

Responsible Office	General Counsel	Effective Date	08/14/2020
Responsible Official	University Title IX Coordinator	Last Revision	10/21/2025

TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCEDURES

I. POLICY STATEMENT

Fairleigh Dickinson University ("FDU" or the "University") is committed to fostering a living, learning and working environment free of discrimination and harassment. FDU is subject to Title IX of the Educational Amendments of 1972 ("Title IX"), 20 U.S.C. §§1681, et seq., which states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." FDU does not discriminate on the basis of sex and prohibits sexual misconduct in any education program or activity that it operates, as required by Title IX, including in admission and employment.

II. SCOPE OF POLICY

Pursuant to Title IX, FDU's Title IX Sexual Harassment Policy and Grievance Procedures ("Policy") provides that FDU will respond promptly, and in a manner that is not deliberately indifferent, when FDU has actual knowledge of covered Sexual Harassment prohibited by this Policy. This Policy applies to all FDU community members, including students, faculty, staff and third parties, such as volunteers, contractors and visitors. Alleged misconduct subject to this Policy ("Prohibited Conduct") is Title IX Sexual Harassment (which is defined by law).

This Policy applies to all reports of Prohibited Conduct which are alleged to have occurred in the United States and at locations, events, or in circumstances over which FDU exercised substantial control over both the respondent and the context in which the conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by FDU.

III. TITLE IX AND THE TITLE IX COORDINATOR

The following individuals are responsible for coordinating FDU's efforts to comply with Title IX and this Policy:

University Title IX Coordinator

Steve Nelson

Administrative Legal & Compliance Operations Attorney

University Title IX & Anti-Discrimination Coordinator

snelson@fdu.edu

(201) 692-2466

Dickinson Hall, Room 3312, Mail Code: H-DH-311

1000 River Road Teaneck, NJ 07666

(Where applicable, responsibilities of the Title IX Coordinator under this Policy may be delegated to and performed by a Deputy Title IX Coordinator)

Deputy Title IX Coordinator, Metro Campus Deputy Title IX Coordinator, Florham Campus

Juhi Bhatt Medjina Milfort

Associate Dean of Students Coord., Student Conduct & Community Standards

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Mail Code: T-DS1-01 Mail Code: M-SCO-02 1000 River Road 285 Madison Ave. Teaneck, NJ 07666 Madison, NJ 07940

Please contact any of the above individuals with questions regarding Title IX or this Policy. Questions may also be directed to:

Assistant Secretary for Civil Rights U.S. Department of Education Office of Civil Rights 400 Maryland Avenue, SW Washington, D.C. 20202-1100 OCR@ed.gov (800) 421-3481

IV. DEFINITIONS

Terms used in this Policy have the following meanings:

Actual Knowledge: Notice to the University Title IX Coordinator or any other official with the authority to institute corrective measures as described in Section XIII.

Admission: Selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by FDU.

Advisor: A person who has agreed to provide support and advice to a Complainant or Respondent, subject to the provisions of Section XVI.

Appeal Officer: The individual responsible for determining an appeal under Section XXIV. The Appeal Officer may be an employee of FDU or an external contractor but shall not be the Hearing Officer, University's Title IX Coordinator or the Investigator assigned to the matter that is the subject of the Appeal.

Applicant: A person who has submitted an application, request, or plan required for employment or admission at FDU.

Complainant: Any individual who is alleged to be the victim of Prohibited Conduct.

Consent: A knowing, voluntary, and mutual decision among participants to engage in sexual activity, as discussed further in Section VI.

Disciplinary Sanctions: Consequences imposed on a Respondent following a determination of responsibility for Prohibited Conduct under FDU's Title IX Policy.

Formal Complaint: A document submitted by a Complainant (meaning a document or electronic submission such as by electronic mail) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the individual filing the formal complaint, requesting that the University investigate the allegation of Prohibited Conduct. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of FDU. The University Title IX Coordinator also may sign a Formal Complaint, as discussed in Section X(A), but does not become the Complainant by doing so.

Hearing Officer: The individual responsible for conducting the Hearing under Section XXII, reaching a decision on responsibility and assigning sanctions, if appropriate. The Hearing Officer may be an FDU employee or an external contractor. The hearing Officer shall not be the University's Title IX Coordinator or the Investigator who investigated the matter that is the subject of the Hearing.

Informal Resolution Facilitator: The individual responsible for facilitating the Informal Resolution process, as discussed in Section XVII. The Informal Resolution Facilitator may be an FDU employee or an external contractor.

Investigator: The individual responsible for conducting the investigation of alleged Prohibited Conduct, as discussed further in Section XIX. The Investigator may be an FDU employee or an external contractor.

Party or Parties: Party refers to either a Complainant or a Respondent. Parties refers to a Complainant and Respondent collectively.

Program or Activity: All operations of FDU.

Relevant: Relevant means related to the allegations of Prohibited Conduct under investigation as part of the grievance procedures described under this Policy. Questions are relevant when they seek evidence that may aid in showing whether the alleged Prohibited Conduct occurred, and evidence is relevant when it may aid a Hearing Officer in determining whether the alleged Prohibited conduct occurred.

Remedies/Remedial Measures: Measures provided to a Complainant where a determination of responsibility for Prohibited Conduct has been made against the Respondent. Remedies are designed to restore or preserve the Complainant's equal access to the University's Education Program or Activity. Remedies may include the same individualized services described in the Supportive Measures, Section XI; however, unlike Supportive Measures, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

Respondent: Any individual who has been reported to have engaged in any form of Prohibited Conduct.

Retaliation: Any type of intimidation, threat, coercion, or discrimination against any person by FDU, a student, an employee, or other person authorized by the University to provide aid, benefit, or service under FDU's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX, as discussed further in Section VII.

Title IX Jurisdiction: In order to constitute Title IX Prohibited Conduct, the alleged misconduct must have occurred under FDU's education program or activity in the United States. Conduct that occurs under FDU's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by FDU and conduct that is subject to FDU's disciplinary authority.

Title IX Sexual Harassment: Conduct on the basis of sex that involves an employee of FDU conditioning the provision of an aid, benefit, or service of FDU on an individual's participation in unwelcome sexual conduct; or an individual engaging in unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to FDU's education program or activity. Title IX Sexual Harassment also includes the following:

a) **Title IX Quid Pro Quo Harassment:** An employee, agent, or other person authorized by FDU to provide an aid, benefit, or service under FDU's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

- b) **Title IX Hostile Environment Harassment:** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from FDU's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
 - i. The degree to which the conduct affected the Complainant's ability to access FDU's education program or activity;
 - ii. The type, frequency, and duration of the conduct;
 - iii. The parties' ages, roles within FDU's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effect of the conduct;
 - iv. The location of the conduct and the context in which the conduct occurred; and
 - v. Other sex-based harassment in FDU's education program or activity.
- c) **Title IX Sexual Assault:** An offense classified as a forcible or nonforcible sex offense and includes any of the following prohibited conduct:
 - i. Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the other Party;
 - ii. The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation;
 - iii. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation;
 - iv. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
 - v. Nonforcible sexual intercourse with a person who is under the statutory age of consent.
- d) **Title IX Dating Violence:** Violence, including sexual or physical abuse or the threat of such abuse, committed by a person:
 - i. Who is or has been in a social relationship of a romantic or intimate nature with the other Party;
 - ii. Where the existence of such a relationship shall be determined based on a consideration of (a) the length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the persons involved in the relationship.
- e) Title IX Domestic Violence: Felony or misdemeanor crimes committed by a person who:
 - i. Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of New Jersey, or a person similarly situated to a spouse of the victim;
 - ii. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
 - iii. Shares a child in common with the victim; or

- iv. Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of New Jersey.
- f) **Title IX Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress. For purposes of this definition:
 - i. A course of conduct means two or more acts, including, but not limited to, acts in which the alleged 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;
 - ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim; and
 - iii. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Supportive Measures: Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent. As discussed further in Section XI, Supportive Measures may or may not extend beyond the duration of the grievance procedures and are designed to:

- a) Restore or preserve that Party's access to FDU's education program or activity, including measures that are designed to protect the safety of the Parties or FDU's educational environment; or
- b) Provide support during FDU's grievance procedures or during an informal resolution process.

