



OFFICIAL POLICY

Subject/Title: Sexual Misconduct

Policy Number: FPU-1.005P

New Revised Technical Revision Only Emergency Policy

Date First Adopted: October 30, 2013

Date Revised: February 27, 2015, August 13, 2020, October 6, 2021

Responsible Division or Department: Office of the President

Initiating Authority: President

(1) APPLICABILITY and PURPOSE:

Florida Polytechnic University is committed to ensuring that each member of the University Community is permitted to work, study, live and interact with each other in a dignified learning environment, free from any form of unlawful sexual misconduct. This policy provides guidance regarding conduct that constitutes sexual misconduct, reporting responsibilities regarding such behavior, and specific information on where to go to seek supportive measures or file a complaint of sexual misconduct. Complaints of sexual misconduct will be handled following the procedures listed within this policy and/or, as appropriate, the procedures in FPU-1.005 Discrimination and Harassment Complaint and Investigation Procedures. In instances where the Respondent is a student, the procedures in FPU-3.006 Student Code of Conduct will also be followed. If this policy and another University regulation or policy conflict, this policy controls.

(2) POLICY STATEMENT:

Sexual misconduct violates University policy, federal and state laws and may also be subject to criminal prosecution. The University is committed to fostering an environment that promotes prompt reporting of all types of sexual harassment and timely and fair resolution of sexual misconduct complaints.

The University does not discriminate on the basis of sex in its educational programs and activities. Title IX of the Higher Education Amendments of 1972, 20 USC 1681 et seq. and The Violence Against Women Act of 1994 (VAWA), prohibits such misconduct, in any form, including sexual harassment. The University has designated a Title IX Coordinator (see contact information below) to handle all complaints alleging sexual misconduct and to conduct investigations of such complaints in a manner that ensures a prompt and equitable resolution. Additionally, as an employer, the University is required to comply with Title VII of the Civil Rights Act of 1964 and other federal and state laws regarding sexual harassment.

(3) DEFINITIONS:

- (a) **Advisor.** A person chosen by either party who may assist and/or accompany the individual throughout the process. An advisor may be a family member, friend, faculty member, staff member, or other advisor/support. An advisor may be an attorney but may not act as legal counsel during the grievance process. An advisor cannot directly participate in the grievance process nor speak on behalf of the party except for administering cross examination questions during a live hearing if the conduct alleged is within the jurisdiction of Title IX. An advisor is not permitted to submit any written requests (including appeals) on behalf of a party. The advisor cannot serve as a witness during the grievance process. A University representative may remove any advisor that does not adhere to these expectations or other established decorum rules during the formal hearing.

- (b) **Complainant.** An individual who is alleged to be the victim of conduct that could constitute sexual misconduct under this policy.
- (c) **Coercion.** To attempt or to cause another person to act or to think in a certain way by use of force, threats, or intimidation. Examples of coercion include but are not limited to:
 - (i) Causing the deliberate incapacitation of another person;
 - (ii) Threatening to harm oneself if the other person does not engage in a sexual act; and
 - (iii) Threatening to disclose a person's sexual orientation, gender identity, or other sensitive, personal information if the person does not engage in a sexual act.
- (d) **Consent.** An understandable exchange of affirmative actions or words that indicate an active, knowing, and voluntary agreement to engage in mutually agreed upon sexual activity.
 - (i) Silence or previous history does not indicate consent. Consent must be given for every instance of every act.
 - (ii) Consent can be withdrawn at any time.
 - (iii) A person cannot consent if the person is incapacitated from alcohol or drugs, asleep, or is otherwise mentally or physically unable to consent to sexual activity. A person must reasonably know or should have known the person was incapacitated for there to be a lack of consent.
 - (iv) A person cannot consent if the person is under the age of consent pursuant to Florida law.
 - (v) Consent must be freely given and cannot be granted under psychological, emotional, or physical force, manipulation, coercion, persuasion or threats.
- (e) **Dating Violence.** As defined in the Violence Against Women Act of 1994, violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- (f) **Domestic Violence.** As defined in the Violence Against Women Act of 1994, any felony or misdemeanor crime of violence committed:
 - (i) By a current or former spouse or intimate partner of the victim;
 - (ii) By a person with whom the victim shares a child in common;
 - (iii) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - (iv) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
 - (v) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- (g) **Formal Complaint.** A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment.
- (h) **Incapacitation.** The physical and/or mental inability to make an informed or rational judgement. Incapacity to consent may result from mental, intellectual or physical disability, duress, unconsciousness/sleep, age, flashbacks, or use of alcohol, drugs, medication, and/or other substances. Where alcohol or other drug has been consumed, one does not have to be intoxicated to lack the capacity to provide consent to engaged in sexual activity. Rather, incapacity is determined by how the alcohol or drug consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. Indications of consent are irrelevant if the initiator of sexual activity knows, or reasonably should have known, of the incapacity of the other person.

