Student and Complainant written notice about the allegations constituting a potential violation of the Code in order for the parties to prepare for meaningful participation in the investigation.

3. ~~—————~~ **Investigative Procedures:** During an investigation, the investigator(s) will seek to meet separately with the Complainant, the Charged Student, and any Witnesses. Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information or may have other information related to the incident, the disclosure, or related matters. Character witness statements will not be considered by the investigator(s). The investigator(s) will also gather other relevant information or evidence, including documents, photographs, communications between the parties, medical records (subject to the consent of the applicable person) and other electronic records as appropriate. The investigator(s), not the parties, are responsible for gathering relevant evidence to the extent reasonably possible. Both the Complainant and Charged Student are encouraged to promptly submit any relevant information, including Witnesses' names. If a party declines to provide relevant information, the University's ability to conduct a prompt, thorough and equitable investigation may be impaired.

4. ~~—————~~ **Prior Sexual History:** The sexual history of the Complainant and/or the Charged Student will never be used to prove character or reputation. Evidence related to the prior sexual history of the parties is generally not used in determining whether a violation of this Code has occurred and will only be considered under limited circumstances. For example, prior sexual history may be relevant to explain injury, to provide proof of a pattern or to address another specific issue raised in the investigation. The investigator(s) will determine the relevance of this

information, and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

5. ~~**Written Investigation Report:** Upon conclusion of the investigation, the investigator(s) will prepare a written report summarizing the relevant information which will include any evidence and/or a list of Witnesses that are supportive or not supportive of a violation. The Charged Student, the Complainant and/or any Witnesses will have the opportunity to review the report before it becomes final. Upon notice of the availability of the investigation report, the Charged Student and the Complainant will have five (5) Business Days to:~~

i. ~~Meet again with the investigator;~~

ii. ~~Provide written comment or feedback on the facts as gathered;~~

iii. ~~Submit additional information, and/or~~

iv. ~~Identify additional Witnesses and/or request the collection of other information by the investigator.~~

v. ~~If any party provides a written response or makes a request for additional information, the content will be shared as appropriate and incorporated in the final investigation report. Participation in this iterative process is important given that the investigation report will be the only evidence submitted at the Hearing. Once the investigation report is final, a redacted copy will be provided to the Charged Student and Complainant at the same time. This report will be used in the hearing. Unless there are extenuating circumstances, information not provided by any party during the investigation or not included in the report will not be permitted to be introduced at the hearing.~~

6. ~~**Charge Letter:** At the time of the issuing the charge letter to the Charged Student, the Complainant will also be notified of the charges and be offered an Information Session.~~

c. ~~**Due Process Rights of The Complainant:**~~

1. ~~Reasonable, written notice of the Code charge and the allegations upon which the charge is based.~~

2. ~~A fair and impartial hearing.~~

3. ~~Accompaniment by an Advisor of their choosing and expense at any time during the Student Conduct process.~~

4. ~~The opportunity to review all relevant information to be used in their Student Conduct process prior to the hearing.~~

5. ~~The ability to participate in the Student Conduct hearing either physically or by contemporaneous alternative means (e.g., Skype, phone).~~

6. ~~Not to provide self-incriminating testimony. (This right does not apply to Student Organizations.)~~

7. ~~Receive notification of the decision of the Hearing Body in writing within fourteen (14) Business Days of the hearing.~~

8. ~~Appeal the decision via the process established by the University.~~

9. ~~In addition to these due process rights, the Complainant has the same responsibilities as those provided by the Code to the Charged Student.~~

d. ~~**Due Process Rights of the Charged Student:** See Section 11~~

1. ~~**Additional Due Process Rights for Charged Students and Complainants:** Both parties have the additional right to submit an Impact Statement for use solely in the sanctioning phase if the Charged Student is found responsible for the Charge(s).~~

e. ~~**Hearing Notifications:** At the time of issuing the hearing notice to the Charged Student, the Complainant will also be notified of the hearing.~~

~~f. Hearing Procedures:~~

~~1. Hearing: To avoid re-victimizing the Charged Student and/or Complainant by having to retell their version of the events, the University determined that the traditional hearing should not be used for Title IX cases.~~

~~2. The Hearing Body, the Charged Student, and the Complainant will be given the final redacted investigation report at least three (3) Business Days prior to the hearing. During the hearing, the investigator(s) will provide a summary statement of the final investigation report. The Hearing Body, the Charged Student and the Complainant may ask questions about the report.~~

~~3. During the hearing, the Hearing Officer presides over the Student Conduct hearing and makes all procedural decisions.~~

~~The burden of proof in a hearing rests with the University. The standard of proof is a Preponderance of the Evidence. The determination of “Conduct meeting the definition of Sexual Harassment or Sexual Misconduct (including the Violence Against Women Act violations incorporated via the Clery Act) are administered via FIU Regulation 105. SCAI serves as the central repository for all student sanctions administered under the Code and FIU Regulation 105, and any prior misconduct under the Code or FIU Regulation 105 is considered in any sanctioning stage of either proceeding.~~

15. SANCTIONS~~Responsible” or~~

~~4. a. Sanctions may only be imposed when a Respondent has been found in violation of the Code. In cases where a Respondent has been found “Not Responsible” will be based solely on the investigation report.~~

~~5. Formal rules of process, procedure and/or technical rules of evidence (including rules regarding hearsay) applicable in for the criminal or civil court process are not used in this hearing.~~

~~6. The hearing will be recorded. The recording will serve as the only official record of the proceedings. No other recordings are permitted.~~

~~7. If the Charged Student or Complainant fail to appear at the scheduled hearing, the hearing will be held and a decision will be rendered in their absence.~~

~~8. The Hearing Officer has the discretion to determine the order of the hearing which may involve the following:~~

~~i. Introductory statement by Hearing Officer including a reading of the allegations and charge(s), introduction of information that is the basis for the charges and identification of the hearing participants.~~

~~ii. Statement, if any, by the Charged Student. This is intended to be a concise statement to identify key facts and questions for the Hearing Body; it is not intended to be a full recounting of the incident.~~

~~iii. Statement, if any, by the Complainant. This is intended to be a concise statement to identify key facts and questions for the Hearing Body; it is not intended to be a full recounting of the incident.~~

~~iv. Summary of the relevant portions of the final investigation report by the investigator.~~

~~v. Relevant questions directed to the Charged Student, Complainant and/or investigator(s) by the Hearing Body. The purpose of these questions is to clarify information in the final investigation report. Any party may also request that the Hearing Body pose relevant questions of the other party concerning clarifications about information in the final investigation~~

report. The Hearing Officer makes the determination whether any question is relevant and will be asked.

vi. _____ Final statement by the Charged Student.

vii. _____ Final statement by the Complainant.

viii. _____ Hearing Officer brings hearing to closure.

9. _____ Deliberation by the Hearing Body is not part of the hearing.

10. _____ Prior Student Conduct records, Character Witness Statements and/or Impact Statements are considered only in determining the appropriate sanction(s).

11. In SCC hearings, the Committee will make a recommendation of the decision and alleged violation(s), no sanctions to the Hearing Officer. The Hearing Officer may take one of these actions with respect to the recommendation: will be assigned.

- _____ Adopt

- _____ Modify

- _____ Reject the findings and sanctions, or

- _____ Remand for a rehearing.

If the Committee decision is not adopted, the Hearing Officer will include the reasons for any differences between the recommendations of the Committee and the Hearing Officer's final decision as part of the decision letter.

12. _____ A decision letter will be sent to the Charged Student and the Complainant on the same day but no later than fourteen (14) Business Days from the conclusion of the Hearing Body's deliberation. The decision will include outcome, the rationale for the outcome, the sanctions and the rationale for the sanctions.

g. _____ **Interim Suspension:** A Complainant will be notified of the Interim Suspension of the Charged Student and will have the same rights as the Charged Student to participate in the subsequent hearing.

h. _____ **Appeals:**

1. _____ The Complainant wishing to appeal must complete the appeal form in full, indicating the basis for the appeal, explain in detail the reasons for the appeal, and attach supporting relevant documentation.

2. _____ SCAI will notify the Complainant if the Charged Student appeals, and vice versa. Both parties may submit a written statement within seven (7) Business Days.

3. _____ The appellate decision is issued in writing to the Charged Student and Complainant within twenty-one (21) Business Days of receipt of the written request for appeal unless notification is given that additional time is necessary for consideration of the record on appeal.

15. _____ SANCTIONS

a. b. In light of the facts and circumstances of each case, the following sanctions or combination of sanctions (with or without appropriate modifications) will be imposed upon any Charged Student or Student Organization Respondent found to have violated the Code or FIU Regulation 105. Sanctions will be commensurate with the prohibited conduct with consideration given to any aggravating and mitigating circumstances, including, but not limited to, the Charged Student's or Student Organization's Conduct Respondent's conduct and Academic Misconduct record. Fees may be associated with certain sanctions (e.g., counseling consultation, online programs) and are the Student's or Student Organization's Respondent's responsibility.

b. c. When an undergraduate ~~Student~~student is found Responsible for Academic Misconduct violations, SCAI will determine any University Sanctions which are not related to a grade or the course in general. The Instructor and Chair (or designee) will recommend Course Sanctions and communicate their recommendation to SCAI. SCAI will then communicate the final outcome to the ~~Student~~student. Should the Instructor fail to provide SCAI with recommended course sanctions within seven (7) Business Days, SCAI may assign Course Sanctions. If the undergraduate ~~Student~~student is a member of the Honors College, SCAI will notify the Dean of the Honors College that a ~~Student~~student was found in violation and ask if the College wishes to invoke any Honors College-level academic action(s). The Dean of the Honors College will determine if Honors College action is necessary. SCAI will be notified within seven (7) Business Days if the Dean recommends additional program action.

e. d. When a graduate or professional ~~Student~~student is found Responsible for Academic Misconduct violations, SCAI notifies the Instructor, Dean or designee of the University Graduate or Professional School, and the Dean or designee of the Academic College in which the graduate or professional ~~Student~~student resides. SCAI will determine any University Sanctions, which are not related to a grade or the course. The Instructor and Dean (or designee) will recommend Course Sanctions and communicate their recommendation to SCAI. Should the Instructor fail to provide SCAI with recommended course sanctions within seven (7) Business Days, SCAI may assign Course Sanctions. The College Dean or designee will in turn notify the graduate or professional program that a ~~Student~~student was found in violation and ask if the program wishes to invoke any program-level academic action(s). The ~~Student's~~student's graduate or professional program will determine if program action is necessary. SCAI will be notified within seven (7) business days if the graduate or professional program recommends additional program action. SCAI will then communicate the final outcome to the ~~Student~~student.

d. e. In the event the course Instructor is no longer at the University, the Department Chair (or designee) will determine the recommended Course Sanctions.

e. ~~Sanctions may only be imposed when a Student has been found in violation of the Code. In cases where a Student has been found "Not Responsible" for the alleged violation(s), no sanctions will be assigned.~~

f. f. University Sanctions

1. 1. **Written Reprimand:** ~~the~~The University takes official notice that such actions are inappropriate and not in accordance with our community standards.

2. 2. **Educational Activities:** ~~attendance at in-person and/or online~~Appropriate educational program(s)/workshop(s); ~~interview(s) with appropriate officials; written research assignments; behavior~~steps (such as referrals for alcohol or drug education, reflection ~~papers; planning and implementing educational program(s);~~activities, counseling, letters of apology, directed study programs, or classes).

3. 3. **Conduct Probation:** Probation for a stated period, including completion of any required probation program. While on conduct probation, any additional violations of the Code or other ~~educational activities.~~University Policies may result in suspension or expulsion.

4. 4. **Deferred Suspension:** Period of time in which suspension is temporarily withheld or withheld pending completion of other sanctions by a specified deadline date. A Respondent who is on deferred suspension is considered not in good standing with the University, resulting in applicable restrictions on privileges and/or activities which may include, but are not limited to, being prohibited from participating in study abroad or alternative break, or serving as a peer advisor, resident assistant or elected/appointed Student leader in Student Government or other

Student Organizations. Additional restrictions on University privileges and/or activities may be imposed on the Respondent based on their current or potential future activities. If the Respondent fails to fulfill the sanctions described in the decision letter (including failure to timely fulfill the sanction), the Respondent will no longer be considered on deferred suspension but will be automatically suspended with no further appeal. While on deferred suspension, any additional violations of the Code or other University Policies may result in suspension or expulsion.

5. Suspension: Separation from the University for a specified period of time. A Respondent is considered not in good standing with the University while suspended. The Respondent may not attend classes (either in person or online) and is banned from being on or in any University Premises or On-Campus Housing. The suspended Respondent is also banned from participation in any University-sponsored/related event or activity and their FIU OneCard will be deactivated. This sanction is recorded on the Respondent's academic transcript permanently. A Respondent who is suspended from the University is not eligible for tuition and/or registration fee reimbursement except as provided by University Policies. The Respondent will be administratively withdrawn from courses and will lose respective credit hours.

~~644.~~ **6. Expulsion:** Permanent separation from the University with no possibility of readmission. This sanction is recorded on the Respondent's academic transcript permanently. A Respondent is considered not in good standing with the University after being expelled. The Respondent may not attend classes (either in person or online) and is banned from being on or in any University Premises or On-Campus Housing. The expelled Respondent is also banned from participation in any University-sponsored/related activity or event and their FIU OneCard will be deactivated. A Respondent who is expelled from the University is not eligible for tuition nor registration fee reimbursement except as provided by University Policy. The Respondent will be administratively withdrawn from courses and will lose respective credit hours.

g. Remedies

3. **1. No Contact Order:** the requirement that the ~~Charged Student Respondent~~ and/or friends have no contact with ~~the Complainant~~. This restriction can be imposed at any time during the Student Conduct process.~~another person.~~

4. ~~—————~~ **Counseling Screening/Consultation:** referral for screening and/or consultation with the University Counseling and Psychological Services (CAPS) (or a licensed psychologist/psychiatrist if the Charged Student is no longer enrolled when sanctioned or is seeking readmission) for alcohol/drug dependence, anger management, general mental health or other counseling issues. Charged Student must follow through with recommendations made by CAPS or the licensed psychologist/psychiatrist, as applicable. The Charged Student must permit the consulting professional to provide official documentation on letterhead verifying attendance and to share the recommendations with SCAI.

5. ~~—————~~ **Psychological Evaluation:** referral for an evaluation and recommendation by a licensed psychologist or psychiatrist which may include CAPS. The Charged Student must follow through with any recommendations made by the psychologist or psychiatrist. The Charged Student must permit the professional to provide official documentation on letterhead verifying attendance and share the recommendations with SCAI.