V. PREGNANCY AND RELATED CONDITIONS

FDU does not discriminate in its education program or activity against any student based on the student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom. FDU also does not discriminate against or exclude from employment any employee or employment applicant on these bases.

When a student informs any FDU employee of the student's pregnancy and related conditions, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee shall promptly provide that person with the Title IX Coordinator's contact information and inform that person that the Title IX Coordinator can coordinate specific actions to ensure the student's equal access to FDU's education program or activity.

FDU will treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom the same as any other temporary disability with respect to any hospital or medical service, plan, or policy for students. For employees, FDU will treat pregnancy and the same related conditions, as well as any temporary disability resulting therefrom, as any other temporary

disability for all job-related purposes, including employment-based medical, hospital, and other benefits.

VI. CONSENT

Consent is the communication of an affirmative, conscious and freely made decision by each participant to engage in agreed upon forms of sexual activity. Consent requires an outward demonstration, through understandable words or actions that convey a clear willingness to engage in a specific form of sexual activity. Consent to sexual activity on one occasion is not Consent to engage in sexual activity on another occasion. A person who has given Consent to engage in sexual activity may withdraw Consent, through understandable words or actions that clearly convey a party is no longer willing to engage in sexual activity, at any time. Once Consent is withdrawn, the sexual activity must cease immediately.

Consent is not to be inferred from silence, passivity, or a lack of resistance. Relying on nonverbal communication alone may result in a violation of this Policy. For example, a person who does not physically resist or verbally refuse sexual activity may not necessarily be giving Consent. There is no requirement that an individual verbally or physically resist unwelcome sexual activity for there to be a violation of this Policy.

Consent is not to be inferred from an existing or previous dating or sexual relationship. Even in the context of a relationship, there must be mutual Consent to engage in sexual activity. Consent to one form of sexual activity does not constitute Consent to any other form of sexual activity, nor does Consent to sexual activity with one person constitute Consent to sexual activity with any other person.

Consent cannot be obtained by Coercion or Force or by taking advantage of the Incapacitation of another person. Coercion or Force and Incapacitation are described in more detail below.

Coercion or Force: Coercion or Force includes conduct, intimidation, and express or implied threats of physical or emotional harm that would reasonably place an individual in fear of immediate or future harm and that is employed to persuade or compel someone to engage in sexual activity. Examples of Coercion or Force include conditioning an academic benefit or employment advantage on submission to the sexual activity; threatening to harm oneself if the other party does not engage in sexual activity; or threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personal sensitive information if the other party does not engage in the sexual activity.

Incapacitation: An individual who is incapacitated is unable to give Consent to sexual activity. States of Incapacitation include sleep, unconsciousness, intermittent consciousness, or any other state where the individual is unaware that sexual activity is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to Consent to sexual activity. Alcohol or drug use is one of the prime causes of Incapacitation. Where alcohol or drug use is involved, Incapacitation is a state beyond intoxication, impairment in judgment, or

"drunkenness". Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is Incapacitated, and therefore unable to give Consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:

- a) Making decisions about the potential consequences of sexual activity;
- b) Appraising the nature of one's own conduct;
- c) Communicating Consent to sexual activity; or
- d) Communicating unwillingness to engage in sexual activity.

In evaluating Incapacitation, FDU will consider whether the Respondent knew that the Complainant was incapacitated based on articulable and objective facts and circumstances, and if not, whether a sober, reasonable person in the same position and under the same circumstances would have known that the Complainant was Incapacitated.

Additional Guidance about the Impact of Alcohol or Other Drugs on Consent: Where an individual's level of impairment does not rise to Incapacitation, FDU will still consider the impact of intoxication on Consent. In evaluating whether Consent was sought or given, the following factors may be relevant:

- a) Intoxication may impact one's ability to give Consent and may lead to Incapacitation (the inability to give Consent);
- b) A person's level of intoxication is not always demonstrated by objective signs; however, some signs of intoxication may include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness or emotional volatility;
- c) An individual's level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism.

No matter the level of an individual's intoxication, if that individual has not affirmatively agreed to engage in sexual activity, there is no Consent. Anyone engaging in sexual activity must be aware of both their own and the other person's level of intoxication and capacity to give Consent. The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether Consent is effectively sought and freely given. If there is any doubt as to the level or extent of one's own or the other individual's intoxication or Incapacitation, the safest course of action is to forgo or cease any sexual activity. A Respondent's intoxication is never an excuse for or a defense to committing prohibited conduct and it does not diminish one's responsibility to obtain Consent.

VII. RETALIATION

Retaliation against an individual for participating in any way in a report, investigation, hearing or other proceeding under this Policy is strictly prohibited. No one may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege

secured by Title IX, or because the individual made a report or complaint, testified, assisted, participated, or refused to participate, in any manner in an investigation, proceeding, or hearing under this Policy. When FDU has information about conduct that may reasonably constitute Retaliation, such conduct will be addressed under this Policy. In evaluating whether retaliation has occurred, FDU may consider whether the conduct in question constituted the exercise of rights protected under applicable law or was covered by another FDU policy, including with respect to freedom of expression or academic freedom.

VIII.RECORDKEEPING

FDU will retain records created in connection with complaints and Grievance Procedures for seven years. Such records include those relating to any Informal Resolution, investigation, determination regarding responsibility (including any audio or audiovisual recording or transcript), any disciplinary sanction imposed, any appeal, and any remedies provided to the Complainant designed to restore or preserve equal access to FDU's education program or activity.

FDU will also document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the education program or activity. If FDU provides no Supportive Measures to the Complainant, it will additionally document why such a response was not clearly unreasonable in light of all the known circumstances.

IX. TRAINING

Any individual serving as FDU's Title IX Coordinator, Deputy Title IX Coordinator, Investigator, Informal Resolution Facilitator, Hearing Officer, or Appeal Officer will receive training on this Policy, the scope of FDU's education program or activity, how to conduct an investigation, and Grievance Procedures (including Hearings, Appeals and Informal Resolution, as applicable). Each individual will also receive training on how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Further, they will receive training on questions of relevance, credibility, and on preparing an Investigation Report, Hearing Outcome Letter or Appeal decision, as appropriate.

GRIEVANCE PROCEDURES

FDU has adopted grievance procedures that provide for the prompt and equitable resolution of complaints made by students or employees who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any Prohibited Conduct that would be prohibited by this Policy or the Title IX Regulations. These grievance procedures address all forms of Title IX Sexual Harassment.

During the Grievance Procedures, FDU will treat Complainants and Respondents equitably.