- (i) **Preponderance of the Evidence.** Information, considered as a whole, that indicates the facts sought to be proved are more likely than not. This is the burden of proof that must be met in determining whether conduct is a violation of this policy.
- (j) **Reporter.** A person who reports a violation of this policy to the Title IX Coordinator or their supervisor/manager.
- (k) **Respondent.** An individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct under this policy.
- (l) **Sexual Misconduct.** Sexual Misconduct can be committed by any person and can occur between people of the same or different sex, sexual orientation, and gender identity or gender expression. Sexual Misconduct is a broad range of sexually inappropriate behaviors that includes, but is not limited to:
- (i) **Indecent Exposure.** To expose or exhibit one's sexual organs in public or within the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in a place provided for that purpose. It also includes the unwelcome transmission of sexual images of sexual organs or nakedness, including but not limited to sexting and any other electronic means.
- (ii) **Sexual Violence** (rape/sexual battery/sexual assault). Engaging in a sexual activity without consent.
- (1) **Sexual Assault.** As defined in the Violence Against Women Act of 1994 is any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent. This includes, but is not limited to, attempted sexual assault and the following:
- Rape. The 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 victim.
 - Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 - Incest. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape. Sexual intercourse with a person who is under the statutory age of consent.
- (2) **Sexual Battery.** As defined in section 794.001, Florida Statutes, oral, anal or vaginal penetration by, or union with a sexual organ of another or anal/vaginal penetration of another by any other object.
- (iii) **Sexual Harassment.** As defined in Title IX, conduct on the basis of sex that satisfies one or more of the following:
- (1) A University employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- (3) For instances where the conduct is outside the scope of Title IX but is within the purview of the University jurisdiction or Title VII as it pertains to employment law, the definition of sexual harassment is severe, pervasive, or objectively offensive.
- (4) Sexual assault, dating violence, domestic violence, or stalking as defined herein and consistent with federal law.

- (iv) **Intimate partner violence** (domestic violence, dating violence, relationship violence). Abuse or aggression that occurs in a romantic relationship that may include any of the following types of behavior: physical violence, sexual violence, stalking, and/or psychological aggression.
- (1) **Dating Violence.** As defined in the Violence Against Women Act of 1994, violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- (2) **Domestic Violence.** As defined in the Violence Against Women Act of 1994, any felony or misdemeanor crime of violence committed:
- By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
 - By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- (v) **Stalking.** As defined in the Violence Against Women Act of 1994, a course of conduct directed at a specific person that would cause a reasonable person to:
- (1) Fear for the person's safety or the safety of others; or
 - (2) Suffer substantial emotional distress.
- (3) For the purposes of this definition:
- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
 - Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.
- (vi) **Sexual Exploitation.** Taking sexual advantage of another person without their consent, and includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing, or transmitting identifiable images of private sexual activity and/or the intimate parts (including genitalia, groin, breasts, or buttocks) of another person; allowing third parties to observe private sexual acts; and/or knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV.
- (vii) and other forms of sexually exploitative behavior that can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship.

(m) **Student.**

- (i) Persons taking courses at the University (full-time or part-time) in undergraduate, graduate, or professional studies;
- (ii) Persons who withdraw from the University after allegedly violating this policy;
- (iii) Persons who were previously enrolled but are not officially enrolled for a particular term and have a continuing relationship with the University;
- (iv) Persons who have been notified of their acceptance for admission to the University

(n) **Supportive Measures.** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment.

(o) **University Community.** For purposes of this policy, includes individuals applying for enrollment at or employment with the University, University students, University employees, visitors, and contracted agents and vendors.

(4) SEEKING GUIDANCE OR FILING A COMPLAINT:

Any member of the University Community who believes that they have been subjected to sexual misconduct, retaliation related to an allegation of sexual misconduct, or any member of the University Community who believes that others have been subjected to sexual misconduct in violation of this policy may seek guidance, supportive measures, or file a complaint by contacting:

Title IX Coordinator
4700 Research
Way
Lakeland, Florida 33805-8531
(863) 874-8484
titleixcoordinator@floridapoly.edu
Online Report Form –
www.floridapoly.edu/titleix

Allegations of a violation of this policy, including complaints of retaliation, will be addressed by the Title IX Coordinator, in accordance with the applicable regulations, policies and procedures. Members of the University Community may contact the Title IX Coordinator to seek assistance in informally resolving the complaint or in a formal investigation. Allegations of sexual misconduct reported to the University's Title IX Coordinator in no way affect the right of the complainant to file a criminal complaint, even in the event an internal University investigation has already commenced.

