

# FDU's Title IX Sexual Harassment and Grievance Policy

Title IX Team Training

Fall 2025



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# Title IX

*“No 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 program or activity receiving federal financial assistance.”*

20 U.S.C. § 1681

34 C.F.R. 106



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# A Brief Timeline

- August 14, 2020: Title IX regulations updated and become effective
- August 1, 2024: New Title IX regulations become effective
- January 9, 2025: The 2024 Title IX regulations are vacated which means the 2020 regulations are currently back into effect.



# Title IX Geographic Limitations

- For an issue to have Title IX jurisdiction, it must fall within the following geographical limitations
  - The event(s) must have taken place within the United States
  - The event(s) must have taken place on property owned or controlled by FDU
    - This includes off-campus spaces rented or officially occupied by FDU for the purpose of FDU sponsored events or courses

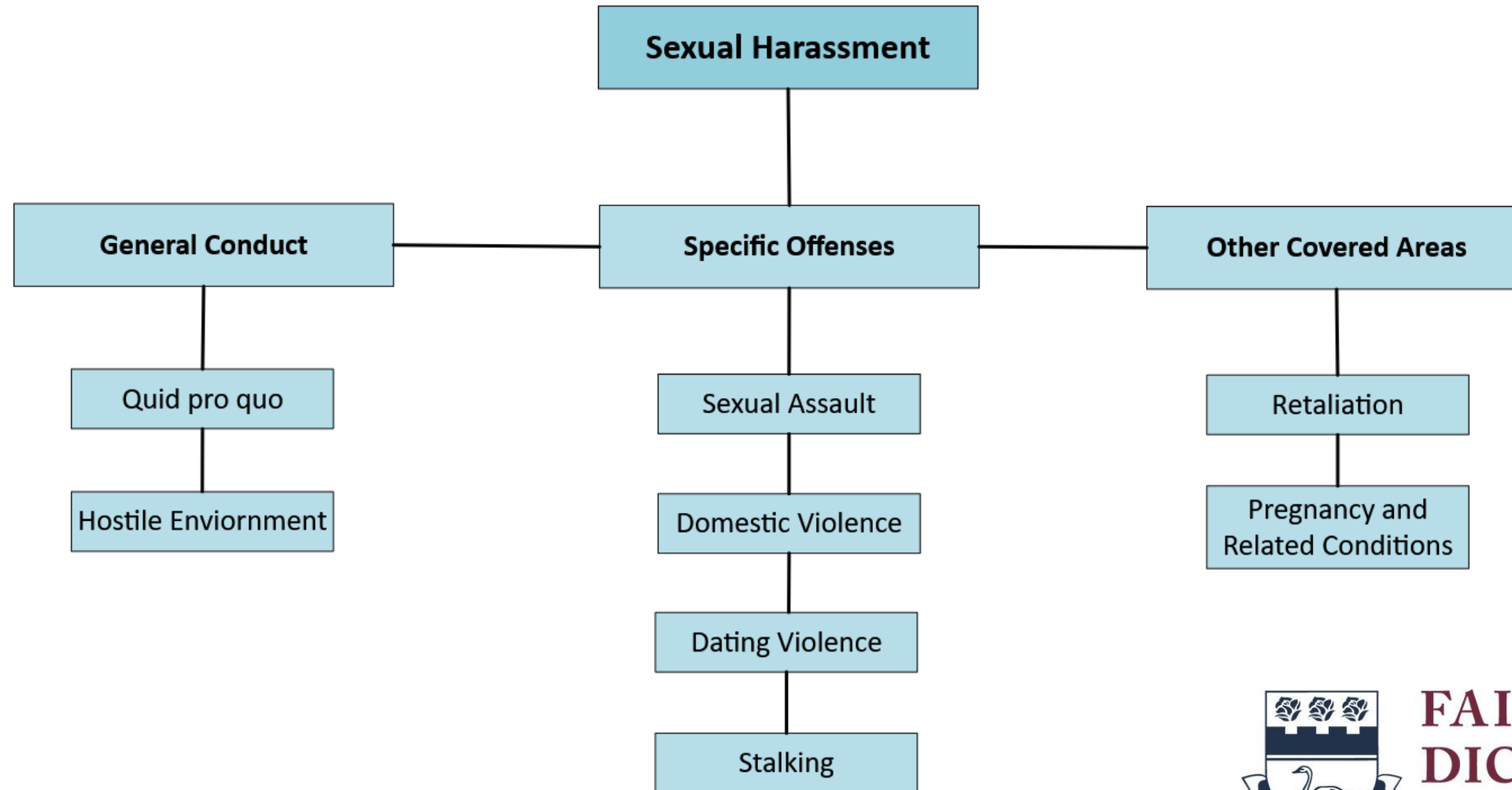


# Other Necessary Conditions

- The Complainant (individual who has been subjected to the alleged conduct) must be participating, or attempting to participate in an FDU program or event
- The Respondent (individual who has allegedly committed the conduct) must be under the jurisdiction of FDU
  - A current student, employee, or volunteer



# Prohibited Conduct Under FDU's Title IX Policy



# 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. \*

*\*This broader definition encompasses both Quid Pro Quo and Hostile Environment Harassment*



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# Quid Pro Quo

Commonly referred to “this for that” harassment, FDU’s definition states:

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.