X. REPORTING

A. Filing a Complaint

Anyone who has experienced Prohibited Conduct is urged to immediately seek help. Help includes seeking medical assistance, seeking confidential counseling or crisis response, filing a report with law enforcement, and making a report to FDU. FDU's Department of Public Safety will help any individual on the New Jersey campuses get to a safe place, provide transportation to the hospital, contact another law enforcement agency, and offer information about the University's resources and processes.

Any person may report conduct constituting possible Prohibited Conduct to the Title IX Coordinator in person, by mail, by telephone, by email, or via the online reporting form. The Title IX Coordinator will promptly contact the potential Complainant to discuss the availability of Supportive Measures, where appropriate, and to explain the Grievance Procedures.

Complainants are encouraged, but not required, to proceed with a Formal Complaint. If the Complainant desires to proceed with a Formal Complaint, the University Title IX Coordinator or designee will begin the Formal Complaint Process (*see* Section XIII). If the Complainant decides not to submit a Formal Complaint, the University Title IX Coordinator may sign a Formal Complaint when the University Title IX Coordinator deems doing so necessary to address the possible Prohibited Conduct, including in order to provide a safe and nondiscriminatory environment for all members of FDU's community. In deciding whether to sign a Complaint if the Complainant elects not to do so, the University Title IX Coordinator may, but is not required to, consider factors such as whether the conduct alleged included threats, violence, serial predation, or weapons. A Complainant is not required to submit a Formal Complaint to receive Supportive Measures.

In addition, although reporting parties have a right to notify or decline to notify law enforcement, FDU encourages reporting parties to promptly report conduct that may be criminal in nature to law enforcement by contacting:

- a) 911 (for emergencies)
- b) FDU Department of Public Safety (NJ campuses), 24 hours a day, 7 days a week
 - i. Florham Campus: (973) 443-8888
 - ii. Metropolitan Campus: (201) 692-2222

Police have unique legal authority, including the power to execute search warrants, collect forensic evidence, make arrests, and assist in seeking civil protection orders. FDU will assist reporting parties in notifying law enforcement if they choose to do so.

FDU may consolidate complaints of Prohibited Conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations of Prohibited Conduct arise out of the same facts or circumstances.

B. Anonymous Reporting

With the exception of Authorized and Responsible Employees, discussed in Section X(C), any individual may anonymously report allegations of Prohibited Conduct to the Title IX Coordinator in person, by mail, by telephone, by email, or via the online reporting tool which can be found on the University's Title IX page or by using the following direct link: https://cm.maxient.com/reportingform.php?FairleighDickinsonUniv&layout_id=26. Depending on the information provided, FDU's ability to take action in response to an anonymous report may be limited.

C. Reports to Authorized and Responsible Employees

There may be instances when a student or employee discloses alleged Prohibited Conduct to an employee of FDU. Whether that disclosure constitutes actual notice to FDU, triggering its response obligations under this Policy, depends on the role of the employee to whom the disclosure is made, as follows:

- a) Authorized employees: A disclosure or report of Prohibited Conduct made to an Authorized Employee (regardless of whether the disclosure is made by the Complainant or a third party) constitutes a report to FDU (i.e., actual knowledge), triggering a response under this Policy. All Authorized Employees are required to promptly report disclosures of Prohibited Conduct to the University Title IX Coordinator, including all information that has been disclosed to the Authorized Employee, such as the names of those involved, the location of the incident, the alleged Prohibited Conduct, etc. The following individuals are Authorized Employees:
 - i. University Title IX Coordinator
 - ii. Deputy Title IX Coordinators for the Florham and Metropolitan Campuses
 - iii. President of the University
 - iv. University Provost and Senior Vice President for Academic Affairs
 - v. Senior Vice President for Finance and Administration
 - vi. Chief Strategy Officer and Vice President for Enrollment Management

- vii. Vice President for Information, Resources & Technology and Chief Information Officer
- viii. Vice President for Facilities and Auxiliary Services
 - ix. General Counsel
 - x. Vice President for Student Affairs and Division III Athletics, and Dean of Students
- xi. Senior Vice President for University Advancement
- xii. Dean or Director (of either Maxwell Becton College of Arts and Sciences; Peter Sammartino School of Education; School of Pharmacy and Health Sciences; Silberman College of Business; International School of Hospitality, Sports, and Tourism Management; School of Psychology and Counseling; Gildart Haase School of Computer Sciences and Engineering; Henry P. Becton School of Nursing and Allied Health; or School of Public and Global Affairs)
- b) Responsible employees: A disclosure or report of Prohibited Conduct made to a Responsible Employee (regardless of whether the disclosure is made by the Complainant or a third party) does not constitute a report to FDU (i.e., is not actual knowledge) triggering a response under this Policy. FDU, as a matter of policy, requires Responsible Employees to promptly report disclosures of Prohibited Conduct to the Title IX Coordinator, including all information that has been disclosed to the Responsible Employee, such as the names of those involved, the locations of the incident, the alleged Prohibited Conduct, etc.
 - i. FDU has determined that all Employees (who are not Confidential Resources), including student workers, staff, faculty, OPEIU members, graduate assistants, etc., are "Responsible Employees" under Title IX and are therefore obligated to report any incidents or alleged incidents of Prohibited Conduct to the Title IX Coordinator. In addition, all Authorized Employees (other than the Title IX Coordinator) are required to report any such incidents or alleged incidents to the Title IX Coordinator.
 - ii. This category includes all student workers when working in the capacity of an employee of FDU, including but not limited to Resident Assistants, Graduate Assistants, Teaching Assistants and Administrative personnel.

Confidential Resources are designated professionals who have the ability to have legally privileged conversations under New Jersey state law. These generally include medical and mental health professionals (when working with specific patients under their care), rape crisis counselors and clergy (in the context of a confidential communication). Confidential Resources will not share information about an individual (including whether that individual has received services) without the individual's express written permission, unless there is a continuing threat of serious violence to the patient/client or to others or there is a legal obligation to reveal such information (e.g. suspected abuse or neglect of a minor).

All students and other members of the FDU community, even if not Authorized or Responsible Employees, are encouraged to report instances of possible Prohibited Conduct to the Title IX Coordinator.

D. Privacy and Confidentiality

FDU respects the privacy of individuals involved in any report of alleged Prohibited conduct, meaning the Title IX Coordinator and others responsible for carrying out this Policy will disclose information only as required to implement this Policy or by law. If a Complainant requests that a report of alleged Prohibited Conduct remain confidential (i.e., with the Complainant's identity not being disclosed to the Respondent and an investigation not being commenced), the Title IX Coordinator will evaluate that request in the context of FDU's responsibility to provide a safe and nondiscriminatory environment for all members of its community. FDU may question an employee-Respondent about alleged sex discrimination without disclosing the identity of the Complainant, provided that it does not take disciplinary action against that Respondent without implementing the Grievance Procedures.

Supportive Measures, as described in Section XI, may be requested and received by the Complainant without implementing the Grievance Procedures but there may be instances when disclosing the Complainant's identity is necessary to provide certain Supportive Measures (e.g., where the Respondent would need to know the identity of the Complainant in order to comply with a no-contact order). FDU will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair its ability to provide the Supportive Measures.

E. False Reports and Other False Information

The submission of knowingly false information is prohibited and will be addressed under FDU's Code of Conduct for students and employment policies for faculty and staff. This provision does not apply to reports made and other information submitted in good faith, even if the facts alleged are not substantiated by an investigation and/or Hearing determination.