2. Restitution: ~~requirement~~

6. **Restitution** to ~~reimburse the University or person for damage to or misappropriation of property owned or in possession of the University or other persons.~~ the impacted part(ies) of the

violation. Any such payment on restitution will be limited to actual cost of repair, services not covered, or replacement costs.

7. ~~3.~~ **Restrictions/Loss of Privileges:** ~~R~~estrictions or loss of privileges which may be imposed upon a ~~Charged Student~~ **Respondent** for a specified amount of time, including but not limited to, participation in Student activities, University or Student events, representation of the University on athletic teams or in leadership positions, presence at University residence halls or other buildings/areas of campus, participation as a peer advisor, resident assistant or elected/appointed Student leader in Student Government or other Student Organizations, and/or participation in study abroad or alternative break programs. ~~Additional restrictions on University privileges and/or activities may be imposed on the Charged Student based on their current or potential future activities.~~

8. ~~Conduct Probation:~~ a temporary interruption of the Student's status with the University. A ~~Charged Student~~ who is on conduct probation is considered not in good standing with the University, resulting in applicable restrictions on privileges and/or activities which may include, but are not limited to, being prohibited from participating in study abroad or alternative break, or serving as a peer advisor, resident assistant or elected/appointed Student leader in Student Government or other Student Organizations. ~~Additional restrictions on University privileges and/or activities may be imposed on the Charged Student based on their current or potential future activities. The conduct probation period is a time for the Charged Student to reflect on their behavior and demonstrate that he/she can once again be a responsible Member of the University community. While on conduct probation, further violations of the Code or other University Policies may result in suspension or expulsion.~~

9. ~~Deferred Suspension:~~ period of time in which suspension is temporarily withheld or withheld pending completion of other sanctions by a specified deadline date. A ~~Charged Student~~ who is on deferred suspension is considered not in good standing with the University, resulting in applicable restrictions on privileges and/or activities which may include, but are not limited to, being prohibited from participating in study abroad or alternative break, or serving as a peer advisor, resident assistant or elected/appointed Student leader in Student Government or other Student Organizations. ~~Additional restrictions on University privileges and/or activities may be imposed on the Charged Student based on their current or potential future activities. If the Charged Student fails to fulfill the sanctions described in the decision letter (including failure to timely fulfill the sanction), the Charged Student will no longer be considered on deferred suspension but will be automatically suspended with no further appeal. While on deferred suspension, further violations of the Code or other University Policies may result in suspension or expulsion.~~

10. ~~Suspension:~~ separation from the University for a specified period of time. A ~~Charged Student~~ is considered not in good standing with the University while suspended. The ~~Charged Student~~ may not attend classes (either in person or online) and is banned from being on or in any University Premises or On-Campus Housing. The suspended ~~Charged Student~~ is also banned from participation in any University-sponsored/related event or activity and their FIU OneCard will be deactivated. This sanction is recorded on the ~~Charged Student's~~ academic transcript during the period of suspension. A ~~Charged Student~~ who is suspended from the

University is not eligible for tuition and/or registration fee reimbursement except as provided by University Policies. The ~~Charged Student~~ will be administratively withdrawn from courses and

will lose respective credit hours.

11. ~~For a student organization, restrictions or loss of privileges include~~ **Expulsion:** permanent separation from the University with no possibility of readmission. This sanction is recorded on the Charged Student's academic transcript permanently. A Charged Student is considered not in good standing with the University after being expelled. The Charged Student may not attend classes (either in person or online) and is banned from being on or in any University Premises or On-Campus Housing. The expelled Charged Student is also banned from participation in any University-sponsored/related activity or event and their FIU OneCard will be deactivated. A Charged Student who is expelled from the University is not eligible for tuition nor registration fee reimbursement except as provided by University Policy. The Charged Student will be administratively withdrawn from courses and will lose respective credit hours.

g. Student Organization Sanctions

1. ~~Restrictions/Loss of Privileges (Student Organizations):~~ for an organization, restrictions or loss of privileges including, but not limited to, participation in or exclusion from Student activities, social events, intramural activities, alcohol functions or in campus facilities. This does not affect an individual Student's status with the University or attendance at classes unless the individual Student has been charged and sanctioned independently of the Student Organization.

2. ~~Conduct Probation (Student Organizations):~~ temporary interruption of the organization's status with the University. An organization that is on conduct probation is considered not in good standing with the University, resulting in applicable restrictions of privileges and/or activities including, but are not limited to, participation in or exclusion from Student activities, social events, intramural activities, alcohol functions, ~~or in campus facilities.~~ Further violations of Interfraternity Council (IFC), Panhellenic Council (PC), National Panhellenic Council (NPHC), Wellness & Recreation Center (WRC), or Multicultural Greek Council (MGC) Policies, Code or other University Policies may result in suspension or expulsion of the Charged Student Organization from the University. This does not affect an individual Student's status with the University or attendance at classes unless the individual Student has been charged and sanctioned independently of the Charged Student Organization or in campus facilities. Additional restrictions on University privileges and/or activities may be imposed on the Respondent based on their current or potential future activities.

3. ~~Deferred Suspension (Student Organizations):~~ period of time in which the organization's suspension is temporarily withheld or withheld pending completion of other sanctions by a specified deadline date. An organization on deferred suspension is considered not in good standing with the University, resulting in applicable restrictions or privileges and/or activities including, but not limited to, participation in or exclusion from Student activities, social events, intramural activities, alcohol functions or in campus facilities. If the organization fails to fulfill the sanctions described in the decision letter (including failure to timely fulfill the sanction), the organization will no longer be considered on deferred suspension but will be automatically suspended with no further appeal. This does not affect an individual Student's status with the University or attendance at classes unless the individual Student has been charged and sanctioned independent of the Student Organization.

4. ~~Suspension (Student Organizations):~~ separation from the University for a specified period of time. An organization while suspended is considered not in good standing with the University. A suspended Organization may not participate in any University activities or

events and is not recognized as a University organization during the suspension period. This does not affect an individual Student's status with the University, academic area or attendance at classes unless the individual Student has been charged and sanctioned independently of the Student Organization.

5. ~~_____~~ **Expulsion (Student Organizations):** permanent separation from the University with no possibility of re-chartering or re-registering. An organization that has been expelled is considered not in good standing with the University. An expelled organization is not recognized as a University organization and may not participate in any University-sponsored activity or event. This does not affect an individual

Student's status with the University, academic area or attendance at classes unless the individual Student has been charged and sanctioned independently of the Student Organization.

h. _____ Housing Sanctions

1. ~~_____~~ **On-Campus Housing Reassignment:** required change in University residence hall assignment. The Charged Student must move out by the date and time provided and will be responsible for any additional room rental charges for the new Housing assignment.

2. ~~_____~~ **On-Campus Housing Probation:** a period of probation for the remainder of the Student's time in On-Campus Housing. Future violation(s) of the Code or other Housing/University policies may result in additional sanctions such as Housing Agreement Termination, University suspension or expulsion. A person on On-Campus Housing Probation is considered not in good standing with University Housing, resulting in applicable restrictions on privileges and/or activities including, but not limited to, ineligibility for Residence Hall Association (RHA) leadership positions and student employment within HRL (including Resident Assistants, Clerical Assistants and Housing Ambassadors).

3. ~~_____~~ **Deferred On-Campus Housing Termination:** period of time in which the Charged Student is allowed to continue to reside in On-Campus Housing notwithstanding the fact that, but for the Deferred On-Campus Housing Termination (DOCHT), the Housing Agreement would have been immediately terminated. At the end of the current semester, the current Housing Agreement with the student is effectively terminated and the Student is ineligible to reside in any On-Campus Housing for the remainder of the Student's career at FIU. The Student is also excluded from all On-Campus Housing premises for the remainder of the Student's career at FIU. This exclusion applies to all buildings, grounds and the parking lots surrounding the buildings. If another violation of the Code occurs in the semester while the Charged Student is on DOCHT, the Charged Student's

Housing Agreement will be immediately terminated and the remaining sanctions of this provision will apply (i.e., exclusion from housing and premises).

4. ~~_____~~ **On-Campus Housing Exclusion:** exclusion from On-Campus Housing for the remainder of the Student's career at FIU. This exclusion applies to all buildings, grounds and the parking lots surrounding the buildings.

i. h. Course Sanctions:

1. ~~1.~~ **1. Grade Penalty on the Assignment/Exam/Project with Resubmission:** A point/grade reduction on the assignment/assessment in question, and with the permission of the Faculty member, an opportunity to resubmit the assignment/ assessment with the addition of the implemented point/grade reduction.

~~2.~~ **2. Grade Penalty on the Assignment/Exam/Project:** A point/grade reduction on the assignment/assessment in question.

~~3.~~ **3. Overall Course Grade Penalty with Drop:** Receive a decrease in overall grade or an F for the entire course. However, the Student will be permitted to drop or withdraw the course with approval from the SCAI Director or designee. Requests for drop consideration must be submitted in writing with rationale to the SCAI Director or designee, where the final approval rests and is not eligible for independent appeal outside of the formal conduct appeal process.

~~4.~~ **4. Overall Course Grade Penalty:** Receive a decrease in overall grade or an F for the course. A point/grade reduction for the entire course. There will be no ability to drop or withdraw from the course for any reason.

~~j.~~ **i.** Violations of the Code that are motivated by prejudice toward a person or group because of such factors such as race, color, creed, religion, ethnicity, national origin, disability, age, marital status, ~~sex, sexual orientation, sexual identity or expression, pregnancy,~~ genetic information, veteran status or any group/class protected by state or federal law may result in stronger sanctions.

~~k.~~ **j.** Students who are found “Responsible” for Academic Misconduct violations under the Code are prohibited from using the Grade Forgiveness Policy for the course in which the Academic Misconduct occurred.

~~l.~~ **k.** Sanctions take immediate effect unless appealed ~~(, except for suspensions or expulsions), which may be stayed until Final Agency action at the discretion of the SCAI Director. During such time, the SCAI Director may implement any supportive/interim measures available under the Code, excepting an interim suspension..~~

~~m.~~ **l.** Proof of the completion of the sanction(s) must be provided as directed in the decision letter. It is the responsibility of the ~~Charged Student or Student Organization~~ Respondent to ensure that such proof is provided by the specified date. Failure of the ~~Charged Student or Student Organization~~ Respondent to provide proof by the specified date may result in a charge of failure to comply, ~~which will result in the~~ placement of a Student Conduct hold on a ~~Charged Student’s~~ Respondent’s academic and University records, and suspension if the ~~Charged Student or Student Organization~~ Respondent had been on deferred suspension.

~~16.~~ **16. WITHDRAWAL FROM A COURSE PENDING CHARGES OF ACADEMIC MISCONDUCT**

Upon receipt of notification of allegations of Academic Misconduct, a Student can choose to withdraw from the course in question, in accordance with the University policies related to course withdrawal. Students who withdraw from a course will have their ability to register for future semesters temporarily placed on hold until the SCAI Director or designee is assured that the Student is satisfactorily responding to the charges. Students who are found “Responsible” of Academic Misconduct in a course from which they have withdrawn are still eligible to receive the appropriate sanctions (as listed in Section 15) based on the case and may be reinstated to the course from which they have withdrawn.

~~Section 15) based on the case and may be reinstated to the course from which they have withdrawn.~~

~~17.~~ **INTERIM SUSPENSION**

~~Where the Senior Vice President for Academic & Student Affairs or designee determines that the health, safety or welfare of the Charged Student, the Student Organization or University community are in jeopardy or in danger, an interim (temporary) suspension will be imposed. This includes, but is not limited to, sexual misconduct, physical assault, hazing, possession of a firearm or explosives, illegal drug possession and other acts of a similar nature. A Charged Student or Student Organization under Interim Suspension is considered not in good standing with the University, resulting in applicable restrictions on privileges and/or activities. The Charged Student may neither attend nor participate in any classes, including any online components, during this time. The Charged Student or Student Organization is also banned from being on or in any University Premises and/or On-Campus Housing, and from participation in any University-sponsored/related event or activity.~~

~~a. The Charged Student under Interim Suspension shall not be allowed on Campus except with the permission of the SCAI Director.~~

~~b. Once an Interim Suspension is imposed, a hearing must be held within a reasonable time. The Interim Suspension does not replace the regular conduct process, which shall proceed up to and through a hearing, if required.~~

18. 17. PROCESS OF PRESIDENTIAL REVIEW

~~a.~~ a. The President will notify the SCAI Director within three (3) Business Days of notification of a disciplinary outcome if he/she wishes to review the underlying disciplinary matter. This review will serve as the appeal process for the ~~Charged Student/Student Organization Respondent~~ and ~~Complainant Reporting Party~~ (if applicable). Any other appeal process will immediately cease.

~~b.~~ b. No later than one (1) Business Day after the President notifies the SCAI Director and the Appellate Officer, the SCAI Director shall notify the ~~Charged Student/Student Organization and the Complainant Respondent and Reporting Party~~ (if applicable) of the President's decision to review the underlying disciplinary matter including sanctions. The ~~Charged Student/Student Organization Respondent~~ and ~~Complainant Reporting Party~~ (if applicable) may provide the President with any information (including any documents supporting an appeal if not previously submitted) within three (3) Business Days of the SCAI Director's notification.

~~c.~~ c. The President may only consider the information included in the Student Conduct file, any appeals submitted by the ~~Charged Student/Student Organization Respondent~~ and ~~Complainant Reporting Party~~ (if applicable), and any information that was not reasonably available at the time of the hearing.

~~d.~~ d. The President shall issue a written decision to the ~~Charged Student/Student Organization, Complainant Respondent Reporting Party~~ (if applicable), Appellate Officer, and SCAI Director within fourteen (14) Business Days of notification of a disciplinary outcome. Decisions based on charges involving Hazing (Section (5)(pm)) and Sexual Misconduct (Section (5)(s)) will include an explanation for the decision and sanctions. The President's decision constitutes Final Agency Action and will include notice of the Respondent's right to appeal to an external judicial forum if the sanction is suspension or expulsion.

~~include notice of the Charged Student/Student Organization's right to appeal to an external judicial forum if the sanction is suspension or expulsion.~~

~~19.~~ 18. APPEALS

~~a.~~ **a. Appellate Officer:** The ~~A~~ppellate ~~O~~fficer for all appeals is the Senior Vice President for Academic & Student Affairs or designee.