In other words: “I’ll give you X (better grade, better work assignment, etc.) if you have sex with me”



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# Hostile Environment

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.



## Some Examples of Possible Hostile Environment Sexual Harassment

- Unsolicited, deliberate, or repeated touching, sexual flirtation, advances or propositions which are not welcomed and/or desired;
- Unwelcome jokes, stories, comments, innuendos, or other sexually oriented statements which are specifically designed to embarrass or humiliate through their sexual subject matter content;
- Unwelcome sexual communication such as graphic or degrading comments about one's gender related to personal appearance;
- Unwelcome display of sexually explicit materials, objects, or pictures in an individual's place of work or study, such as viewing material on computers or other electronic devices where others can see.

*(Subjective offensiveness alone is not enough to create a hostile environment)*



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# Specific Offenses (VAWA Offences)

Section 304 of the Violence Against Women Reauthorization Act of 2013 (reauthorizing VAWA) requires FDU to have policies and procedures to address sexual violence, domestic violence, dating violence and stalking. It further requires that FDU provide education, prevention, and awareness programs on these same types of conduct, and provide information about available resources, law enforcement options and supportive measures.

The corresponding Title IX prohibited conduct includes:

**Sexual Assault**

**Domestic Violence**

**Dating Violence**

**Stalking**



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## 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 **is not** to be inferred from silence, passivity, or a lack of resistance. It is also not to be inferred from an existing or previous dating or sexual relationship.
- Consent **cannot be obtained by coercion or force**, or by taking advantage of the incapacitation of another person
- **Consent can be withdrawn** at any time through words or actions that clearly convey that the party is no longer willing to engage in sexual activity.



# Sexual Assault

Sexual Assault is classified as a forcible or nonforcible sex offense and includes any of the following prohibited conduct:

- 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;
- 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;
- 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;
- Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- Nonforcible sexual intercourse with a person who is under the statutory age of consent.



# Domestic Violence

Domestic Violence is a felony or misdemeanor crime committed by a person who:

- 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;
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner\*;
- Shares a child in common with the victim; or
- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of New Jersey.

*\*Note: FDU does not consider roommates living in the residence halls as “cohabitating” for the purposes of Title IX Domestic Violence*



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# Dating Violence

Sexual Assault is classified as violence, including sexual or physical abuse or the threat of such abuse, committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the other party;
- 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



# Stalking

Stalking is defined as 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:

- 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;
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim; and
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.





## Other Areas Under Title IX

- **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 FDU's Title IX Policy.
- **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.
  - FDU is required to treat pregnancy and related conditions in the same manner as it would treat any short-term medical issue, and the Title IX Coordinator is responsible to ensure that supportive measures are in place.



# FDU's Grievance Procedures



# Reporting

Anyone who has experienced or has knowledge of conduct that may violate FDU's Title IX Policy may make a report to the Title IX Coordinator, or either Deputy Title IX Coordinator in person, by mail, by telephone, or by using the online reporting form which may be found at:

[https://cm.maxient.com/reportingform.php?FairleighDickinsonUniv&layout\\_id=26](https://cm.maxient.com/reportingform.php?FairleighDickinsonUniv&layout_id=26)



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## Reporting *cont.*

All employees are required to provide contact information for the Title IX Coordinator and inform the student that this person can assist with supportive measures when a student discloses that she is pregnant – no report to the Coordinator is required in these cases.



# Responding to a Report

Upon receipt of a report, the Title IX Coordinator will reach out to the Complainant and/or reporter. The Coordinator will offer the following to the Complainant:

- A meeting to speak about the incident(s)
- Supportive measures
- Information on filing a Formal Complaint
- The Grievance Procedures processes



## Supportive Measures

Supportive Measure are individualized measures offered **as appropriate and 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. They are designed to 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. Examples of some possible Supportive Measures include:

- Access to Counseling
- Course-related adjustments
- No-Contact orders
- Changes in housing location
- Referrals to off-campus resources (e.g., victim advocacy, counseling, etc.)

*Note: we do not require the submission of a Formal Complaint for a student to receive Supportive Measures*



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# Complainant Outreach

Upon receipt of a report, the Title IX Coordinator will reach out to the Complainant and/or reporter. The Coordinator will offer the following to the Complainant:

- A meeting to speak about the incident(s)
- Supportive measures
- Information on filing a Formal Complaint
- The Grievance Procedures processes



# Formal Complaint

In order for a complaint to be considered formal, it must request that FDU open an investigation of an issue that is described, be in writing, and signed (wet or digital signature) by the Complainant.