F. Amnesty

FDU seeks to remove any barriers to reporting. FDU will generally offer any student, whether the Complainant or a witness, who reports conduct that may reasonably constitute Prohibited Conduct amnesty or limited immunity from being charged for policy violations related to the personal ingestion of alcohol or other drugs, provided that any such violations did not and do not place the health and safety of any person at risk. FDU may choose, however, to pursue educational or therapeutic remedies for those individuals.

XI. SUPPORTIVE MEASURES

Supportive Measures are non-disciplinary, non-punitive individualized services that may be provided to Complainants or Respondents upon request, when deemed by the Title IX Coordinator to be appropriate and reasonably available. Supportive Measures may also be imposed at the initiative and in the sole discretion of the Title IX Coordinator. Supportive Measures are available beginning at any time after the submission of a report of Prohibited Conduct

Supportive Measures are designed to restore or preserve equal access to FDU's education program or activity, without unreasonably burdening the other Party. Supportive Measures may be of any duration and may be modified at the discretion of the Title IX Coordinator, as circumstances warrant. Supportive Measures will be kept confidential to the extent doing so does not impair FDU's ability to provide them.

Supportive Measures may include, but are not limited to, the following:

- a) Access to counseling services;
- b) Course-related adjustments;
- c) Modification of work or class schedules;
- d) Restrictions on contact by one or both Parties (i.e., Disengagement/ "no contact" orders)
- e) Changes in work or housing location;
- f) Leaves of absence:
- g) Increased security and monitoring of certain areas; or
- h) Any other measures deemed appropriate by the Title IX Coordinator to preserve equal access to FDU's program or activities.

A student or employee's failure to abide by the terms of any Supportive Measure may result in discipline and, depending on the circumstances, could be deemed to constitute Retaliation.

XII. EMERGENCY REMOVALS

If at any point following the receipt of a report of Prohibited Conduct, FDU determines that the Respondent poses an immediate threat to the physical health or safety of the Complainant or any other person(s), including the Respondent, FDU may temporarily remove the Respondent from any or all of its education program or activities. The imposition of an Emergency Removal does not suggest a finding of responsibility for any Prohibited Conduct.

Before imposing an Emergency Removal, appropriate FDU resources will undertake an individualized safety and risk analysis concerning the Respondent at the request of the Title IX Coordinator. An Emergency Removal will be imposed only if FDU concludes that the threat to physical health or safety arises from the allegations of Prohibited Conduct and warrants the removal.

An Emergency Removal may involve the denial of access to some or all of FDU's campus facilities, academic programs, or other programs or activities. While FDU may provide alternative academic or employment opportunities during an Emergency Removal, it is not required to do so. Non-punitive actions taken as Supportive Measures do not constitute Emergency Removals.

The Title IX Coordinator will notify the Respondent of the terms imposed in connection with an Emergency Removal. The Respondent has the right to appeal the Emergency Removal immediately following the removal. In order to appeal the Emergency Removal, the Respondent shall submit an appeal, via email, to the Vice President of Student Affairs (if the Respondent is a student) or the Vice President for Human Resources (if the Respondent is an employee), within three business days from the date of the notice of Emergency Removal, explaining why the Emergency Removal is not warranted or appropriate. In evaluating the appeal, the Vice President of Student Affairs, or the Vice President of Human Resources, as appropriate, may seek additional information from the Respondent or any other individual. The Emergency Removal will remain in place while the appeal is pending. The Vice President of Student Affairs, or the Vice President of Human Resources, as appropriate, shall issue a decision as soon as possible under the circumstances. The rendered decision is final and shall not be subject to further appeal.

Separate from the Emergency Removal process, the Title IX Coordinator may request that the Vice President for Human Resources place an employee-Respondent on an administrative leave, with or without pay.

GRIEVANCE PROCEDURES

XIII. FORMAL COMPLAINT PROCESS

In order to commence the Grievance Procedures, a Complainant must file a Formal Complaint with the Title IX Coordinator. Alternatively, if the Title IX Coordinator has received a report of Prohibited Conduct, but the Complainant elects not to submit a Formal Complaint or the Complainant is unknown, the Title IX Coordinator has the discretion to sign the Formal Complaint if the Title IX Coordinator deems doing so necessary to address Prohibited Conduct, including in order to provide a safe and nondiscriminatory environment for all members of the FDU community. In doing so, The Title IX Coordinator does not become the Complainant.

There is no time limit within which a Complainant must file a Formal Complaint. However, at the time a Formal Complaint is filed, the Complainant must be participating or attempting to participate in FDU's programs or activities.

Pursuing a Formal Complaint does not preclude a Complainant from pursuing the filing of criminal charges. However, it is important to understand that the standard for criminal prosecution is different from that used in student and employee conduct proceedings. As a result, decisions rendered in either forum are not determinative of what will happen in the other.

If the Title IX Coordinator receives Formal Complaints against more than one Respondent or by more than one Complainant against one or more Respondents, or by one Party against the other party (i.e., "counterclaims"), where the allegations of Prohibited Conduct arise out of the same facts or circumstances and are so intertwined that the allegations directly relate to all the Parties, the Title IX Coordinator has the discretion to consolidate the Formal Complaints. If Formal Complaints are consolidated, all Parties must receive the same version of any written notice or determination.

XIV. WRITTEN NOTICE OF ALLEGATIONS

Upon the submission of a Formal Complaint, the Title IX Coordinator will notify the Parties in writing of the following with sufficient time for the Parties to prepare a response before any initial interview:

- a) FDU's Title IX Sexual Harassment Policy and Grievance Procedures;
- b) Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the alleged Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
- c) That Retaliation is prohibited;
- d) The Respondent is presumed not responsible for the alleged Prohibited Conduct until a determination is made at the conclusion of the grievance procedures. Prior to such a determination, the Parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Hearing Officer;

- e) The Parties may have an advisor of their choice at any meeting, interview, or other proceeding related to the Grievance Procedures, and who may be, but is not required to be, an attorney;
- f) The identity of the Investigator(s) as described in Section XIX;
- g) Notice that the Parties may inspect and review evidence gathered during the investigation as discussed in Section XX;
- h) Notice that FDU's policies prohibit knowingly making false statements or knowingly submitting false information in connection with or during the Grievance Procedures or Informal Resolution process.

If, in the course of an investigation, FDU decides to investigate additional allegations of Prohibited Conduct by the Respondent toward the Complainant that are not included in the Written Notice or that are included in a consolidated Formal Complaint, it will provide written notice of the additional allegations to the Parties.

XV. DISMISSAL FOR PURPOSES OF TITLE IX SEXUAL HARASSMENT

If any of the following circumstances are met, the Title IX Coordinator will dismiss the Formal Complaint for purposes of any form of Title IX Sexual Harassment:

- a) Even if proved, the misconduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined in Section IV;
- b) The misconduct alleged in the Formal Complaint did not occur in FDU's education program or activity, which is defined as locations, events or circumstances over which FDU exercised substantial control over both respondent and the context in which the misconduct occurred, or any building owned or controlled by a student organization officially recognized by FDU; or
- c) The misconduct alleged in the Formal Complaint is not alleged to have occurred in the United States.

Further, if any of the following circumstances are met, the Title IX Coordinator may dismiss the Formal Complaint for purposes of any form of Title IX Sexual Harassment, in the Title IX Coordinator's sole discretion:

- a) Complainant notifies the Title IX Coordinator in writing that Complainant wishes to withdraw the Formal Complaint or any allegation in it;
- b) Respondent is no longer enrolled or employed at FDU; or
- c) Specific circumstances prevent FDU from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegation.