~~b.~~ **b. Appeal Form/Basis for Appeals:** The ~~Charged Student or Student Organization~~ Respondent wishing to appeal must complete the appeal form in full, indicating the basis for the appeal, explain in detail the reasons for the appeal and attach supporting relevant documentation. The burden of proof rests with the person appealing to clearly demonstrate the reason for appeal as set forth below. Appeals are not a ~~re-hearing~~ rehearing of the Student Conduct matter but are only a file and/or document review. The reason for the appeal must be based on at least one of the following:

~~1.~~ **1.** Violations of the appealing party's rights or other failure to follow the Student Conduct procedures that substantially affected the outcome of the initial hearing. Appeals based on this reason will be limited solely to a review of the record of the hearing;

~~2.~~ **2.** New information which was not available at the time of the hearing and could not have been presented. In addition, the appealing party must show that the new information could have substantially affected the outcome; or

~~3.~~ **3.** The severity of the sanction is disproportionate to the nature of the ~~c~~Charge(s).

~~c.~~ **c. Appeal Requests:** All appeals must be written and submitted using the appeal form available in the decision letter.

~~1.~~ **1.** The person wishing to appeal must complete the appeal form in full and send it to the ~~A~~ppellate ~~O~~fficer for receipt no later than 5:00pm of the seventh (7th) Business Day after the delivery date of the hearing decision letter. If the appeal form is submitted and/or signed by any individual other than the appealing party, it will not be accepted.

~~d.~~ **d. Untimely Appeal:** If a hearing decision is not appealed within the timeframe, the original decision becomes Final Agency Action.

~~e.~~ **e. The ~~Charged Student's~~ Respondent's Status Pending Appeal:**

~~1.~~ **1.** An appeal has no effect on a ~~Charged Student's~~ Respondent's status when the sanction was suspension or expulsion. The sanction(s) are effective immediately from the date of the decision, unless stayed until Final Agency action at the discretion of the SCAI Director. During such time, the SCAI Director may implement any supportive/interim measures available under the Code, excepting an interim suspension.

~~2.~~ **2.** If the ~~Charged Student~~ Respondent appeals in any other case, once an appeal is requested, the sanction(s) will be stayed and will not take effect until the appeal process has been completed. Under these circumstances, a ~~Charged Student~~ Respondent shall remain eligible to attend classes and University activities pending the appeal.

~~3.~~ If a Charged Student's privileges are temporarily revoked through an Interim Suspension and the Charged Student is subsequently found not responsible for the violation, the University must to the extent possible:

~~i.~~ Correct any record of the change in enrollment status in the Charged Student's permanent records and reports in a manner compliant with state and federal laws; and

~~ii.~~ Refund to the Charged Student a pro-rata portion of any charges for tuition, and out-of-state fees, as appropriate, relating to the temporary revocation or

~~suspension which affected the Charged Student's ability to attend classes for more than ten (10) Business Days.~~

~~4.~~ 3. If no appeal is requested, the sanctions will take effect immediately.

~~f.~~ **f. Appellate Review/Decision:**

~~1.~~ 1. No person may hear or decide an appeal if they conducted or participated in the Code proceeding being reviewed on appeal.

~~2.~~ 2. The Appellate Officer shall first determine if sufficient grounds for the appeal exists and then, if so, may either deny the appeal, thus sustaining the initial decision and sanction(s), or do one of the following:

~~i.~~ a. If the basis of the appeal is that the severity of the sanction was disproportionate to the nature of the offense and the Appellate Officer finds the appealing party proved their allegation, the Appellate Officer may modify the sanction.

~~ii.~~ b. If the basis of the appeal is that there was a failure to follow the Student Conduct procedures that substantially affected the outcome, or that there was new information which was not reasonably available at the time of the hearing and could not have been discovered through the exercise of due diligence, which would have substantially affected the outcome and the Appellate Officer finds that the appealing party proved their allegation, the Appellate Officer will order a new hearing.

~~g.~~ g. Written Decision on Appeal: The appellate decision is issued in writing to the ~~Charged Student or Student Organization~~Respondent within twenty-one (21) Business Days of receipt of the written request for appeal unless notification is given that additional time is necessary for consideration of the record on appeal.

~~h.~~ h. Effect of the Final Appellate Decision: The decision of the Appellate Officer constitutes Final Agency Action. In the case of a suspension or expulsion of a ~~Charged Student~~Respondent, the decision of the Appellate Officer will include notice to the ~~Charged Student of the Charged Student's~~Respondent's right to appeal to an external judicial forum.

~~i.~~ i. Academic Grievance Process: The ~~Charged Student~~Respondent may not use the Student Academic Grievance Policy as a way to appeal the filing of a complaint or the outcome of the Academic Misconduct process outlined in this regulation.

~~20.~~ 1920. RECORDS

~~a.~~ a. All ~~s~~Student ~~c~~Conduct-related records, including records involving Conduct violations, Academic Misconduct violation, and ~~Title IX violations~~FIU Regulation 105, will be housed in the web-based system maintained by SCAI.

~~b.~~ b. The release of ~~Student Conduct~~student conduct-related records will be governed by applicable federal and state laws regarding the privacy of education records.

~~c.~~ c. SCAI may place a ~~Student Conduct~~student conduct hold on the records and registration of any ~~Charged Student~~Respondent who has a pending Code matter, including any outstanding sanctions. ~~Charged Students~~Respondents may not be allowed to graduate, ~~or~~ receive grades, ~~nor have transcripts released~~ until pending matter(s), including any outstanding sanctions, are resolved. The University reserves the right withhold a transcript until properly notated.

~~d.~~ d. The official University email address on file with the Registrar's Office will be used for all ~~Student Conduct~~student conduct correspondence sent ~~to the Charged Student.~~ For Student Organizations, the official University email address on file with the Registrar's Office for the organization's respective President will be used. The Hearing Officer may, in their discretion,

decide to send the notices via additional means (e.g., overnight delivery) and/or to other authorized University Officials.

~~e.~~ e. Suspension(s) and Expulsion will be noted permanently on a Student's academic transcript. ~~Suspension will be noted on the Student's transcript during the period of suspension. Student Conduct~~student conduct-related files are kept in compliance with General Records Schedule GS5, but not for less than seven (7) years from the date of the last incident(s) that the ~~Charged Student or Student Organization~~Respondent was involved in that resulted in Code charges. However, in the case of suspension or expulsion ~~or suspension~~, the files shall be permanently retained.

~~f.~~ f. Students may have access to the information in their ~~Student Conduct~~student conduct and Academic Misconduct file by submitting a written request to the SCAI Director. The access will be provided in accordance with federal and state laws regarding the privacy of education records (FERPA) and University regulation (see FIU Regulation 108).

~~21.~~ 20. **AUXILIARY AIDS AND SERVICES**

Students with disabilities as defined by the Americans with Disabilities Act who require special accommodations for meetings/hearings should notify SCAI and the ~~DRC~~Disability Resource Center in writing at least three (3) Business Days prior to any meeting or hearing.

~~22.~~ 22. **CONFLICT RESOLUTION**

~~a.~~ a. Not every matter processed through SCAI is required to go through summary resolution or a hearing. An overall goal of SCAI is to provide a learning process which entails understanding and respecting the rights of others. An avenue utilized by SCAI to foster mutual respect and understanding when differences arise is Conflict Resolution. Conflict Resolution through SCAI is an informal and confidential process.

~~b.~~ b. Conflict Resolution may be utilized where the incident in question is minor in nature, ~~and the parties involved chose not to participate, and the University cannot~~ proceed with charges through the University ~~Student Conduct~~student conduct system. ~~SCAI reserves the right to determine if charges will be filed or whether Conflict Resolution is the appropriate option in each matter.~~

~~c.~~ c. Conflict Resolution cases handled through SCAI will not be identified or filed as a ~~Student Conduct~~student conduct matter. Conflict Resolution records will be maintained separate from ~~Student Conduct~~student conduct files and will not be recorded or reported as part of a Charged Student's record. All Conflict Resolution files are ~~confidential~~private and will not be released without written consent except in cases where the conduct or behavior is a repeat offense. In repeat cases, this information is only released to the Hearing Body and only used if the ~~Charged Student~~Respondent is found responsible for a violation of the Code.

~~d.~~ d. Conflict Resolution files are kept for seven (7) years from the date of the resolution. ~~Incident(s) considered serious in nature, and consequently not suitable for Conflict Resolution, include, but are not limited to, sexual misconduct, endangerment, personal abuse, hazing, a crime of violence, illegal drugs, alcohol, weapons or other violations of federal, state and local ordinances.~~

~~f.~~ e. Participation must be voluntary, and either party can request to end Conflict Resolution at any time which may result in the initiation of the ~~Student Conduct~~student conduct process for the behavior.

~~23.~~ 22. **INTERPRETATION AND REVISION**

~~a.~~ a. Any question of interpretation or application of the Code shall be referred to the Senior Vice President for Academic and Student Affairs or designee for final determination.

~~b.~~ b. The Code shall be reviewed periodically by a committee which shall include Student representation under the direction of the SCAI Director.

~~c.~~ c. The Academic Misconduct procedures outlined in this regulation will be reviewed at least every three (3) years by a committee which shall include Student and faculty representation under the direction of the SCAI Director. The committee will be appointed by the Chair of the Faculty Senate, in consultation with the SCAI Director and the Faculty Fellow for Academic Integrity. Any changes to Academic Misconduct procedures must be approved by the Faculty Senate.

Contact: ~~_____~~ Director, Office of Student Conduct and Academic Integrity

Location: ~~_____~~ GC 311

Phone: ~~-~~ (305) 348-3939 ~~/~~ Fax: (305) 348-6477

Email: ~~-conduct@fiu.edu~~ conduct@fiu.edu

Web Page: ~~_____~~ conduct.fiu.edu

Authority: Florida Board of Governors Regulation 6.0105 Student Conduct and Discipline; Florida Board of Governors Regulation 6.010 Student Affairs Administration; Florida Board of Governors Regulation 1.001(4)(a)(10); and Section 7(d), Article IX, Florida Constitution.

History—New June 19, 2012, Amended 9-17-12, 4-8-14, 6-8-18, 6-25-19, Amended 8-13-20, Amended

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES
FLORIDA BOARD OF GOVERNORS**

NOTICE OF CHANGE TO PROPOSED AMENDMENT TO REGULATION

REGULATION NO.: FIU-2501

REGULATION TITLE: Student Conduct and Honor Code

SUMMARY: Regulation FIU-2501 Student Conduct and Honor Code is amended as follows:

- Clarifying that when a case is ceded to adjudication under Regulation FIU-105 Sexual Harassment (Title IX) and Sexual Misconduct because of an overlap of facts between Regulation FIU-2501 and FIU-105, such a case may be resolved by an informal resolution or formal proceeding
- Clarifying that if the University President exercises authority deemed necessary to meet the goals of this Code regarding sexual misconduct or stalking, that authority is being exercised under Regulation FIU-105;
- Incorporating language to the hazing definition to ensure compliance with Board of Governors' Regulation 6.021; and
- Fixing scrivener and editorial errors.

TEXT OF REGULATION: The full text of the Proposed Regulation can be viewed below and on the website of The Florida International University Board of Trustees, <http://regulations.fiu.edu>. If you would like a copy of the Proposed Regulation, please contact Eli Deville, Departmental Administrator, Office of the General Counsel at (305) 348-2103.

AUTHORITY: Article IX, section 7(d), Florida Constitution; Florida Board of Governors 1.001; Florida Board of Governors Regulation 6.010; and Florida Board of Governors Regulation 6.0105.

NAME OF PERSON INITIATING PROPOSED REGULATION: Dr. Elizabeth Bejar, Senior Vice President for Academic & Student Affairs.

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED REGULATION MUST SUBMIT COMMENTS IN WRITING TO THE CONTACT PERSON LISTED BELOW. ALL WRITTEN COMMENTS MUST BE RECEIVED BY THE CONTACT PERSON WITHIN 14 CALENDAR DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE.

CONTACT PERSON REGARDING THE PROPOSED REGULATION:

Eli Deville, Departmental Administrator, Office of the General Counsel, Florida International University, 11200 SW 8th Street, PC 511, Miami, FL 33199, Email: devillee@fiu.edu
Phone: (305) 348-2103, Fax: (305) 348-3272.

DATE OF PUBLICATION: October 19, 2020

THE FULL TEXT OF THE REGULATION IS PROVIDED BELOW.

FIU-2501 Student Conduct and Honor Code

As an academic community, Florida International University (FIU) fosters the intellectual exchange of ideas, knowledge, and experience. It is the responsibility of the University to provide a safe and stimulating environment in which scholarship and personal growth may occur. The desired effect is that Students will take advantage of this environment to develop intellectually as well as to participate as responsible, contributing citizens of our community. Being a contributing Student also comes with responsibility to adhere to the Student Conduct and Honor Code (Code). The ultimate responsibility for knowing University requirements and regulations rests with the Student, regardless of institutional or program affiliation. Nothing in this Regulation should be interpreted to abridge the right of any member of the University community of rights granted under the United States or Florida Constitution and/or any other applicable law including, but not limited to, the freedom of expression protected by the First Amendment. Those charged with and found Responsible for violations of the Code will be subject to appropriate action as outlined herein. For the most updated Code, please refer to the website of Student Conduct and Academic Integrity (SCAI) at conduct.fiu.edu.

Undergraduate, Graduate, and Professional Students at FIU are expected to adhere to the highest standards of integrity in every aspect of their lives. Honesty in academic matters is part of this obligation. Each Student shall be responsible for their conduct from the time that they have been notified of admission through the actual awarding of a degree, including the academic year and during periods between terms of actual enrollment. The Code shall apply to a Student's conduct even if the Student withdraws from the University, while a conduct matter is pending, or if the conduct is not discovered until after a Student has withdrawn or a degree has been awarded. Academic integrity is the adherence to those special values regarding life and work in an academic community. Code violations may lead to suspension or expulsion from the University if a determination of responsibility has been made. These sanctions will be determined based on severity of incident and prior violations of the Code.

The safety and well-being of our community is the University's foremost concern. It is the policy of the University that acts of harassment and violence will not be tolerated. Any act of intimidation, threat of violence, or act of violence committed against other members of the University when committed within the jurisdiction of the Code is prohibited. Any Student or Student Organization found responsible for a violation of this standard will be subject to discipline up to and including expulsion pursuant to the Code.