Once a Formal Complaint has been received, and notice has been sent to the involved parties, three options are available:

- Dismissal on the merits
  - Even if all alleged conduct is taken as true, the conduct does not constitute a violation of Title IX, or the conduct occurred in a location that is not within the jurisdiction of Title IX
- Informal Resolution
- Formal Resolution





## 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 for both parties. Either party can choose to discontinue at any time up to when an agreement is reached – if done, the matter shifts to a Formal Resolution.
- 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.
- Informal Resolution is not available to resolve a student-Complainant's allegations that an employee has engaged in Title IX Sexual Harassment.



# 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.
- An Advisor is a person who has agreed to provide support and advice to a Complainant or Respondent.



## Formal Resolution - Investigation

- The burden is on FDU – not the parties – to conduct an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred.
- An Investigator will be named in the Notice of Allegations and Formal Investigation
- The Investigator will conduct investigations in a neutral and unbiased manner
- It is important to remember that a Respondent is presumed not responsible for the alleged conduct – a determination regarding responsibility is only made at the conclusion of the grievance process by the appointed Hearing Officer.



## Formal Resolution – Investigation *cont.*

- The Investigator is responsible for interviewing the Parties and witnesses and gathering relevant and not otherwise impermissible inculpatory and exculpatory evidence.
- All Parties will have an equal opportunity to identify witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, for the Investigator.
- The Investigator will prepare an investigation report summarizing all relevant evidence but excluding all non-relevant evidence, as well as any evidence not subject to disclosure.



## Formal Resolution – Investigation *cont.*

- 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.
- 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.



# Formal Resolution – Hearing Notice

With the completion of the investigation report, the Title IX Coordinator will send a Hearing Notice to the parties and their advisors. The notice will contain:

- date, time, and location of the Hearing
  - All Hearings are now conducted over the Zoom online platform
- The specific charges with a description of the alleged conduct
- The name of the Hearing Officer



# Formal Resolution – Live Hearing

- All parties, including witnesses called by the Hearing Officer, are expected to attend a live hearing
  - If a party declines to attend, the Hearing may continue in the party's absence at the discretion of the Hearing Officer
- The Complainant and Respondent must be accompanied by an Advisor
  - If a party does not have an Advisor present, the Hearing Officer shall recess the Hearing until FDU appoints an Advisor for purposes of cross-examination
- All Hearing are recorded
- The Hearing Officer is responsible for making all determinations of relevance as to witnesses, questions and documentary evidence presented



## Formal Resolution – Live Hearing *cont.*

- During the Hearing, only Advisors, or the Hearing Officer, can ask relevant cross-examination questions of the opposing party and witnesses.
- Where a party or witness declines to participate in the live hearing process, and thus is not subject to cross-examination, the Hearing Officer is not prohibited from considering their out of Hearing statements.
- If a party declines to be cross-examined, the Hearing Officer cannot draw an inference about the determination regarding responsibility solely from their refusal.





## Formal Resolution – Decision

At the conclusion of the Live Hearing, the Hearing Officer will consider all the relevant evidence and make a decision regarding responsibility that is supported by a preponderance of the evidence, meaning that based on the evidence available, the alleged conduct was more likely than not to have occurred or not occurred.

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



# Formal Resolution – Hearing Outcome Letter

The Hearing Outcome Letter will include, among other things:

- A statement of factual finding supporting the determination
- A statement of the conclusions regarding the application of the Title IX policy to the facts
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility
- An explanation of the disciplinary sanctions imposed on the Respondent, if any
- The procedures and permissible bases for either party to appeal



# Formal Resolution – Appeals

Either party may appeal a determination of responsibility (or non-responsibility) by submitting a written appeal to the Title IX Coordinator, via email, within 5 business days of the issuance of the Hearing Outcome Letter.

Appeals can be granted only on the following grounds\*:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available at the time of the Hearing; or
- 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 outcome is not grounds for an appeal*



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## Formal Resolution – Appeals *cont.*

Upon receipt of an appeal, the Title IX Coordinator will notify the other Party that the appeal has been filed, permitting the Party 3 business 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 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.



## Formal Resolution – Appeals *cont.*

The Appeal Officer will typically issue a written decision on the appeal, including the result and a brief rationale, within 7 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 stated appeal grounds

The Appeal Officer's determination is final with no further appeals being permitted.



# FDU and Community Resources

Appendix A of the Title IX policy (last 3 pages) lists resources available to parties, both on and off campus. These resources include state and local organizations, most of which operate under rules of confidentiality.

Parties to a Title IX matter are provided with and encouraged to seek out assistance from any of these resources at any point before, during, or after a Title IX matter.



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