The Title IX Coordinator will promptly send notice of the dismissal, including the reasons for dismissal, to the Complainant and Respondent via email. The notice will advise the Parties whether the Formal Complaint will proceed as possible under separate FDU policies. Both the Complainant and Respondent may appeal any decision to dismiss the Formal Complaint for purposes of Title IX Sexual Harassment by submitting a request for appeal to the Title IX

Coordinator by email within three calendar days of the date of the Title IX Coordinator's email. The appeal will be determined using the procedures set forth in Section XXIV.

The decision whether the matter will proceed as a potential violation of other FDU policies, including the Policy on Non-Title IX Prohibited Discrimination, Harassment and Related Misconduct, is not subject to appeal. When a Complaint is dismissed, FDU will, at a minimum:

- a) Offer Supportive Measures to the Complainant as appropriate;
- b) If the Respondent has been notified of the allegations, offer Supportive Measures to the Respondent as appropriate; and
- c) Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that Prohibited Conduct does not continue or recur within FDU's education program or activity.

XVI. ADVISORS

The Parties are entitled to identify an Advisor of their choice, who may accompany them to all investigative interviews, Hearings, and other meetings or proceedings held in connection with a Formal Complaint ("Formal Complaint Process Proceedings"). An Advisor is a person who has agreed to provide support and advice to a Complainant or Respondent. The Parties are responsible for identifying their own Advisor, if they wish to have one. FDU will maintain a list of employees who have agreed to serve as Advisors at no cost to Complainants or Respondents, whom the Complainant or Respondent may, but are not required to, contact to determine whether they are available for that purpose. In its discretion, FDU may choose to expand the list of Advisors to include persons who are external to the University.

As discussed in Section XXII(F), the Parties must have an Advisor for the purpose of conducting cross-examination at a Hearing. If a Party has not identified an Advisor to accompany them to the Hearing for the purpose of conducting cross-examination, FDU will provide one for that limited purpose.

Except when conducting cross-examination as discussed in Section XXII(F), Advisors may not speak aloud during any Formal Complaint Process Proceedings, including by addressing anyone other than the individual for whom they are an Advisor. The Advisor may confer with the individual whom they are advising quietly or by means of written notes. Parties may request a brief recess to consult with their Advisor, which may be granted at the sole discretion of the FDU representative conducting the Formal Complaint Process Proceeding. An Advisor whose presence is deemed at that FDU representative's sole discretion to be improperly disruptive or inconsistent with Rules of Decorum established by FDU, as discussed in Section XXII(H), will be required to leave and may be prohibited from participating in future Formal Complaint Process Proceedings.

While FDU may consider short delays in scheduling to reasonably accommodate an Advisor's availability, whether to grant such a request is in the sole discretion of the FDU representative responsible for the event in question.

XVII. INFORMAL RESOLUTION

Informal Resolution presents the opportunity for the Complainant and Respondent to resolve allegations of Prohibited Conduct without an investigation or hearing. Participation in Informal Resolution in lieu of the Formal Resolution Process is purely voluntary. Informal Resolution is available only when a Formal Complaint has been filed, and the Parties agree to its use in writing. Informal Resolution may be used only with the approval of the Title IX Coordinator, who may deem its use inappropriate based on the specific allegations involved or other factors. Informal Resolution is not available to resolve a student-Complainant's allegations that an employee has engaged in Title IX Sexual Harassment. Prior to initiating Informal Resolution, the Title IX Coordinator will provide the Parties with written notice disclosing the allegations, the requirements of the process, the right to withdraw from Informal Resolution to pursue Formal Resolution, and any consequences of participation (e.g., as it relates to any subsequent Formal Resolution if Informal Resolution is not achieved).

Informal Resolution can be commenced at any point prior to the conclusion of a Hearing under the Formal Resolution Process. It is conducted by an Informal Resolution Facilitator appointed by the Title IX Coordinator. The Complainant, Respondent, Title IX Coordinator or Facilitator may terminate Informal Resolution at any time prior to its completion. If Informal Resolution is terminated, the Formal Resolution Process will promptly commence or resume, as appropriate.

FDU's Informal Resolution process is a mediation process. Mediation may involve the Complainant and Respondent being in the same or different rooms, but they will never be required to be in the same room. Mediation typically does not require an admission of responsibility for the conduct which may be reasonably considered Prohibited Conduct by the Respondent.

Unless the Complainant and the Respondent otherwise agree in writing before the commencement of an Informal Resolution process or as otherwise may be required by applicable law:

- a) All communications, documents, and materials created for the Informal Resolution process and exchanged between the Parties for the process will be confidential and may not be submitted as evidence as part of any subsequent Grievance Process between the same Parties; and
- b) The Informal Resolution Facilitator may not serve as a witness in any subsequent Grievance Process between the same Parties.

The outcome of the Informal Resolution will be documented in an agreement or other form that is signed by both the Complainant and the Respondent.

Unless otherwise communicated in writing by the Informal Resolution Facilitator or other authorized representative of FDU to both the Complainant and the Respondent before the

commencement of an Informal Resolution process, or as otherwise may be required by applicable law, the outcome of Informal Resolution will not:

- a) Constitute a disciplinary outcome to be reported to third parties (e.g., in connection with graduate school applications, reference checks, etc.); and
- b) Be taken into consideration in the event of future findings of responsibility for sex discrimination or other violations of FDU's policies.

If the Informal Resolution Facilitator or other authorized representative of FDU communicates the intention that either condition listed directly above will not apply to the Informal Resolution process, either Party, or both Parties, may decline to go forward with the Informal Resolution, in which case the Informal Resolution process will not go forward and other processes (including the possibility of the Formal Resolution Process) will be available. Failure to adhere to an agreed outcome of an Informal Resolution process is subject to the sanctions outlined in Section XXV(A), below.

The Informal Resolution process, typically, should be completed within thirty calendar days of the Parties documenting their agreement to participate. That period may be extended at the discretion of the Title IX Coordinator.

XVIII. FORMAL RESOLUTION

FDU strives to resolve Formal Complaints within 90 calendar days of the submission of a Formal Complaint but balances its desire to achieve a prompt resolution with the need to conduct a thorough and complete investigation, which may delay that timeframe. Delays might also result from a number of factors, including but not limited to the appeal of a dismissal as discussed in Section XXIV, impacts of concurrent criminal processes, or an attempt at Informal Resolution. The Title IX Coordinator may extend the time for completion of the Formal Resolution Process for good cause as determined in the sole discretion of the Title IX Coordinator, and will provide written notice to the Parties of the reason for extension or delay.

At the discretion of the Title IX Coordinator, possible violations of the Student Code of Conduct, The Non-Title IX Policy on Prohibited Discrimination, Harassment and Related Misconduct and Procedures, or other policies that occurred directly in connection with the alleged Prohibited Conduct may be, but are not required to be, addressed under the Formal Resolution Process herein, in lieu of engaging in a separate decision-making process for those possible violations. Where applicable, references in this Policy to Prohibited Conduct will be deemed to include violations of other FDU policies that are addressed through the Formal Resolution Process set forth in this Policy.

XIX. INVESTIGATION

FDU will provide for adequate, reliable, and impartial investigation of Complaints when the Grievance Procedures are requested to be initiated through the submission of a Formal Complaint.

The burden is on FDU – not the Parties – to conduct an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred.