Any Sexual Misconduct or Sexual Harassment, as defined pursuant to FIU-Regulation 105, will be handled in accordance with FIU-Regulation 105.

1. DEFINITIONS

a. **Academic Misconduct:** Any act or omission by a Student, which violates the concept of academic integrity and undermines the academic mission of the University in violation of the Code.

b. **Advisor:** Any person chosen by the Respondent to assist throughout the Student Conduct and/or Academic Misconduct processes (e.g., faculty, staff, parent/guardian, attorney, friend, alumni, or any other person who is not a Witness in the process). Proceedings may not be

unreasonably delayed due to the selection of schedule of an advisor, and it is the responsibility of the Respondent to communicate relevant information to their advisor and to ensure that their advisor comports themselves in a manner which respects the educational-administrative conduct process. After an appropriate warning, the University reserves the right to stop a proceeding and remove an advisor whose presence disrupts the conduct proceedings.

c. **Business Day:** A day when the University is open for regular business operations from 8:30 a.m. up to 5:00 p.m. Eastern Standard Time. In computing any time period specified in this Code, the day of the event, act, or default that initiates the period shall be excluded.

d. **Character Witness Statement:** A statement relating to the general character and reputation of the person.

e. **Charge:** The written statement of the alleged violations of the Code.

f. **Coercion:** Conduct, intimidation, and/or expressed or implied threats of physical, emotional, financial, or any other type of harm that would reasonably place an individual in fear of immediate or future harm and that is employed to force or compel someone to engage in any sexual contact or any other type of involuntary conduct not covered by FIU Regulation 105, especially conduct which would endanger or be detrimental to the Complainant. Examples of Coercion include:

i. Causing the deliberate Incapacitation (see below for definition) of another person; and

ii. Conditioning an academic benefit or employment advantage;

g. **Consent:** Incorporated as defined by FIU Regulation 105.

h. **Final Agency Action:** The written decision resulting from the Student Conduct and/or Academic Misconduct processes which finally determines the rights or obligations of the Respondent. Decisions of the Hearing Body constitute Final Agency Action unless there is a timely appeal. If a decision is timely appealed, the decision of the appellate body constitutes Final Agency Action.

i. **Hazing:** Any action or situation that recklessly or intentionally endangers the mental or physical health or safety of a Student for purposes including, but not limited to, initiation or admission into, affiliation with, or the perpetuation or furtherance of a tradition or ritual of any Student Organization operating under the sanction of the University or other organization or group not officially recognized by the University. Although hazing is typically related to a person's initiation or admission into, or affiliation with a Student Organization, athletic team (intramural, club or intercollegiate), extracurricular activity or any other University group or organization, it is not necessary to have direct proof that a person's initiation or continued membership is contingent upon participation in the activity for a charge of hazing to be upheld. The actions of active, prospective, former, or associate members (pledges) of a Student organization may be considered hazing. Organizational leaders who plan a hazing event will be held Responsible even if not in attendance at an event where the hazing occurs. Hazing does not include customary athletic events or similar contests or competitions or any activity or conduct that furthers a legal and legitimate objective.

j. **Hearing Body:** Student Conduct hearings consist of a Hearing Officer (Administrative Hearing) or, if a Student Conduct Committee, two (2) Students, a faculty/staff member, and a nonvoting Hearing Officer. Academic Misconduct hearings consist of a Hearing Officer (Administrative Hearing) or, if a Student Conduct Committee, three (3) Students, and two (2) fulltime faculty members, and a non-voting Hearing Officer. The Hearing Body is

authorized by the Senior Vice President for Academic & Student Affairs or designee to conduct Student Conduct hearings as set forth in this Code.

k. **Hearing Officer:** The SCAI Director, or respective designee(s). For cases involving Academic Misconduct, representatives from Housing and Residence Life may not serve as a Hearing Officer.

l. **Immediate Medical Assistance:** Aid that includes, but is not be limited to, calling or seeking additional assistance, rendering cardiopulmonary resuscitation (CPR) to a victim, clearing an airway for the victim to breathe, using a defibrillator (AED) to assist the victim, or rendering any other assistance to the victim which the Student intended in good faith to stabilize or improve the victim's condition while waiting for medical assistance or law enforcement to arrive.

m. **Impact Statement:** A statement (oral or in writing) that describes how the Reporting Party or Respondent has been impacted by the incident that is the basis for the Charge.

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

o. **Instructor:** The Instructor of record for a course in which a violation(s) of Academic Misconduct is alleged.

p. **Interim Suspension:** An immediate temporary (i.e., a limited period of time) separation from the University.

q. **On-Campus Housing:** Such housing owned, controlled, and operated by the University to include, but not limited to, the following: Everglades Hall, Lakeview Halls (North & South), Panther Hall, Parkview Hall, University Apartments, and University Towers. On-Campus Housing also includes Bayview Student Living (BBC), or any fraternity or sorority houses located on University Premises.

r. **Policy:** The written procedures, policies, or regulations of the University (as they may be amended from time to time) as found in, but not limited to, the Florida International University Board of Trustees regulations, the Code, FIU Regulation 105, the Undergraduate/Graduate/Professional Catalogs, the Student Handbook, the University Housing Resident Handbook, and/or Campus Life/Wellness & Recreation Center policies.

s. **Preponderance of the Evidence:** When the information that is presented supports a finding that it is more likely than not that a violation occurred.

t. **Receipt of Written Notice:** When Written Notice (see below for definition) has been sent electronically to the official University email address.

u. **Reporting Party:** Any person who reports an alleged violation of the Code.

v. **Respondent:** A student or student organization charged with violating the Student Conduct and Honor Code.

w. **SCAI Director:** The Director of Student Conduct and Academic Integrity Academic Integrity (SCAI) or designee.

x. **Student:** Any person who participates in any course or program of the University, either full-time or part-time, in-person or online, and whether degree-seeking or non-degree seeking. Persons who withdraw after allegedly violating the Code, persons who are not officially enrolled at the University for a particular term but who have a continuing relationship with the University, persons who have been notified of being accepted for admission, and persons who are living in the residence halls but are not enrolled at the University are also considered Students.

y. **Student Organization:** A Student group that is officially registered or recognized by the University, including, but not limited to, political groups, social groups, honor & professional societies, fraternities & sororities, and sport clubs. Membership in a student organization does not affect an individual Student's status with the University or attendance at classes unless the individual Student has been charged and sanctioned independently.

z. **Title IX Coordinator:** The individual University official with the primary responsibility for coordinating the University's compliance with Title IX. The Deputy Title IX Coordinator is an individual(s) designated by the Title IX Coordinator to support the Title IX Coordinator with respect to the University's efforts to comply with Title IX.

aa. **University:** Florida International University.

bb. **University Community:** Any person who is a Student, faculty or staff, any other person currently employed by the University, or third party working on University Premises or within On-Campus Housing (i.e. contractor, vendor), or any participant in a University-sponsored program or activity regardless of the location of the program or activity.

cc. **University Official:** Any person employed by the University to perform assigned teaching, research, administrative, professional or other responsibilities (e.g., faculty, staff, administrators, residence hall staff, FIU Police).

dd. **University Premises:** Any building or property owned or controlled by the University within the same reasonably contiguous geographic area and used by the University in direct support of, or in a manner related to, the University's educational purposes, including residence halls; and any building or property that is within or reasonably contiguous to that previously described in this paragraph that is owned by the University, but that is controlled by another person, is frequently used by students, and supports University purposes (e.g., a food or other retail vendor). This definition is designed to conform to the Clery Act definition which can be amended from time to time.

ee. **Witness:** A person(s) who has factual knowledge about the incident which forms the basis of the Charge.

ff. **Written Notice:** A notification of the charges against the Respondent sent via email to the Respondent's official University email address. A notification to a Student Organization Respondent sent via email to the official University email address of the Student Organization's President.

2. JURISDICTION

a. Jurisdiction under the Code applies to the conduct of any Student or Student Organization that while the student meets the definition of "student" as articulated in 1.x and the student organization meets the definition of "student organization" as articulated in 1.y, regardless of the geographic or electronic location.

b. A conduct proceeding is not a criminal or judicial proceeding. It is designed to address the Respondent's behavior. Therefore, alleged violations of the Code will be addressed independently of any criminal or judicial proceeding and regardless of whether the criminal charges have been dismissed or reduced to a lesser offense. In extra-ordinary situations, and at the request of external law enforcement or prosecutor's office, the University may delay its application of this Code.

c. The Code does not address: Issues related to research misconduct or violations of FIU Regulation 105. Resolutions of issues related to research misconduct must be addressed using the University Research Misconduct policy; or, issues related to professional misconduct.

Resolutions of issues related to professional misconduct must be addressed at the school or college level. Violations of FIU Regulation 105 will be addressed in accordance to that Regulation.

d. **Filing Time:** Anyone may report an alleged Code violation within ninety (90) calendar days of the incident or obtaining knowledge about the incident, whichever is later. In addition, the SCAI Director may extend the filing time where the delay may be related to issues of victimization or beyond the control of the University.

3. AUTHORITY

a. The Board of Trustees of Florida International University has been charged with the responsibility of, and authority for, providing a Student conduct system. Authority for Student discipline and the Student conduct system rests with the University President. Although the University President holds the ultimate authority for Student discipline, this authority is delegated to the Senior Vice President for Academic & Student Affairs, who is responsible for implementing the Student disciplinary system. The Senior Vice President for Academic & Student Affairs delegates authority for the execution and implementation of the Code to the SCAI Director.

b. The requirements and procedures in the Code may be revised. Those revisions may occur in order to serve the needs of the University Students, faculty and/or staff where safety and security issues so demand. In addition, those revisions may occur in circumstances where, in the University's sole discretion, the requirements and procedures described herein are deemed insufficient to meet the objectives of educating and protecting the members of the University community and/or to respond to changes in the law. Nothing in this Code shall be construed as preventing the University President from taking any action which may be deemed necessary to meet the goals of this Code. In matters involving charges for drug distribution and/or sales (Section 5(i)(2)), endangerment (Section 5(j)), hazing (Section 5(p)), stalking (Section 5(y)), and weapons (Section 5(dd)) the President may change the outcome and/or sanctions to fulfill requirements of the Code as outlined in Section 17.

c. The Department of Housing and Residential Life (HRL) may conduct both Summary Resolutions and Administrative Hearings regarding cases involving Conduct violations arising in On-Campus Housing. HRL is not authorized to conduct Summary Resolutions and Administrative Hearings regarding cases involving Academic Misconduct violations or Student Conduct Committee hearings. HRL cases may be referred to SCAI.

4. AMNESTY

a. **Medical Amnesty for Alcohol or Drug Use:** The University encourages Students to seek medical assistance, but it recognizes that students may be hesitant to make a call or report when they:

- i. Need immediate medical assistance due to their own use of alcohol/drugs;
- or,
- ii. Witness another Student who needs immediate medical assistance due to alcohol/drugs.

Thus, students involved in an incident involving alcohol/drugs will not be charged under the Code with consumption if:

- iii. they render or call for immediate medical assistance for themselves and/or others who have participated in or witnessed the incident;

iv. the Student calling for immediate medical assistance remains at the scene with the person in need of immediate medical assistance until such assistance arrives and then cooperates with such personnel on the scene; and,

v. the student timely completes the appropriate educational intervention for the incident as determined by SCAI. Other charges related to the incident (e.g., alcohol distribution, drug distribution, or other non-alcohol/drug charges) may be determined at the discretion of the SCAI Director.

While student organizations are not eligible for amnesty, calling for medical assistance will be a mitigating factor, while failing to call or removing a person in need of medical assistance will be an aggravating factor at any sanctioning stage.

b. Reporting Amnesty: The University encourages Students to report allegations of the Code, including allegations of FIU Regulation 105, but recognizes that students may be hesitant to make a report when they were using alcohol/drugs. Thus, students involved in an incident involving alcohol/drugs will not be charged under the Code with consumption if they are reporting a violation of the Code or FIU Regulation 105. Any other charge(s) related to the incident may be determined at the discretion of the SCAI Director, but the reporting will be a mitigating factor at any sanctioning stage.

While student organizations are not eligible for reporting amnesty, reporting and self-reporting will be a mitigating factor, while failing to report will be an aggravating factor at any sanctioning stage.

c. Investigatory Amnesty: As part of an investigatory process, and conditioned on being truthful and providing complete information, a witness or party may be asked to provide information which would self-disclose a Code violation. Without abridging the right of any member of the University community of rights granted under the United States or Florida Constitution and/or any other applicable law including, but not limited to the Fifth Amendment, disclosing a Code violation such as alcohol/drugs use related to an incident being investigated and outlined in the investigation will not be charged under the Code. All other charges related to the incident may be determined at the discretion of the SCAI Director, but additional amnesty may be provided under e of this provision.

d. Hazing Amnesty: A Student may not be charged under the Code if the Student establishes that, before medical assistance or law enforcement arrived on the scene of a hazing event, the Student rendered aid to the hazing victim and establishes all of the following: i. the Student was present at an event where, as a result of hazing, a person appeared to be in need of immediate medical assistance; and ii. The Student was the first person to call 911 or FIU Police to report the need for immediate medical assistance; and iii. the Student provided their own name, the address where immediate medical assistance was needed, and a description of the medical issue to the 911 operator or FIU Police at the time of the call; and, iv. the Student remained at the scene with the person in need of immediate medical assistance until such medical assistance or law enforcement arrived and that the Student cooperated with such personnel on the scene.

e. Amnesty at the SCAI Director's Discretion: The SCAI Director may grant amnesty from proceedings within the conduct system, contingent on a student providing complete and accurate information during an investigation or conduct proceeding.

5. CONDUCT VIOLATIONS The following conduct is prohibited by this Code. These violations are included in each section below and need not be cited separately. Lack of

familiarity with University policy is not a defense to a violation of this Code. Unless specifically noted, intent is not a required element to establish a policy violation. Additionally, intoxication or impairment caused by use or consumption of alcohol, drugs, or other substances is not a defense to a violation of this Code. The following conduct violations or any attempt to violate the Code will be used in charging all Students or Student Organizations.

- a. Any conduct prohibited by FIU Regulation 105.
- b. **Assisting:** Any affirmative act which aids, attempts, promotes, conceals, or facilitates any act prohibited by this Code.
- c. **Attempt:** Attempt or intent to commit any violation outlined in the Code.
- d. **Alcohol:** Students who choose to drink will be held fully responsible for their behavior while under the influence of alcohol. Loss of control due to intoxication does not excuse or justify a violation of the state law, University Policy, or the rights of others.
 - i. Possession, use and/or consumption of alcohol when under the legal drinking age as provided by Florida Law.
 - ii. Dispensing, selling or supplying alcoholic beverages to an individual who is under the legal drinking age as provided by Florida Law.
 - iii. Any violations of FIU Policy governing alcohol usage. See, FIU-Regulation 2505 Alcoholic Beverages.
 - iv. Use and/or possession of beer kegs and party balls or other common sources of alcohol.
 - v. Possession of open containers of alcohol or consumption of alcoholic beverages in public areas, such as balconies, courtyards or hallways.
 - vi. Public intoxication (e.g., appearing in a state of intoxication) and/or excessive drinking.
 - vii. Use and/or possession of devices designed for the rapid or excessive consumption of alcohol, including, but not limited to, funnels, ice luges, and beer bongs.
 - viii. Hosting or sponsoring a gathering where underage individuals are drinking alcohol.
 - ix. Unlawful manufacture, trade, and/or intent to sell alcohol.
 - x. Reporting to classes, work, or related assignments “under the influence” of alcohol.
 - xi. Violating any other University Policy while under the influence of alcohol.
- e. **Animals:** The University allows individuals to bring animals on University Premises in accordance with federal laws. A service animal is permitted on campus grounds and within University buildings, including the University housing assignment provided to an individual with a disability. An emotional support animal is permitted on campus to accompany an individual into his or her University assigned residence in accordance with the U.S. Department of Housing and Urban Development.
 - i. Failing to obtain approval from Housing and the Disability Resource Center (DRC) for the Student’s emotional support animal (as defined by federal law) in a residence hall.
 - ii. Having an approved emotional support animal beyond authorized areas (i.e., within the residence halls and immediate access to outdoor areas).
 - iii. Failing to register the Student’s service animal (as defined by federal law) with the DRC if the Student resides on campus.

iv. Failing to properly control the service animal and/or emotional support animal such that the animal is disruptive, is not housebroken, or poses a safety or health concern.

v. Bringing pet dogs, cats, or other animals (except non-dangerous fish) to campus or being in possession of stray animals.

f. **Bribery:** Knowingly making an offer, gift, receipt, or solicitation of money, materials, goods, services or anything of value for the Student or others for the purpose of procuring or providing an advantage to which they are not otherwise legally entitled.

g. **Computer Misuse**

i. Unauthorized access, entry or use of a computer, computer system, network, software, password, account or data.

ii. Unauthorized alteration or degradation of computer equipment, software, network, data or system performance.

iii. Unauthorized copying or distribution of computer software or data.

iv. Unauthorized use, taking, or theft of University computer resources for commercial purposes or personal financial or other gain. This includes, but is not limited to, advertising a product or service on personal web pages, fund-raising or advertising on behalf of unsanctioned non-University organizations, publicizing of unsanctioned non-University activities, resale of University resources to any non-University individuals or organizations, and the unauthorized use of the University's name or logos. Use of the University's network for any of these purposes, even if the user is using their own personal computer, constitutes an offense.

v. Allowing another person to use one's FIU username and password.

vi. Any other violation of the University computer use and web page policies.

The complete policies are available at <http://security.fiu.edu/policies>. The website also contains the civil and criminal penalties for distributing, without authority, copyrighted materials (including unauthorized peer-to-peer file sharing) and the penalties for violating federal copyright law.

vii. Unauthorized distribution or downloading of copyrighted materials, including but not limited to, unauthorized peer-to-peer file sharing. This is a violation whether the user is using their own personal computer or the University's information technology system for the unauthorized distributions.

h. **Disruptive Conduct**

i. that substantially and materially disrupts, disturbs, impairs, interferes with or obstructs the orderly conduct, processes and functions of the University or the rights of other Members of the University community.

ii. Behavior that substantially and materially disrupts, disturbs, impairs, interferes with or obstructs the orderly conduct, processes, and functions of the classroom, or laboratory and/or immediate surrounding areas. This includes interfering with the academic mission of the University or individual classroom or interfering with a faculty member or instructor's role to carry out the normal academic or educational functions of their classroom laboratory and/or immediate surrounding areas.

iii. Behavior that substantially and materially disrupts, disturbs, impairs, interferes with or obstructs the Student Conduct process, including, but not limited to, harassment and/or intimidation of any member of the Student Conduct Committee, Witness or University personnel before, during or after a proceeding, or attempting to coerce or influence any person(s) in order to discourage their participation in any Student Conduct proceeding.

iv. Any behavior that substantially and materially disturbs the peace.

i. Drugs

Students who choose to use illegal drugs or use prescription drugs without a prescription will be held fully responsible for their behavior while under the influence. Loss of control due to being under the influence does not excuse or justify a violation of the state law, University Policy, or the rights of others.

i. Possession, use, the manufacture, creation and/or the cultivation of illegal drugs or prescription drugs without a prescription. Inhalable or ingestible substances (e.g., nitrous oxide, glue, paint) that will alter a Student's mental state.

ii. Distribute, dispense, deliver, trade, sell and/or attempt to sell drugs or prescription drugs.

iii. In possession and/or use of drug paraphernalia (including, but not limited, to bong, pipes, "hookahs," spoofs, rolling papers, blunts, small plastic baggies).

iv. Misuse and/or abuse of prescription drugs.

j. Endangerment

i. Occurs when one intentionally or recklessly (a) causes bodily harm to another person; (b) attempts to cause bodily harm to another person; or (c) puts another in fear of imminent bodily harm. No Student may knowingly or recklessly touch any other person without that person's consent. Punching, slapping, scratching, or otherwise striking any person with any part of one's body or with any object constitutes physical violence.

ii. Engage in any action(s) that endangers the health, safety or welfare of others.

k. Failure to Comply

i. Failure to comply with a request or directive of a University Official or non-University law enforcement official in the performance of their duty.

ii. Failure to comply with the final decision and sanctions rendered by a Student Conduct hearing or appellate body.

iii. Failure to comply when a University Official requests to identify oneself and/or produce FIU identification.

l. Falsification/Fraudulent Activity/False Testimony

i. Withholding relevant information from any Hearing Body, University Officials, non-University law enforcement officers, faculty and/or staff.

ii. Providing false or misleading information (whether oral or written) to any Hearing Body, University Officials, non-University law enforcement officers, faculty and/or staff. A good-faith report of prohibited conduct does not constitute a Code violation.

iii. Misuse, reproduction, alteration or forgery of any identification, documents, keys or property.

iv. Permitting another person to use one's identification information.

v. Misuse or possession of false identification information

vi. Purporting to act on behalf of another person, group or the University without authorization or prior consent.

vii. Providing a worthless check, money order or using a fraudulent credit card or a credit card without authorization.

viii. Any other acts of falsification/fraud/false testimony or misrepresentation.

m. Fire and Safety

i. Inappropriate activation of any emergency warning equipment or the false reporting of any emergency.

ii. Removing, damaging, interfering and/or tampering with fire safety or other emergency warning equipment, including smoke detectors, sprinklers and/or fire alarms. Items may not be hung from or block sprinklers or smoke detectors.

iii. Failure to evacuate University Premises or On-Campus Housing facility/unit when a fire alarm is activated.

iv. Engaging in action(s) which cause or attempts to cause the release of chemicals or substances that can cause harm to another person's health or would start a fire or explosion.

n. Gambling

i. Soliciting, placing or accepting a bet on any high school, intercollegiate or professional athletic contest on University Premises, On-Campus Housing, or at a University or Student Organization-sponsored activity or event.

ii. Soliciting, facilitating or participating in any illegal gambling, bookmaking or illegal betting whether through a bookmaker, a parlay card, a pool or any other method of organized gambling on University Premises, On-Campus Housing, or at a University or Student Organization-sponsored activity or event.

o. **Harassment:** Severe or pervasive interactions aimed towards another or entity which is by objective measure threatening, abusive, or severely annoying and that is beyond the scope of free speech and which is not covered by FIU Regulation 105.

p. Hazing

i. Any group or individual action or activity that inflicts or intends to inflict physical or mental harm or otherwise endanger or discomfort which may demean, disgrace and/or degrade any person, regardless of location, intent or consent of participant(s). Taking into consideration the aforementioned description, hazing includes, but is not limited to:

1. Interference with a Student's academic performance;
2. Forced consumption of any food, alcohol, controlled substances, drugs or any other substance;
3. Forced physical activity (e.g., calisthenics, line-ups, walking or marching in formation);
4. Deprivation of food, water or sleep;
5. Not permitting individuals to speak for extended periods of time and/or forced exclusion from social contact;
6. Engaging in activities which involve compelling an individual or group of individuals to remain at a certain location or transporting anyone anywhere within or outside the University (e.g., road trips, kidnaps, drops);
7. Physical or mental abuse of any nature, including physical discomfort;
8. Sexual misconduct of any nature;
9. Theft, defacement or destruction of private or public property;
10. Compelling the performance of personal chores or errands;
11. Verbal abuse or degradation, including yelling or demands;
12. Assigning or endorsing pranks (e.g., stealing, harassing other organizations);
13. Conducting activities designed to deceive or convince a member that they will not be initiated or that they will be hurt;

14. Compelling scavenger hunts, treasure hunts, quests, road trips, big brother/little brother hunts, big sister/little sister hunts;

15. Any action or threatened action that would subject the individual to embarrassment, humiliation or mental distress, including the use of demeaning names; or

16. Any other acts or attempted acts which would constitute hazing pursuant to Section 1006.63 of the Florida Statutes.

ii. The following shall not constitute a defense to Hazing:

1. The consent of the victim was obtained;

2. The conduct or activities that resulted in death or injury to the victim was not part of any official organizational event or otherwise sanctioned or approved by a Student Organization or group; or

3. The conduct of activity that resulted in death or injury to the victim was not done as a condition or membership into a Student Organization or group.

q. Motorcycles, Bicycles, Pocket Bikes, Rollerblades, or Skateboards

Failure to comply with FIU Regulation 115 Skateboards, Skates, Scooters, Ripstiks, Hoverboards and other similar devices and high-risk activities on University Premises or in On-Campus Housing.

r. Obstruction

Taking action, individually or working with others, which the Respondent knew or should have known would impede an investigation by the University into possible violations of the Code committed by a Student and/or Student Organization, including failing to participate in a University investigation or proceeding if not the Respondent.

s. On-Campus Housing Violations

Violation(s) of any HRL policies published in hard copy or available electronically via the HRL website (<https://studentaffairs.fiu.edu/campuservices/housing-and-residential-life/explore-housing/housingpolicies/index.php>).

t. Personal Abuse

i. Verbal or written abuse, threats, intimidation, and/or Coercion that objectively endangers the health, safety or well-being of others and which is not covered by FIU Regulation 105. Using fighting words or statements which reasonably endanger the health and safety of any person that are not protected speech may result in University action. Conduct directed at any person, including a Member of the University community, which is intended to, or would reasonably, cause fear, distress, injury or intimidation to a person, or would place a reasonable person in fear of injury or death.

ii. Conduct that is based on race, color, religion, ethnicity, national origin, disability, age, marital status, genetic information, veteran status or any group/class protected by federal or Florida law sufficiently severe, pervasive or persistent (when viewed both from a reasonable person in similar circumstances and the person in question) that a person would be adversely affected to a degree that interferes with or limits their ability to participate in or benefit from the services, activities or opportunities offered by the University.

iii. Interference with the freedom of another person or group to move about in a lawful manner.

u. Promotions/Posting

i. Solicitation of commercial speech on campus, including On-Campus Housing facilities, without prior approval from the appropriate University Officials. This includes, but is not limited to, the distribution of any forms of promotional/informational

commercial speech material on University Premises or On-Campus Housing or objects (e.g., motor vehicles).

ii. Posting of flyers, posters, banners, cards or any promotional/informational material on University Premises or On-Campus Housing, including, but not limited to, the exterior and interior of On-Campus Housing facilities, buildings, trees, walls, sidewalks, vehicles, windows, stairwells, stairs, display cases, vending machines, doors, classrooms, departmental and unauthorized bulletin boards, railings, elevators, bathrooms, art and/or sculptures without prior approval from the appropriate University Officials.

v. Retaliation

i. Acts or words taken against an individual because of the individual's participation in a protected activity that would discourage a reasonable person from engaging in protected activity. Protected activity includes an individual's good faith

1. Participation in the reporting, investigation, and/or resolution of an alleged violation of this Code; and/or

2. Opposition to policies, practices and/or actions that the individual reasonably believes are in violation of the Code. Retaliation may include intimidation, threats, coercion, physical harm and/or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated. Retaliation may be committed by the Respondent, the Reporting Party, or any other individual or group of individuals.

w. Smoking and Use of Tobacco-Related Products

i. Failure to comply with FIU Regulation 113 Smoke and Tobacco-Free Campus by smoking in or on any University Premises or On-Campus Housing. Smoking means possession of a lighted cigarette, cigar, pipe, water pipe or hookah, or the use of an electronic cigarette, cigar, pipe, vape or any other device intended to simulate smoked tobacco.

ii. Use of smokeless tobacco, snuff, chewing tobacco, smokeless pouches and any other form of loose-leaf or smokeless tobacco.

x. Social Host Responsibility:

Allowing, permitting, or providing an opportunity for a guest to violate University policy.

y. Stalking

Engaging in a course of conduct directed at a specific person, not covered under FIU Policy 105, that would cause a reasonable person to (a) fear for the person's safety or the safety of others; or (b) suffer substantial emotional distress. For the purposes of this conduct violation, course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens or communicates to or about a person, or interferes with a person's property.

z. Student Organization Policies

i. Members of the Student Organization acting together to violate University Policy.

ii. More than one Student working together to impede an investigation by the University into possible violations of the Code committed by a Student Organization.

iii. Acting to protect from official action one or more alleged individual offenders who are members, former members or guests of the Student Organization.

iv. Leaders of the Student Organization who fail to report and/or take reasonable action against guests and/or members responsible for alleged violations.

v. Violation(s) of any Campus Life/Fraternity and Sorority Life/Sports Club Policies published in hard copy or available electronically via the appropriate website. See <https://studentaffairs.fiu.edu/get-involved/campus-life/index.php>, <https://studentaffairs.fiu.edu/get-involved/sorority-and-fraternity-life/index.php>, or <https://studentaffairs.fiu.edu/health-and-fitness/recreation/index.php>.

aa. Theft and Theft-Related Conduct

i. Taking, or use of, the property or services of another person or of the University without prior written consent or authorization of the person or of the appropriate authority.

ii. Possession and/or sale of property or services of another person or of the University without prior written consent or authorization.

bb. Trespassing/Unauthorized Use

Unauthorized presence in or unauthorized use of University Premises or On-Campus Housing, facility or restricted area.

cc. Vandalism/Damage/Littering

i. Damage, destruction or defacing property of another person, group or the University.

ii. Dispersing litter in any form on University grounds or facilities, including, but not limited to, cigarette butts, flyers, cans, and bottles.

dd. Weapons, Firearms, Explosives

i. Possession, storage or use of firearms, except as provided in below, explosives, ammunition or other weapons or dangerous articles or substances, including, but not limited to tasers, switchblade knives and non-lethal weapons such as fireworks, paintball guns, air guns, BB guns, any dangerous chemical or biological agents, corrosive agents, compressed gas, sling shots, brass knuckles, Chinese stars, or any other item used as a weapon.