The written notice described in Section XIV will identify the appointed Investigator. Either Party may object to the Investigator on the grounds of conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, by submitting an objection to the Title IX Coordinator in writing within three business days of receipt of the issuance of the written notice. The Title IX Coordinator, in their sole discretion, shall determine whether a different Investigator should be appointed.

FDU will provide to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate.

The Investigator will conduct an investigation of the allegations and is responsible for interviewing the Parties and witnesses and gathering relevant and not otherwise impermissible inculpatory and exculpatory evidence. The Investigator may not access, consider, disclose or otherwise use records that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional in connection with the provision of treatment to the Complainant or Respondent, unless the Investigator obtains the Complainant's or Respondent's, as appropriate, voluntary written consent to do so.

All Parties will have an equal opportunity to identify witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, for the Investigator. Parties may be accompanied by an Advisor of their choice at any investigative interview, as described in Section XVI. The Investigator may contact any law enforcement agency that is conducting its own investigation to ascertain the status of that investigation; and to determine the extent to which any evidence collected by law enforcement may be available to FDU in its investigation. At the request of law enforcement, the Investigator may delay the FDU investigation temporarily while an external law enforcement agency is gathering evidence. If the FDU investigation is temporarily delayed, the Investigator will promptly resume the FDU investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation. In the event that the evidence-gathering stage of a criminal investigation becomes unreasonably long, FDU may decide to move forward even while the criminal investigation is continuing.

XX. INVESTIGATION REPORT

The Investigator will prepare an investigation report summarizing all relevant evidence. The report will exclude all non-relevant evidence, as well as any evidence not subject to disclosure for reasons set forth herein (e.g., medical records regarding which the Party has not authorized disclosure).

Prior to completing the investigation report, the Investigator will send to both Complainant and Respondent, and their Advisors an offer to inspect all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, regardless of whether it is anticipated that the evidence will be used at the hearing or in connection with any decision on responsibility. The Parties and their Advisors are strictly prohibited from disclosing or disseminating the evidence to any third parties and from using it for purposes other than carrying out the Formal Resolution Process. Complainant and Respondent will have ten calendar days to provide a written response concerning the evidence to the Investigator, including identifying additional evidence for the Investigator's consideration prior to completing the investigation report. The response must be by the Party, not the Party's Advisor. A Party's response will be shared with the other Party.

After receipt of the Parties' responses concerning the evidence and at least ten calendar days before the hearing, the Investigator will provide the Complainant and Respondent, and their Advisors, if any, a copy of the investigation report. The Complainant and Respondent may, but are not required to, provide written responses to the investigation report at least three calendar days before the hearing. Any response must be by the Party, not the Party's Advisor. A Party's response will be shared with the other Party.

XXI. HEARING NOTICE

After the investigation report has been provided to the Parties and their Advisors, if any, and not fewer than seven calendar days before the hearing, the Title IX Coordinator will issue a Hearing notice via email advising the Parties of the following:

- a) The date, time and location of the Hearing;
- b) The specific charges of Prohibited Conduct and (if applicable) other violations of FDU policies subject to disposition at the Hearing and a brief description of the conduct resulting in the charges;
- c) The individual to serve as the Hearing Officer; and
- d) That at the request of either Party, the Hearing will take place with the Parties located in separate rooms with technology enabling the Parties to simultaneously see and hear the Party/witness answering questions. Requests for separate rooms must be submitted to the Title IX Coordinator via email at least three calendar days before the Hearing.

Any Party may object to the Hearing date or challenge the appointment of the Hearing Officer for bias or conflict of interest by submitting a written objection to the Title IX Coordinator via email within three calendar days of the Title IX Coordinator issuing the Hearing Notice. The Title IX Coordinator, in their sole discretion, shall determine whether the Hearing Officer should be removed and/or the Hearing rescheduled. Once the Hearing Officer is confirmed, the Title IX Coordinator will provide the Hearing Officer with a copy of the investigation report.

XXII. PROCEDURE FOR LIVE HEARING

Hearings are governed by the procedures set forth below. The formal Rules of Evidence that may apply to any courtroom proceeding do not apply to Hearings conducted under this Policy.

A. Attendees

Except as provided in this paragraph, the only individuals who may appear at a Hearing are the Complainant and Advisor, Respondent and Advisor, and witnesses called by the Hearing Officer. The Parties and their Advisors may be present throughout the Hearing, with the exception of any recesses for which they are excused by the Hearing Officer. Witnesses are permitted to be present only when providing testimony. The Investigator and Title IX Coordinator may be present throughout the Hearing, as may other FDU representatives at the discretion of the Hearing Officer. If a Party fails to attend a Hearing, the Hearing may be held in the Party's absence, at the discretion of the Hearing Officer.

B. Witnesses

At least five business days before the Hearing, the Hearing Officer will advise the Parties which witnesses will be requested to provide testimony at the Hearing. No later than two business days after such notice, the Parties may request that additional witnesses be requested to be present at the Hearing. The request must be submitted to the Hearing Officer in writing, including a brief description of why the information is relevant to the determination of whether sex discrimination occurred. Whether or not to approve such requests as potentially providing relevant and not otherwise impermissible information shall be in the sole discretion of the Hearing Officer, who will advise the requesting Party of the final decision. If the request is approved, the Hearing Officer will advise the other Party of the additional witness's participation.

C. Documents

All documentary evidence provided to the Parties under Section XIX will be made available at the Hearing, as well as all evidence produced by the Parties in their response. The availability of such evidence does not suggest a determination on relevance, which shall be made by the Hearing Officer.

D. Relevance

The Hearing Officer is responsible for making all determinations of relevance as to witnesses, questions and documentary evidence presented at the Hearing. For purposes of this Policy, questions are relevant when they seek evidence that may aid in showing whether the alleged Prohibited Conduct occurred, and evidence is relevant when it may aid a Hearing Officer in determining whether the alleged Prohibited Conduct occurred.

Evidence that is not relevant or otherwise impermissible will be excluded at the Hearing and may not form the basis for any decision by the Hearing Officer. Evidence that is duplicative of

evidence already in the Hearing record may be deemed not relevant. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are impermissible and thus, not relevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the alleged conduct or if the questions and evidence concern a specific incident of the Complainant's prior sexual behavior with the Respondent and are offered to prove consent. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged Prohibited Conduct or preclude determination that the Prohibited Conduct occurred.

E. Standard of Proof

The Hearing Officer will make decisions on responsibility using a preponderance of the evidence standard of proof. "Preponderance of the evidence" means that it is more likely than not that the Respondent is responsible for the alleged Prohibited Conduct.

F. Advisors at Hearings

The Parties may be accompanied by their Advisor at the Hearing. The Advisor may not address the Title IX Coordinator, Investigator, Hearing Officer, other Advisors, or any other individuals participating in the Hearing. The only exception is with respect to cross-examination as discussed below. Like the Parties, Advisors are required to adhere to the Rules of Decorum applicable to Hearings, as outlined in Section XXII(H). An Advisor who fails to adhere to the Rules of Decorum may, at the sole discretion of the Hearing Officer, be required to leave the Hearing.

The Parties shall inform the Title IX Coordinator whether they will be accompanied at the hearing by their Advisor of choice by no later than five business days before the Hearing. If a Party has not identified an Advisor, FDU will provide one for the sole purpose of conducting cross-examination as discussed below.