1. In accordance with Florida Statutes section 790.115, possession of firearms on University Premises or On-Campus Housing (except as provided by Florida Statutes section 790.25(5)).

2. Possession of a concealed weapon or firearm on University Premises or On-Campus Housing even if the Student possesses a concealed weapon license.

ii. Notwithstanding the foregoing, weapons, including non-functioning antique display weapons, may be used for classroom instructional purposes or other University sanctioned activities (e.g., firearms under the direct supervision of ROTC, a diver's knife for a scuba divers' class) but only with prior approval by the appropriate University Official.

iii. Threat of the use of a weapon or weapons that could, or would, cause distress or injury to a member or members of the University community or damage to University Premises or On-Campus Housing.

ee. Other Violations

i. Aids or abets another in any violation of federal law, state law, local ordinance, and/or Policy not already listed above.

ii. Violations of federal and/or state laws, local ordinance, and/or Policy not already listed above.

6. ACADEMIC MISCONDUCT VIOLATIONS

a. Academic Dishonesty

In general, by any act or omission not specifically mentioned in the Code and which is outside the customary scope of preparing and completing academic assignments and/or contrary to the above stated policies concerning academic integrity.

b. Bribery

The offering of money or any item or service to a member of the faculty, staff, administration, Student or any other person in order to commit academic misconduct.

c. Cheating

i. The unauthorized use of any materials, information, study aids or assistance from another person on any academic assignment or exercise, unless explicitly authorized by the course Instructor.

ii. Assisting another Student in the unauthorized use of any materials, information, study aids, unless explicitly authorized by the Instructor.

iii. Having a substitute complete any academic assignment or completing an academic assignment for someone else, either paid or unpaid.

d. Commercial Use

The selling of course material to another person, Student, and/or uploading course material to a third-party vendor without authorization or without the express written permission of the University and the Instructor. Course materials include but are not limited to class notes, Instructor's PowerPoints, tests, quizzes, labs, instruction sheets, homework, study guides and handouts.

e. Complicity

The planning or acting with one or more fellow Students, any member of the faculty, staff or administration, or any other person to commit any form of academic misconduct together.

f. Falsification of Records

The tampering with or altering in any way of any academic record used or maintained by the University.

g. Plagiarism

i. The deliberate use and appropriation of another's work without any indication of the source and the representation of such work as the Student's own.

ii. Assisting another Student in the deliberate use and appropriation of another's work without any indication of the source and the representation of such work as the student's own.

7. INVESTIGATION AND PRE-ADJUDICATION PROCEDURES

a. Initiating Charges for Conduct Violations: Any person or entity (including University departments, offices, officials, community members) may report an alleged violation(s) of the Code for review by SCAI by:

- i. Submitting a police report that has been filed with any police department;
- ii. Providing a SCAI incident report (see <http://conduct.fiu.edu> for report) along with accompanying documentation; or
- iii. Making an oral report to SCAI.

b. Initiating Charges for Academic Misconduct Violations: Any person or entity (including University departments, offices, officials, community members) may report an alleged violation(s) of the Code for review by the SCAI by:

- i. Submitting the alleged violation(s) through the Academic Misconduct Report Form (AMR) along with any accompanying documentation (see <http://conduct.fiu.edu> for

report). Instructors are encouraged to discuss the allegations with the Student prior to referral to SCAI.

ii. If a Student, staff member, or a person not affiliated with the University observes a Student committing an Academic Misconduct violation, they may report the alleged violation to SCAI via the standard incident reporting form (see <http://conduct.fiu.edu> for report). SCAI will then communicate with the appropriate faculty member, chair, or College/School Dean.

iii. All matters relating to Academic Misconduct among undergraduate, graduate, and professional Students are referred to the SCAI Director or designee. In matters where there is a conflict of interest with the SCAI Director, the case will be referred to the Senior Vice President for Academic & Student Affairs or designee.

c. **Preliminary Review:** The SCAI Director will determine, at their discretion, whether further fact-finding is needed and whether there is sufficient information to file charges or refer to another University office regardless of the participation of any party in the proceedings.

i. Upon receiving an alleged violation of Academic Misconduct, the SCAI Director may review relevant information and consult with relevant parties regarding the incident in question. In addition, Instructors can request an intake meeting with SCAI staff to review allegations, the Charges, possible Sanctions, and to be explained the Student conduct process, and any available forms of resolution. Reasonable efforts will be made to hold this intake meeting at least ten (10) Business Days before any scheduled hearing.

d. **Interim Measures:** Until final agency action or there is a such a change in circumstances that the decision-maker for each action below no longer supports such an action, the following interim measures may be implemented as follows:

i. No-Contact Directive: In cases involving allegations of, hazing, personal abuse, retaliation, stalking, or other menacing activity or concerning behavior, the SCAI Director, after making a reasonable effort to meet with the Respondent if appropriate to do so, may issue a No-Contact Directive.

ii. Restriction of Privilege or Access Directive: In cases involving allegations of hazing, personal abuse, retaliation, stalking, trespassing, or other menacing activity or concerning behavior, the SCAI Director, after making a reasonable effort to meet with the Respondent if appropriate to do so, may issue a Restriction of Privileges or Access Directive.

iii. Interim Suspension

1. Where the Senior Vice President for Academic & Student Affairs or designee determines that the health, safety or welfare of University community are in jeopardy or in danger, an interim (temporary) suspension will be imposed. This includes, but is not limited to, physical assault, hazing, possession of a firearm or explosives, illegal drug possession and other acts of a similar nature. A Respondent under Interim Suspension is considered not in good standing with the University, resulting in applicable restrictions on privileges and/or activities. The Respondent may neither attend nor participate in any classes, including any online components, during this time. The Respondent is also banned from being on or in any University Premises and/or On-Campus Housing, and from participation in any University-sponsored/related event or activity. The Respondent, except with the permission of the SCAI Director.

2. The Respondent may petition the Student Conduct Committee (SCC), in writing, for a review of the decision; the University will submit to the SCC, in writing,

relevant information related to the decision to impose an interim suspension. The SCC shall meet to consider the petition as soon as possible, but typically no later than five business days after it receives the petition. If the SCC determines that the suspension was improper or is no longer necessary, it shall lift the suspension immediately and the underlying matter shall proceed. The SCC may implement any alternative interim measures if it lifts the interim suspension.

3. The Respondent's transcript will remain notated during the interim suspension.

4. If a Respondent's privileges are temporarily revoked through an Interim Suspension and the Respondent is subsequently found not responsible for the violation, the University must, to the extent possible:

a. Correct any record of the change in enrollment status in the Respondent's permanent records and reports in a manner compliant with state and federal laws; and

b. Refund to the Respondent a pro rata portion of any charges for tuition, and out-of-state fees, as appropriate, relating to the temporary revocation or suspension which affected the Respondent's ability to attend classes for more than ten (10) school days.

e. **Investigations:** The SCAI Director retains the discretion to determine whether an investigation should be conducted, and the scope of such investigation based on the alleged violations under the Code. The investigation will be a neutral fact-finding process used to determine if there is sufficient information to warrant action by the University. If the SCAI Director directs an investigation to another office to act on behalf of SCAI, including the Department of Housing and Residence Life or the Office of Inclusion, Diversity, Equity & Access (IDEA), the Director of such office, or designee, shall conduct the investigation in accordance to the Code and relevant processes and procedures, so long as such procedures do not conflict with this Code or applicable University Policy which has jurisdiction over the reported behavior. For cases in which there is an overlap of charges between the Code and FIU Regulation 105, a joint investigation will commence, and the details of the Code investigation will be included in the FIU Regulation 105 final report or considered as part of the informal resolution. The Code behaviors will cede to adjudication and appeal under the process set forth in FIU Regulation 105.

In cases where conduct involves both potential Conduct and Academic Misconduct violations, the Hearing Officer or Hearing Body has the authority to handle both matters simultaneously through a joint hearing. If a Student is found Responsible for simultaneous Conduct and Academic Misconduct violations, sanctions from both processes may be imposed.

f. **Charge Letter:** The Respondent will be given a written notice of the Charges. The Charge Letter will include the following:

i. Notice of the charge(s), including specific code section(s) which constitutes the alleged violation(s) of the Code, an allegations statement and any other detail in order to prepare for a Student Conduct proceeding; and

ii. Information regarding next steps.

g. **Joint Hearings:** Cases that present common questions of conduct or fact and that would come before a panel of like composition may be joined for hearing.

i. For a joint hearing, the individual who conducted the information sessions must affirm, in writing, to the Hearing Officer that each Respondent performed acts sufficiently

similar that the facts presented in evidence would not differ materially from one Respondent to another. In such case, the Hearing Officer may order joinder of such cases for hearing.

ii. Any Respondent, whose case is joined may request, in writing, to the Hearing Officer to be excluded from the joint hearing on the ground that (i) they are not charged with the same offense, at the same time and place, or (ii) that the facts relevant to them would differ materially from the facts relevant to the Respondent(s). The Hearing Officer's decision regarding whether any requesting Respondent be severed from the joint hearing is final.

iii. All decisions regarding responsibility under this Code, and any applicable sanctions or remedies will be rendered individually, and each Respondent remains entitled to their own advisor.

h. **Information Session:** An information session is designed to provide the Respondent with information about the adjudication process, as well as giving access to the information supporting the charge(s) available at that time.

i. Subsequent to the information session, the Hearing Officer may conduct further fact-finding regarding the incident that is subject to the charge. This information will be communicated to the Respondent prior to the hearing or at a subsequent meeting before a hearing.

ii. If a Respondent fails to attend a scheduled information session, the Respondent will be deemed to have waived their right to an information session. Under those circumstances, a hearing will be scheduled. Failure to attend an information session will result in the Hearing Officer determining the type of hearing. The hearing type will be determined based on the severity of the possible sanctions (e.g., suspension/expulsion cases may be referred to the Student Conduct Committee).

iii. If the Respondent fails to attend the information session, the Hearing Officer may place a hold/service indicator on the Respondent's record until the conclusion of the hearing. If sanctions are imposed as a result of the hearing, the hold/service indicator will be retained until the Respondent fulfills all of the sanctions.

i. **Student Academic Status Pending the Code Process:** The Student's academic status will remain unchanged pending the outcome of the Code process, except where the Senior Vice President for Academic & Student Affairs or designee has implemented an interim suspension. When a final grade for a course may be involved, a grade of IN should be assigned, pending the University's final decision in the matter. A Respondent's ability to register for future semesters may be temporarily placed on hold.

8. RESOLUTION OPTIONS

A Respondent is entitled to a resolution of any alleged violation of the Code through a disciplinary proceeding unless waived as set forth below. Two (2) types of resolution options are provided by the Code.

a. Summary Resolution

i. A summary resolution is available when the Respondent waives the right to a hearing and requests that the Hearing Officer conducting the information session determine the findings and sanctions if applicable. The Hearing Officer reserves the right to conduct fact-finding to make an informed decision.

ii. The following apply to a summary resolution:

1. The meeting(s) will not be recorded.

2. The written decision will serve as the official record of the Summary Resolution.

3. The written decision will be sent to the Respondent within fourteen (14) Business Days from the date of the Summary Resolution. For Academic Misconduct violations, the written decision will also be sent to the Instructor.

iii. If the Respondent does not choose the Summary Resolution (or the option is unavailable), the Respondent may indicate their preference for one of the two (2) types of hearings.

b. **Hearings:** Two hearing types are available under the Code: 1) an Administrative Hearing, or 2) a Student Conduct Committee (SCC) hearing. All procedures described in the Hearing Procedures section apply to these types of hearings.

i. Administrative Hearing - Conducted by a Hearing Officer who serves as the Hearing Body.

ii. SCC Hearing - Conducted by a committee which serves as the Hearing Body. SCC committees for Conduct violations consist of two (2) Students, one (1) faculty or staff member, and a non-voting Hearing Officer. SCC committees for Academic Misconduct violations consist of three (3) Students, two (2) full-time faculty members, and a non-voting Hearing Officer. The non-voting Hearing Officer will moderate the hearing.

iii. For SCC Hearings, members of any particular committee will vary, but will come from a pool of qualified faculty, staff and Students. Faculty members can be recommended annually by the Faculty Senate. Undergraduate, graduate, and professional Student members will be recruited and selected through SCAI's formal SCC recruitment and selection process. All members of the SCC will be trained by SCAI. In cases where the Respondent is an undergraduate, every effort will be made to select undergraduate student representatives for the SCC. In cases where the Respondent is a graduate or professional student, every effort will be made to select graduate or professional student representatives for the SCC. For Academic Misconduct violations, the committee must include two full-time faculty members, and if the Respondent is a graduate or professional student faculty representatives must have at least Graduate Faculty status. For cases in which there is an overlap of charges under only the Code (Academic misconduct and a non-FIU Regulation 105 violation), the Hearing Body shall meet the requirements of the Academic Misconduct hearing.

iv. For cases in which there is an overlap of charges between the Code and FIU Regulation 105, the Code behaviors will cede the adjudication processes under that Regulation.

c. The SCAI Director retains the discretion to ultimately determine which hearing forum is appropriate.

d. All hearing(s) will be conducted in private or in accordance with applicable law.

9. HEARING NOTIFICATION AND INFORMATION EXCHANGE

a. **Scheduling:** Hearings may be scheduled during class periods. Every effort will be made to avoid a class conflict; however, due to availability of persons involved in the hearing and meeting room, it may not be possible.

b. **Hearing Notice:** The notice of a hearing, including date, time and location will be sent to the official University email address of the Respondent, or to the official University email address of the President of the Student Organization, at least five (5) Business Days prior to the hearing. The Instructor will also be notified in Academic Misconduct cases. The Hearing Officer

has the discretion to provide notice through additional means (e.g., overnight or hand delivery). The delivery notification of the hearing notice through the official University email will constitute full and adequate notice under the Code. The Respondent may waive the notice period by indicating the waiver in writing.

i. The notice will include the names of witnesses to be called by the University and a list of information to be used in the hearing, which may be different from what was presented in the information session or subsequent meetings.

ii. The notice will also indicate the name(s) of the Hearing Body member(s) if known at the time, but will be provided before the start of the hearing.

c. Witnesses and Information

i. Witnesses: In addition to witnesses to be called by the University, the Respondent may request the presence of additional witnesses to voluntarily present relevant information on their behalf.

1. The Respondent must provide the Hearing Officer with the names of all additional witnesses in writing at least three (3) Business Days prior to the hearing.

2. The Hearing Officer will determine the admissibility of testimony from additional witnesses. Character witnesses or witnesses to other incidents outside the specific incident in question will not be allowed to testify at a hearing. The Respondent may provide the Hearing Body with character witness statements (which will only be considered during the sanctioning phase, if any).

3. The Respondent is responsible for contacting and notifying the additional witnesses they wish to call for the hearing.

4. The proceedings shall not be delayed due to scheduling conflicts of witnesses. Failure of any witness to appear shall not require a delay or affect the validity of the proceedings. If called witnesses do not appear, their written statements, if they exist, will be considered by the Hearing Body. Witnesses can appear in person or by contemporaneous alternative means (e.g., Skype, phone).

5. The Hearing Officer has the discretion to limit the number of witnesses whose testimony may be duplicative, redundant or not in dispute.

6. The Hearing Officer may place limits on the length of testimony and also may advise to the scope, direction or tone of questioning.

ii. The Instructor of the course in which the alleged Academic Misconduct violation(s) have occurred will always be requested to attend the hearing. The Instructor is strongly encouraged to participate in the hearing procedure.

The Respondent may inspect all of the information that will be presented at the Hearing at least three (3) Business Days before the hearing.

iii. The Respondent must submit any information they intend to use at a hearing at least three (3) Business Days before the hearing. Relevant records, exhibits, and statements may be accepted at the discretion of the Hearing Officer. The University will not consider polygraph reports.

iv. Acceptance or denial of witnesses and/or information is within the discretion of the Hearing Officer.

v. Information and/or the names of witnesses will be provided to the Hearing Body prior to the hearing.

d. Challenging a Member of the Hearing Body/Change of a Hearing Body Member

i. The Respondent may challenge the inclusion of any member at least three (3) business days prior to the scheduled hearing. The challenge must be in writing and must show actual bias (such as a conflict of interest, animosity, pressure or influence) that would preclude a fair and impartial hearing. The Hearing Officer will determine whether to grant such challenge in their discretion, and such decision is final and not appealable.

ii. If a Hearing Body member is unable to serve due to an emergency or unforeseeable occurrence, the Hearing Officer will appoint a new hearing body member prior to the scheduled hearing and notify the Respondent as soon as possible. The Respondent may challenge the inclusion of this member at the time of the hearing. The challenge must be on the basis outlined above.

e. Request for a Postponement: Any request to postpone a hearing must be submitted in writing or by email and must be received by the SCAI Director at least two (2) business days prior to the hearing. The request must state the reason(s) for the postponement. The granting of such requests shall be at the discretion of the SCAI Director. The University is not required to postpone a proceeding pending the outcome of a criminal prosecution. The University may postpone the hearing, at any time, for extraordinary situations (e.g. hurricane, emergency personnel matters).

10. ADVISOR FOR THE RESPONDENT

a. The Respondent may be accompanied by an advisor of their choosing and at their expense at any time during the Code process.

i. It is the responsibility of the Respondent to make appropriate arrangements for the advisor to attend the proceeding. The proceedings shall not be delayed due to scheduling conflicts of the chosen advisor. If the advisor is an attorney, the attorney must comply with the same restrictions imposed on any other advisor.

ii. The Respondent is responsible for presenting their own information, and therefore, advisors are not permitted to speak or to participate directly in any process under this Code.

iii. Although the Respondent may consult with their Advisor during the hearing, this consultation must take place in a manner that does not disrupt the proceedings.

iv. The Advisor chosen by the Respondent cannot be a witness in the matter.

v. SCAI can provide the Respondent with a list of Advisors who can provide assistance in preparing a response to the reported Code violation.

11. DUE PROCESS RIGHTS OF THE RESPONDENT: The Respondent has the following rights:

a. Reasonable, written notice of the Code charge(s) and the allegations upon which the charge(s) is/are based.

b. A fair and impartial hearing.

c. Accompanied by an Advisor of their choice and expense at any time during the Code process.

d. The opportunity to review all relevant information or evidence to be used in the hearing prior to the hearing.

e. The ability to participate in the Student Conduct hearing either physically or by contemporaneous alternative means (e.g., Skype, phone).

f. The opportunity to present relevant witnesses and information at the hearing.

- g. The opportunity to question witnesses in accordance with the Hearing Procedures.
- h. Not to provide self-incriminating testimony. (This right does not apply to Student Organizations.) Invoking the right against self-incrimination will not be considered as a negative factor in the decision of the Hearing Officer or Hearing Body.
- i. Receive notification of the decision of the Hearing Body in writing within fourteen (14) Business Days of the hearing.
- j. Appeal the decision via the process established by the University.

12. PRINCIPLES OF GROUP RESPONSIBILITY

- a. Any Student Organization can be held responsible under the Code for its actions or those of its members acting together. Misconduct on the part of the organization will be addressed when one or more of the following circumstances occur:
 - i. An alleged violation arises out of a Student Organization-sponsored, financed or otherwise supported activity.
 - ii. An alleged violation occurs on University Premises or On-Campus Housing and/or transportation owned, operated or rented exclusively by the Student Organization.
 - iii. A pattern of individual alleged violations has occurred and/or continues to occur without adequate control, response or sanction on the part of the Student Organization or its leaders.
 - iv. The Student Organization or its related activities provided the context for the alleged violation.
 - v. The action resulting in the alleged violation has received either the implied or overt consent of the Student Organization and/or its leaders.
 - vi. The Student Organization overtly places or implicitly allows active members of the Student Organization to be in a position to act on behalf or with the authority of the Student Organization.
- b. The actions of active, prospective, or associate members (pledges) of a Student Organization may be considered hazing. Refer to Section 5 for full details on Hazing.
- c. It is the responsibility of the Student Organization's President or Student-member designee to represent the organization through the conduct process.

13. HEARING PROCEDURES

- a. During the hearing, the Hearing Officer presides over the Code hearing and makes all procedural decisions.
- b. The burden of proof in a hearing rests with the University and Respondents are presumed Not Responsible. The standard of proof is a Preponderance of the Evidence. The determination of "Responsible" or "Not Responsible" will be based solely on the information and/or testimony presented.
- c. Formal rules of process, procedure and/or technical rules of evidence (including hearsay rules) applicable in the criminal or civil court process are not used in Code proceedings.
- d. Witnesses only participate in the hearing to the degree that a question is posed to them. They may not speak or otherwise participate in the Hearing.
- e. In Code hearings involving Academic Misconduct violations, the Instructor can choose to be present in the hearing in its entirety and to ask questions of the Respondent and

witnesses when prompted. The Hearing Officer has the discretion to require the Instructor to step out of a hearing if non-academic student conduct issues are being discussed.

f. The hearing will be recorded. The recording will serve as the only official record of the proceedings. No other recordings are permitted.

g. If the Respondent, or Instructor fails to appear at the scheduled hearing, the hearing will be held, and a decision will be rendered in their absence.

h. Upon request by the Respondent or witnesses, the Hearing Officer may permit the individual to provide relevant information during the hearing in a manner that avoids direct contact with the Respondent.

i. For Code hearings involving Conduct Violations, the Hearing Officer has the discretion to determine the order of the hearings which may involve, but is not limited to, the following:

i. Introductory statement by Hearing Officer including a reading of the allegations and charge(s), introduction of information that is the basis for the charges, and identification of the hearing participants.

ii. Statement by the Respondent and submission of any previously submitted relevant written information (e.g., records, exhibits, written statements) except for witness statements (see below) for consideration by the Hearing Body.

iii. Questions directed to the Respondent by the Hearing Body.

iv. Presentation of witnesses and any results of fact-finding conducted prior to the hearing.

v. The Respondent may pose questions directly to the witness. In certain circumstances to be determined by the Hearing Officer, questions may be presented in writing to the Hearing Officer who will then ask the witness the question(s).

vi. Submission by the Respondent of written statements (if any) of witnesses who are not present.

vii. Follow-up questions (if any) directed to the Respondent by the Hearing Body.

viii. Final statement by the Respondent.

ix. Hearing Officer brings hearing to closure.

j. For Code hearings involving Academic Misconduct Violations, the Hearing Officer has the discretion to determine the order of the hearings which may involve, but is not limited to, the following:

i. Introductory statement by Hearing Officer including a reading of the allegations and charge(s), introduction of information that is the basis for the charges and identification of the hearing participants.

ii. Statement by the Instructor and submission of any previously submitted relevant written information (e.g., records, exhibits, written statements) except for Witness statements (see below) for consideration by the Hearing Body.

iii. Statement by the Respondent and submission of any previously submitted relevant written information (e.g., records, exhibits, written statements) except for Witness statements (see below) for consideration by the Hearing Body.

iv. Questions directed to the Instructor by the Hearing Body and the Respondent.

v. Questions directed to the Respondent by the Hearing Body and the Instructor.

- vi. Presentation of witnesses and any results of fact-finding conducted prior to the hearing.
- vii. The Respondent may pose questions directly to the witness(es).
- viii. The Instructor may pose questions directly to the witness(es).
- ix. Submission by the Respondent written statements (if any) of witnesses who are not present.
- x. Submission by the Instructor of written statements (if any) of witnesses who are not present.
- xi. Follow-up questions (if any) directed to the Instructor by the Hearing Body and Respondent.
- xii. Follow-up questions (if any) directed to the Respondent by the Hearing Body and the Instructor.
- xiii. Final statement by the Instructor.
- xiv. Final statement by the Respondent.
- xv. Hearing Officer brings hearing to closure.
- k. Deliberation by the Hearing Body is held outside the presence of the Respondent for all hearings, and Instructor, for hearings involving Academic Misconduct violations.
- l. Prior Student Conduct and Academic Misconduct records, Character Witness Statements and/or Impact Statements are considered only in determining the appropriate sanction(s).
- m. In Code hearings, the SCC will make a recommendation of the decision and sanctions to the Hearing Officer. The Hearing Officer may take one of these actions with respect to the recommendation:
 - i. Adopt
 - ii. Modify
 - iii. Reject the findings and sanctions, or
 - iv. Remand for a rehearing.

If the Committee decision is not adopted, the Hearing Officer will include the reasons for any differences between the recommendations of the Committee and the Hearing Officer's final decision as part of the decision letter.

n. A decision letter will be sent to the Respondent within fourteen (14) Business Days from the conclusion of the Hearing Body's deliberation. The hearing decision will include the decision, sanctions imposed (if applicable) and the explanation of the right to appeal. For Academic Misconduct violations, the written decision will also be sent to the Instructor.

o. This Regulation acknowledges the Instructor authority to award Student grades. If the Student is found "Not Responsible" for alleged violations of Academic Misconduct, the faculty member should reinstate the grade the Student would have received if the misconduct charges were not submitted and any reduction in grade should be based on the Student's quality of work and not an allegation of Academic Misconduct.

14. TITLE IX PROCEDURES

Conduct meeting the definition of Sexual Harassment or Sexual Misconduct (including the Violence Against Women Act violations incorporated via the Clery Act) are administered via FIU Regulation 105. SCAI serves as the central repository for all student sanctions administered under the Code and FIU Regulation 105, and any prior misconduct under the Code or FIU Regulation 105 is considered in any sanctioning stage of either proceeding.

15. SANCTIONS

a. Sanctions may only be imposed when a Respondent has been found in violation of the Code. In cases where a Respondent has been found “Not Responsible” for the alleged violation(s), no sanctions will be assigned.

b. In light of the facts and circumstances of each case, the following sanctions or combination of sanctions (with or without appropriate modifications) will be imposed upon any Respondent found to have violated the Code or FIU Regulation 105. Sanctions will be commensurate with the prohibited conduct with consideration given to any aggravating and mitigating circumstances, including, but not limited to, the Respondent’s conduct and Academic Misconduct record. Fees may be associated with certain sanctions (e.g., counseling consultation, online programs) and are the Respondent’s responsibility.

c. When an undergraduate student is found Responsible for Academic Misconduct violations, SCAI will determine any University Sanctions which are not related to a grade or the course in general. The Instructor and Chair (or designee) will recommend Course Sanctions and communicate their recommendation to SCAI. SCAI will then communicate the final outcome to the student. Should the Instructor fail to provide SCAI with recommended course sanctions within seven (7) Business Days, SCAI may assign Course Sanctions. If the undergraduate student is a member of the Honors College, SCAI will notify the Dean of the Honors College that a student was found in violation and ask if the College wishes to invoke any Honors College-level academic action(s). The Dean of the Honors College will determine if Honors College action is necessary. SCAI will be notified within seven (7) Business Days if the Dean recommends additional program action.

d. When a graduate or professional student is found Responsible for Academic Misconduct violations, SCAI notifies the Instructor, Dean or designee of the University Graduate or Professional School, and the Dean or designee of the Academic College in which the graduate or professional student resides. SCAI will determine any University Sanctions, which are not related to a grade or the course. The Instructor and Dean (or designee) will recommend Course Sanctions and communicate their recommendation to SCAI. Should the Instructor fail to provide SCAI with recommended course sanctions within seven (7) Business Days, SCAI may assign Course Sanctions. The College Dean or designee will in turn notify the graduate or professional program that a student was found in violation and ask if the program wishes to invoke any program-level academic action(s). The student’s graduate or professional program will determine if program action is necessary. SCAI will be notified within seven (7) business days if the graduate or professional program recommends additional program action. SCAI will then communicate the final outcome to the student.

e. In the event the course Instructor is no longer at the University, the Department Chair (or designee) will determine the recommended Course Sanctions.

f. University Sanctions

i. **Written Reprimand:** The University takes official notice that such actions are inappropriate and not in accordance with our community standards.