The Parties may not conduct cross-examination themselves; cross-examination must be performed by an Advisor. If an Advisor is required to leave a Hearing for failure to adhere to the Rules of Decorum or for any other reason, the Hearing Officer shall recess the Hearing until FDU appoints an Advisor for purposes of cross-examination. Advisors provided by FDU will be adults with an understanding of the purpose of cross-examination, but will not necessarily be attorneys or have training commensurate to attorneys with respect to conducting cross-examination.

G. Hearing procedures

The procedures below provide the general framework for any Hearing. The Title IX Coordinator or Hearing Officer may alter certain procedures as deemed appropriate in their sole discretion to aid in the equitable resolution of the matter.

i. Recording

The Hearing will be recorded by means of audio or audiovisual recording if conducted in person, or by use of the recording function of the online platform if conducted

virtually. Recesses taken or approved by the Hearing Officer, including for the Hearing Officer to consult with the Title IX Coordinator, Investigator, or any other FDU representative, will not be recorded.

ii. Opening Statements

Each Party will have the opportunity to make a brief opening statement. The Parties will make any statements themselves, not through their Advisor.

iii. Parties

Generally, the Hearing Officer will hear from the Complainant and their witnesses first, followed by the Respondent and their witnesses. Each Party will have the opportunity to provide relevant and not otherwise impermissible evidence to the Hearing Officer. The Hearing Officer may ask relevant questions of each Party and witness, either before, during, or in follow-up to their testimony. Each Party's Advisor will have the opportunity to ask cross-examination questions of the other Party and each witness. Advisors are reminded of the importance of adhering to the Rules of Decorum in cross-examining the Parties and any witnesses. If a Party does not submit to cross-examination, the Hearing Officer may rely on any statement of that Party in reaching a determination regarding responsibility, regardless of where, when or in what forum the statement was made. The Hearing Officer cannot draw an inference regarding responsibility based solely on a Party's absence from the Hearing or refusal to answer questions.

With respect to cross-examination, Advisors are limited to asking only relevant questions. The Hearing Officer will determine whether questions are relevant prior to the Party answering the question. If the question is deemed not relevant, the Hearing Officer will provide a brief explanation and the question will be precluded. The Hearing Officer's decision is not subject to challenge or objection during the Hearing.

iv. Witnesses

A similar process and the same rules that apply to Parties will apply to the testimony of witnesses. Like the Parties, any witness may appear remotely, with technology allowing the Hearing participants to simultaneously see and hear the witness.

[If a witness does not submit to cross-examination, the Hearing Officer may rely on any statement of that witness in reaching a determination regarding responsibility, regardless of where, when or in what forum the statement was made. The Hearing Officer cannot draw an inference regarding responsibility based solely on a witness's absence from the Hearing or refusal to answer questions.]

v. Closing Statement

Each Party will have the opportunity to make a brief closing statement. The Parties will make any statements themselves, not through their Advisor.

H. Rules of Decorum

The following Rules of Decorum apply to the Parties, Advisors and witnesses participating in any Hearing. Individuals failing to follow the Rules of Decorum may be directed to leave the Hearing at the Hearing Officer's sole discretion. Although the Hearing Officer may provide warnings or reminders of the Rules of Decorum before such removal, a pre-removal warning or reminder will not necessarily be provided depending on the nature of the conduct in question.

No person participating in the Hearing may act in a disorderly or disruptive manner or otherwise impede the orderly conduct of the Hearing. Interactions must be civil and respectful. Questions will be asked from a seated position. Questions or other statements that are badgering or unduly repetitive will not be permitted. Cell phones and other electronic devices must be turned off unless being offered as evidence. Other than the recording being made by FDU, no participant may record any portion of the Hearing. The Hearing Officer may establish specific additional rules for a Hearing in the interest of efficiency and orderly progress.

XXIII. HEARING OUTCOME LETTER

Within ten business days of the conclusion of the Hearing, the Hearing Officer will issue the Hearing Outcome Letter via email to the Parties.

The Hearing Outcome Letter will include:

- a) A description of the allegations that led to the Hearing, as potentially constituting Prohibited Conduct;
- b) A description of the procedural steps taken from the receipt of the Formal Complaint through the determination;
- c) A statement of factual findings supporting the determination;
- d) A statement of the conclusions regarding the application of this Policy to the facts;
- e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- f) An explanation of the disciplinary sanctions imposed on the Respondent, if any;
- g) A statement of whether remedies designed to restore or preserve equal access to FDU's education program or activity will be provided to the Complainant. Specific remedies will be identified in the Hearing Outcome Letter only to the extent those remedies directly affect the Respondent. The Title IX Coordinator is responsible for implementing such remedies; and
- h) The procedures and permissible bases for the Complainant and Respondent to appeal.

The Hearing Outcome becomes final following the determination of the appeals, if any, or upon the date following the deadline for filing an appeal, if no appeal is pursued. No further appeals of any kind are permitted once the Hearing Outcome becomes final.

XXIV. APPEALS

Either Party may appeal a determination of responsibility (or non-responsibility) occurred as set forth by the Hearing Officer or a Dismissal by submitting a written appeal to the Title IX Coordinator by email within five business days of the Hearing Officer's issuance of the Hearing Outcome Letter. The Appeal must be in writing and clearly explain the basis for the Appeal. If the appeal is from the outcome of a Hearing, the Parties shall have access to the record of the Hearing to prepare their appeal on such terms as the Title IX Coordinator provides. Upon receipt of an appeal, the Title IX Coordinator will notify the other Party that the appeal has been filed, permitting the Party three calendar days to provide a response, and providing the Parties with the identity of the Appeal Officer who will determine the matter. The Party's response will be provided to the appealing Party, but no further exchange of positions is permitted.

The Parties may challenge the appointment of the Appeal Officer for bias or conflict of interest by submitting a written objection to the Title IX Coordinator via email within three calendar days of the Title IX Coordinator issuing the notice. The Title IX Coordinator, in their sole discretion, shall determine whether a new Appeal Officer should be identified.

The Title IX Coordinator will forward the appeal and the other Party's response to the Appeal Officer. The Appeal Officer will evaluate the appeal on the written record and recording of the Hearing, and may seek input from the Title IX Coordinator, Investigator and/or Hearing Officer as deemed appropriate in the Appeal Officer's sole discretion.

For appeals from a Dismissal in Section XV, the Appeal Officer will typically issue a written decision on the appeal, including the result and a brief rationale, within five business days of the Hearing Officer's receipt of the appeal materials.

For appeals from a Hearing Outcome, the Appeal Officer will typically issue a written decision on the appeal, including the result and a brief rationale, within seven business days of the Appeal Officer's receipt of the appeal materials. The Appeal Officer may (1) affirm the findings or (2) alter the findings or order that all or part of the Formal Resolution Process be re-performed only where there is clear error based on the following stated appeal grounds:

- a) Procedural irregularity that would change the outcome;
- b) New evidence that would change the outcome and that was not reasonably available at the time of the Hearing; or
- c) The Title IX Coordinator, Investigator, or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome of the matter.

Dissatisfaction with the determination is not grounds for appeal. The Appeal Officer's decision is final and no further appeals are permitted.