ii. **Educational Activities:** Appropriate educational steps (such as referrals for alcohol or drug education, reflection activities, counseling, letters of apology, directed study programs, or classes).

iii. **Conduct Probation:** Probation for a stated period, including completion of any required probation program. While on conduct probation, any additional violations of the Code or other University Policies may result in suspension or expulsion.

iv. **Deferred Suspension:** Period of time in which suspension is temporarily withheld or withheld pending completion of other sanctions by a specified deadline date. A Respondent who is on deferred suspension is considered not in good standing with the University, resulting in applicable restrictions on privileges and/or activities which may include, but are not limited to, being prohibited from participating in study abroad or alternative break, or serving as a peer advisor, resident assistant or elected/appointed Student leader in Student Government or other Student Organizations. Additional restrictions on University privileges and/or activities may be imposed on the Respondent based on their current or potential future activities. If the Respondent fails to fulfill the sanctions described in the decision letter (including failure to timely fulfill the sanction), the Respondent will no longer be considered on deferred suspension but will be automatically suspended with no further appeal. While on deferred suspension, any additional violations of the Code or other University Policies may result in suspension or expulsion.

v. **Suspension:** Separation from the University for a specified period of time. A Respondent is considered not in good standing with the University while suspended. The Respondent may not attend classes (either in person or online) and is banned from being on or in any University Premises or On-Campus Housing. The suspended Respondent is also banned from participation in any University-sponsored/related event or activity and their FIU OneCard will be deactivated. This sanction is recorded on the Respondent's academic transcript permanently. A Respondent who is suspended from the University is not eligible for tuition and/or registration fee reimbursement except as provided by University Policies. The Respondent will be administratively withdrawn from courses and will lose respective credit hours.

vi. **Expulsion:** Permanent separation from the University with no possibility of readmission. This sanction is recorded on the Respondent's academic transcript permanently. A Respondent is considered not in good standing with the University after being expelled. The Respondent may not attend classes (either in person or online) and is banned from being on or in any University Premises or On-Campus Housing. The expelled Respondent is also banned from participation in any University-sponsored/related activity or event and their FIU OneCard will be deactivated. A Respondent who is expelled from the University is not eligible for tuition nor registration fee reimbursement except as provided by University Policy. The Respondent will be administratively withdrawn from courses and will lose respective credit hours.

g. Remedies

i. **No Contact Order:** the requirement that the Respondent and/or friends have no contact with another person.

ii. **Restitution:**
Restitution to the University or to the impacted part(ies) of the violation. Any such payment on restitution will be limited to actual cost of repair, services not covered, or replacement costs.

iii. **Restrictions/Loss of Privileges:** Restrictions or loss of privileges which may be imposed upon a Respondent for a specified amount of time, including but not limited to, participation in Student activities, University or Student events, representation of the University on athletic teams or in leadership positions, presence at University residence halls or other buildings/areas of campus, participation as a peer advisor, resident assistant or elected/appointed Student leader in Student Government or other Student Organizations, and/or participation in

study abroad or alternative break programs. For a student organization, restrictions or loss of privileges include, but are not limited to, participation in or exclusion from Student activities, social events, intramural activities, alcohol functions or in campus facilities. Additional restrictions on University privileges and/or activities may be imposed on the Respondent based on their current or potential future activities.

h. **Course Sanctions:**

i. **Grade Penalty on the Assignment/Exam/Project with Resubmission:**

A point/grade reduction on the assignment/assessment in question, and with the permission of the Faculty member, an opportunity to resubmit the assignment/ assessment with the addition of the implemented point/grade reduction.

ii. **Grade Penalty on the Assignment/Exam/Project:** A point/grade reduction on the assignment/assessment in question.

iii. **Overall Course Grade Penalty with Drop:** Receive a decrease in overall grade or an F for the entire course. However, the Student will be permitted to drop or withdraw the course with approval from the SCAI Director or designee. Requests for drop consideration must be submitted in writing with rationale to the SCAI Director or designee, where the final approval rests and is not eligible for independent appeal outside of the formal conduct appeal process.

iv. **Overall Course Grade Penalty:** Receive a decrease in overall grade or an F for the course. A point/grade reduction for the entire course. There will be no ability to drop or withdraw from the course for any reason.

i. Violations of the Code that are motivated by prejudice toward a person or group because of such factors such as race, color, creed, religion, ethnicity, national origin, disability, age, marital status, genetic information, veteran status or any group/class protected by state or federal law may result in stronger sanctions.

i. Students who are found “Responsible” for Academic Misconduct violations under the Code are prohibited from using the Grade Forgiveness Policy for the course in which the Academic Misconduct occurred.

j. Sanctions take immediate effect unless appealed, except for suspensions or expulsions, which may be stayed until Final Agency action at the discretion of the SCAI Director. During such time, the SCAI Director may implement any supportive/interim measures available under the Code, excepting an interim suspension.

k. Proof of the completion of the sanction(s) must be provided as directed in the decision letter. It is the responsibility of the Respondent to ensure that such proof is provided by the specified date. Failure of the Respondent to provide proof by the specified date may result in a charge of failure to comply, placement of a Student Conduct hold on a Respondent’s academic and University records, and suspension if the Respondent had been on deferred suspension.

16. WITHDRAWAL FROM A COURSE PENDING CHARGES OF ACADEMIC MISCONDUCT Upon receipt of notification of allegations of Academic Misconduct, a Student can choose to withdraw from the course in question, in accordance with the University policies related to course withdrawal. Students who withdraw from a course will have their ability to register for future semesters temporarily placed on hold until the SCAI Director or designee is assured that the Student is satisfactorily responding to the charges. Students who are found “Responsible” of Academic Misconduct in a course from which they have withdrawn are still

eligible to receive the appropriate sanctions (as listed in Section 15) based on the case and may be reinstated to the course from which they have withdrawn.

17. PROCESS OF PRESIDENTIAL REVIEW

a. The President will notify the SCAI Director within three (3) Business Days of notification of a disciplinary outcome if he/she wishes to review the underlying disciplinary matter. This review will serve as the appeal process for the Respondent and Reporting Party (if applicable). Any other appeal process will immediately cease.

b. No later than one (1) Business Day after the President notifies the SCAI Director and the Appellate Officer, the SCAI Director shall notify the Respondent and Reporting Party (if applicable) of the President's decision to review the underlying disciplinary matter including sanctions. The Respondent and Reporting Party (if applicable) may provide the President with any information (including any documents supporting an appeal if not previously submitted) within three (3) Business Days of the SCAI Director's notification.

c. The President may only consider the information included in the Student Conduct file, any appeals submitted by the Respondent and Reporting Party (if applicable), and any information that was not reasonably available at the time of the hearing.

d. The President shall issue a written decision to the Respondent Reporting Party (if applicable), Appellate Officer, and SCAI Director within fourteen (14) Business Days of notification of a disciplinary outcome. Decisions based on charges involving Hazing (Section (5)(p)) will include an explanation for the decision and sanctions. The President's decision constitutes Final Agency Action and will include notice of the Respondent's right to appeal to an external judicial forum if the sanction is suspension or expulsion.

18. APPEALS

a. **Appellate Officer:** The Appellate Officer for all appeals is the Senior Vice President for Academic & Student Affairs or designee.

b. **Appeal Form/Basis for Appeals:** The Respondent wishing to appeal must complete the appeal form in full, indicating the basis for the appeal, explain in detail the reasons for the appeal and attach supporting relevant documentation. The burden of proof rests with the person appealing to clearly demonstrate the reason for appeal as set forth below. Appeals are not a rehearing of the Student Conduct matter but are only a file and/or document review. The reason for the appeal must be based on at least one of the following:

i. Violations of the appealing party's rights or other failure to follow the Student Conduct procedures that substantially affected the outcome of the initial hearing. Appeals based on this reason will be limited solely to a review of the record of the hearing;

ii. New information which was not available at the time of the hearing and could not have been presented. In addition, the appealing party must show that the new information could have substantially affected the outcome; or

iii. The severity of the sanction is disproportionate to the nature of the charge(s).

c. **Appeal Requests:** All appeals must be written and submitted using the appeal form available in the decision letter.

The person wishing to appeal must complete the appeal form in full and send it to the Appellate Officer for receipt no later than 5:00pm of the seventh (7th) Business Day after the delivery date

of the hearing decision letter. If the appeal form is submitted and/or signed by any individual other than the appealing party, it will not be accepted.

d. **Untimely Appeal:** If a hearing decision is not appealed within the timeframe, the original decision becomes Final Agency Action.

e. **The Respondent's Status Pending Appeal:**

i. An appeal has no effect on a Respondent's status when the sanction was suspension or expulsion. The sanction(s) are effective immediately from the date of the decision, unless stayed until Final Agency action at the discretion of the SCAI Director. During such time, the SCAI Director may implement any supportive/interim measures available under the Code, excepting an interim suspension.

ii. If the Respondent appeals in any other case, once an appeal is requested, the sanction(s) will be stayed and will not take effect until the appeal process has been completed. Under these circumstances, a Respondent shall remain eligible to attend classes and University activities pending the appeal.

iii. If no appeal is requested, the sanctions will take effect immediately.

f. **Appellate Review/Decision:**

i. No person may hear or decide an appeal if they conducted or participated in the Code proceeding being reviewed on appeal.

ii. The Appellate Officer shall first determine if sufficient grounds for the appeal exists and then, if so, may either deny the appeal, thus sustaining the initial decision and sanction(s), or do one of the following:

1. If the basis of the appeal is that the severity of the sanction was disproportionate to the nature of the offense and the Appellate Officer finds the appealing party proved their allegation, the Appellate Officer may modify the sanction.

2. If the basis of the appeal is that there was a failure to follow the Student Conduct procedures that substantially affected the outcome, or that there was new information which was not reasonably available at the time of the hearing and could not have been discovered through the exercise of due diligence, which would have substantially affected the outcome and the Appellate Officer finds that the appealing party proved their allegation, the Appellate Officer will order a new hearing.

g. **Written Decision on Appeal:** The appellate decision is issued in writing to the Respondent within twenty-one (21) Business Days of receipt of the written request for appeal unless notification is given that additional time is necessary for consideration of the record on appeal.

h. **Effect of the Final Appellate Decision:** The decision of the Appellate Officer constitutes Final Agency Action. In the case of a suspension or expulsion of a Respondent, the decision of the Appellate Officer will include notice to the Respondent's right to appeal to an external judicial forum.

i. **Academic Grievance Process:** The Respondent may not use the Student Academic Grievance Policy as a way to appeal the filing of a complaint or the outcome of the Academic Misconduct process outlined in this regulation.

19. RECORDS

a. All student conduct-related records, including records involving Conduct violations, Academic Misconduct violation, and FIU Regulation 105, will be housed in the web-based system maintained by SCAI.

b. The release of student conduct-related records will be governed by applicable federal and state laws regarding the privacy of education records.

c. SCAI may place a student conduct hold on the records and registration of any Respondent who has a pending Code matter, including any outstanding sanctions. Respondents may not be allowed to graduate or receive grades, until pending matter(s), including any outstanding sanctions, are resolved. The University reserves the right withhold a transcript until properly notated.

d. The official University email address on file with the Registrar's Office will be used for all student conduct correspondence sent. For Student Organizations, the official University email address on file with the Registrar's Office for the organization's respective President will be used. The Hearing Officer may, in their discretion, decide to send the notices via additional means (e.g., overnight delivery) and/or to other authorized University Officials.

e. Suspension(s) and Expulsion will be noted permanently on a Student's academic transcript. student conduct-related files are kept in compliance with General Records Schedule GS5, but not for less than seven (7) years from the date of the last incident(s) that the Respondent was involved in that resulted in Code charges. However, in the case of suspension or expulsion, the files shall be permanently retained.

f. Students may have access to the information in their student conduct and Academic Misconduct file by submitting a written request to the SCAI Director. The access will be provided in accordance with federal and state laws regarding the privacy of education records (FERPA) and University regulation (see FIU Regulation 108).

20. AUXILIARY AIDS AND SERVICES Students with disabilities as defined by the Americans with Disabilities Act who require special accommodations for meetings/hearings should notify SCAI and the Disability Resource Center in writing at least three (3) Business Days prior to any meeting or hearing.

21. CONFLICT RESOLUTION

a. Not every matter processed through SCAI is required to go through summary resolution or a hearing. An overall goal of SCAI is to provide a learning process which entails understanding and respecting the rights of others. An avenue utilized by SCAI to foster mutual respect and understanding when differences arise is Conflict Resolution. Conflict Resolution through SCAI is an informal and confidential process.

b. Conflict Resolution may be utilized where the incident in question is minor in nature, the parties involved chose to participate, and the University cannot proceed with charges through the University student conduct system.

c. Conflict Resolution cases handled through SCAI will not be identified or filed as a student conduct matter. Conflict Resolution records will be maintained separate from student conduct files and will not be recorded or reported as part of a Charged Student's record. All Conflict Resolution files are private and will not be released without written consent except in cases where the conduct or behavior is a repeat offense. In repeat cases, this information is only released to the Hearing Body and only used if the Respondent is found responsible for a violation of the Code.

d. Conflict Resolution files are kept for seven (7) years from the date of the resolution.

e. Participation must be voluntary, and either party can request to end Conflict Resolution at any time which may result in the initiation of the student conduct process for the behavior.

22. INTERPRETATION AND REVISION

a. Any question of interpretation or application of the Code shall be referred to the Senior Vice President for Academic and Student Affairs or designee for final determination.

b. The Code shall be reviewed periodically by a committee which shall include Student representation under the direction of the SCAI Director.

c. The Academic Misconduct procedures outlined in this regulation will be reviewed at least every three (3) years by a committee which shall include Student and faculty representation under the direction of the SCAI Director. The committee will be appointed by the Chair of the Faculty Senate, in consultation with the SCAI Director and the Faculty Fellow for Academic Integrity. Any changes to Academic Misconduct procedures must be approved by the Faculty Senate.

Contact: Director, Office of Student Conduct and Academic Integrity
Location: GC 311
Phone: (305) 348-3939 / Fax: (305) 348-6477
Email: conduct@fiu.edu
Web Page: conduct.fiu.edu

Authority: Florida Board of Governors Regulation 6.0105 Student Conduct and Discipline; Florida Board of Governors Regulation 6.010 Student Affairs Administration; Florida Board of Governors Regulation 1.001(4)(a)(10); and Section 7(d), Article IX, Florida Constitution.
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