XXV. DISCIPLINARY SANCTIONS AND REMEDIES

A. Sanctions

If the Respondent is found responsible for any Prohibited Conduct, the Title IX Coordinator will provide the Hearing Officer with the Respondent's prior conduct record for consideration in the Hearing Officer's assignment of a sanction or sanctions. The range of available sanctions includes:

- i. Sanctions for students may include any of the sanctions that are available for violations of the University's Code of Student Rights, Responsibilities, and Conduct, including:
 - a. Administrative reassignment of housing;
 - b. Campus restrictions;
 - c. Campus standard probation;
 - d. Co-curricular restriction;
 - e. Community restitution;
 - f. Community service;
 - g. Counseling assessment/support;
 - h. Disciplinary reprimand;
 - i. Disengagement notice or no-contact order;
 - j. Educational sanctions (exercises, class assignments/essay, workshops, etc.);
 - k. Fines;
 - 1. Housing dismissal;
 - m. Housing probation;
 - n. Housing suspension;
 - o. Social restriction;
 - p. University dismissal;
 - q. University suspension.
- ii. Sanctions for employees may include any of the sanctions that are available for violations of the University's Employee Handbook and Faculty Handbook, including:
 - a. A letter of reprimand being placed in their personnel file
 - b. Additional training;
 - c. Written letter of apology;
 - d. Suspension (paid or unpaid);
 - e. Dismissal;
 - f. Work schedule modifications;
 - g. Voluntary leave of absence;
 - h. Restrictions on campus activities;
 - i. Termination from the University.

iii. Sanctions for faculty covered by the Faculty Handbook will be reviewed with the University Provost and/or the University President.

B. Remedies

The Title IX Coordinator is responsible for the implementation of remedies designed to restore or preserve equal access to FDU's education program or activity. While remedies might constitute Supportive Measures, they also might be in the form of sanctions.

APPENDIX A

FDU AND COMMUNITY RESOURCES

Consistent with the definition of Confidential Resources and licensed community professionals, there are a number of resources within FDU and the Florham Park and Teaneck communities where students and employees can obtain confidential, trauma-informed counseling and support. These resources include the following:

A. New Jersey State

- i. New Jersey Coalition Against Sexual Assault (NJCASA)
 - a. 24-hour hotline: 800-601-7200
- ii. New Jersey Parent Link
 - a. 24-hour Family Health Line: 800-328-3838b. Website: https://www.nj.gov/njparentlink/

B. Florham Campus Confidential Resources

- i. <u>Office of Health Wellness</u>: pregnancy testing, wellness exams, STI testing, treatment or referral, and HIV/AIDS testing referrals for students.
 - a. Hours:
 - i. Monday: 10:30am 5:30pm
 - ii. Tuesday: 9:30am 4:30pm
 - iii. Wednesday: 9:30am 4:30pm
 - iv. Thursday: 11:30am 6:30pm
 - v. Friday: 9:30am 4:30pm
 - b. Phone: 973-443-8535
- ii. Office of Mental and Emotional Wellbeing: offers students free and confidential counseling by licensed mental health professionals (by appointment).
 - a. Hours:
 - i. Monday: 10:30am 5:30pm
 - ii. Tuesday: 9:30am 4:30pm
 - iii. Wednesday: 9:30am 4:30pm
 - iv. Thursday: 11:30am 6:30pm
 - v. Friday: 9:30am 4:30pm
 - b. Phone: 973-443-8504
- iii. <u>Uwill</u>: provides students with access to confidential telemental health at no cost and 24/7 crisis management. A profile must be completed prior to any services being rendered.
 - a. Website: https://app.uwill.com/

C. Morris County Confidential Resources

- i. <u>Morristown Medical Center-Emergency Room</u>: offers 24-hour emergency and confidential medical care, including sexual assault forensic examinations, pregnancy testing, screening and treatment of sexually transmitted infections, and emergency contraceptives.
 - a. Address: 100 Madison Ave., Morristown, NJ 07960
 - b. Phone: 973-971-5000
- ii. <u>Morris CARES at Morristown Medical Center</u>: offers confidential support and crisis counseling for survivors of sexual assault:
 - a. Address: 100 Madison Ave., Morristown, NJ 07960
 - b. 24-Hour Sexual Assault Program Hotline: 973-829-0587
- iii. <u>JBWS</u>: located in Morriston, JBWS offers support and resources for survivors of domestic violence, confidential counseling, emergency shelter, safe house, transitional living, children's services, education and training, and legal assistance.
 - a. 24-Hour helpline: 877-782-2873
 - b. Website: https://jbws.org/
- iv. <u>First Choice Women's Resource Centers</u>: offers assistance with pregnancy questions, abortion options and STD testing.
 - a. Address: 82 Speedwell Ave., Morristown, NJ 07960
 - b. Phone: 973-538-1426
 - c. Website: https://1stchoice.org/

D. Metropolitan Campus Confidential Resources

- i. <u>Office of Health Wellness</u>: pregnancy testing, wellness exams, STI testing, treatment or referral, and HIV/AIDS testing referrals for students.
 - a. Hours:
 - i. Monday: 9:30am 4:30pm
 - ii. Tuesday: 10:30am 5:30pm
 - iii. Wednesday: 11:30am 6:30pm
 - iv. Thursday: 9:30am 4:30pm
 - v. Friday: 9:30am 4:30pm
 - b. Phone: 201-692-2437
- ii. Office of Mental and Emotional Wellbeing: offers students free and confidential counseling by licensed mental health professionals (by appointment).
 - a. Hours:
 - i. Monday: 9:30am 4:30pm
 - ii. Tuesday: 10:30am 5:30pm
 - iii. Wednesday: 11:30am 6:30pm
 - iv. Thursday: 9:30am 4:30pm
 - v. Friday: 9:30am 4:30pm
 - b. Phone: 201-692-2174

- iii. Campus Ministries: offers spiritual wellness and counseling (by appointment).
 - a. Address: Interfaith Chapel, 842 River Road, Teaneck, NJ 07666
 - b. Phone: 201-692-2406
 - c. Email: omj@fdu.edu
- iv. <u>Uwill</u>: provides students with access to confidential telemental health at no cost and 24/7 crisis management. A profile must be completed prior to any services being rendered.
 - a. Website: https://app.uwill.com/

E. Bergen County Confidential Resources

- i. <u>Holy Name Medical Center Emergency Department</u>: offers 24-hour emergency and confidential medical care, including sexual assault forensic examinations, pregnancy testing, screening and treatment of sexually transmitted infections, and emergency contraceptives.
 - a. Address: 718 Teaneck Road, Teaneck, NJ 07666
 - b. Phone: 201-833-3210
- ii. healingSPACE YWCA Northern New Jersey Sexual Violence Resource Center: offers support for survivors of sexual assault, their families and friends. A 24-hour crisis intervention hotline provides free and confidential assistance, and trained advocates provide counseling and medical and legal accompaniments to survivors. HealingSPACE also offers support groups, volunteer training, and educational programs for schools and businesses, as well as sponsors activities to raise awareness about sexual violence.
 - a. Address: 214 State Street, Suite 207, Hackensack, NJ 07601
 - b. 24-hour hotline: 201-487-2227
 - c. Email: healingspace@ywcannj.org
- iii. <u>Center for Hope and Safety</u>: offers assistance to victims, and their families, of domestic violence and offers a 24-hour crisis hotline, and emergency shelter program, transitional housing, and other resources.
 - a. Address: 12 Overlook Ave., Rochelle Park, NJ 07662
 - b. 24-hour hotline: 201-944-9600
 - c. Email: safeline@hopeandsafetynj.org
- iv. <u>Lighthouse Pregnancy Resource Center</u>: offers assistance with pregnancy questions, abortion options and STD testing.
 - a. Address: 809 Main St., Hackensack, NJ 07601
 - b. Phone: 973-238-9045
 - c. Website: https://lighthouseprc.org/