(5) ACTIONS THAT DO NOT CONSTITUTE SEXUAL MISCONDUCT:

The University educational environment is unique in that there must be the freedom to express ideas and to foster communication on subjects that enhance the University's educational mission. Accordingly, while the University is committed to providing a learning environment that is free from sexual harassment, the purpose of this policy is not intended to abridge academic freedom or to interfere with speech, as guaranteed by the First Amendment. As such, pursuant to this policy, sexual misconduct does not include:

- (a) The expression of ideas in an academic context to provoke thought or discussion on topics germane to the course and advancement of the University's educational mission.

- (b) Engagement in debate or discourse over issues that society may find to be unpopular, offensive, or disagreeable.
- (c) Discussing, using, or displaying views, words, symbols or thoughts in an academic setting, which are germane to the course and which some persons may find to be offensive.

(6) VIOLATIONS:

In determining whether alleged conduct constitutes sexual misconduct, and a violation of this policy, the conduct will be evaluated from the perspective of a reasonable person, considering the totality of the circumstances, such as the nature of the alleged conduct and the context in which the alleged conduct occurred. A determination on the allegations is made from the facts on a case-by-case basis, using the preponderance of the evidence standard. In an academic setting, consideration will be given to free speech and academic freedom. Those members of the University Community who are found to have violated this policy may be subject to disciplinary sanctions, including but not limited to:

- (a) Students: Alteration of class schedule, alteration of housing assignment, restriction from entering specific buildings/areas, loss of privilege, restitution, University probation, educational sanctions (work assignments, essays, service to the University or community, or other related discretionary education), removal from on-campus housing, suspension (for a definite period of time not to exceed two years and/or until specific criteria are met), dismissal, and expulsion.
- (b) Employees: Reassignment of duties, mandatory training, verbal reminders, written reprimand, suspension, and termination.

(7) RESPONSIBILITY TO REPORT SEXUAL MISCONDUCT:

To maintain an environment free from sexual misconduct, the responsibility for reporting incidents of sexual misconduct rests with all members of the University Community. Any employee, student, applicant or other member of the University Community who believes another member is being subjected to sexual misconduct in violation of this policy is strongly encouraged, if not required, to report the matter to their supervisor, manager, or directly to the Title IX Coordinator. Once the Title IX Coordinator receives the report the University is deemed to have actual knowledge.

- (a) **Supervisors and Managers.** All supervisors and managers, defined as persons supervising one or more employees, are required to promptly report to the Title IX Coordinator (either verbally or through written communications) allegations, reports or instances of alleged sexual misconduct by or against any person covered by this policy.
- (b) **Faculty Members.** All faculty members are required to promptly report to the Title IX Coordinator or, alternatively, to their department chair, dean, or applicable academic administrator any and all allegations, reports, or instances of alleged sexual misconduct by or against a student in violation of this policy. Persons to whom alleged acts of sexual misconduct are reported by faculty, must promptly report the matter to the Title IX Coordinator (either verbally or through written communications).
- (c) **Student Employees.** Except for students who are employed in Residential Life, students who are employed by the University in an OPS position are strongly encouraged, but not required, to report suspected sexual misconduct in violation of this policy to their supervisor, manager, or directly to the Title IX Coordinator. Students who are employed in Residential Life are required to promptly report to their supervisor, manager, or directly to the Title IX Coordinator (either verbally or through written communications) allegations, reports or instances of alleged sexual misconduct by or against any person covered by this policy.

- (d) **Members of the University Community.** An individual who feels uncomfortable and/or harmed by offensive behavior should try to remove themselves from the offending situation and seek help as quickly as possible by reporting the offending conduct to an individual designated in this policy. However, failure for an individual to take affirmative steps to stop sexual misconduct, in no way, bars the individual from seeking relief through filing a claim under this policy.
- (e) **Confidential Employees.** Employees, vendors, and contractors working in counseling services, medical services, and the University Ombudsperson are confidential resources and are not required to report any information regarding an incident of sexual misconduct. These individuals should:
 - (i) Inform an individual of their right to file a complaint with the University and/or a complaint with campus or local law enforcement;
 - (ii) Inform the student or employee about available resources for counseling, medical, academic, and other supports;
 - (iii) Indicate that they are available to assist an individual in filing a complaint; and (iv) Explain that University policies and regulations include protections against retaliation.

(8) GRIEVANCE PROCESS:

- (a) **Responsibility of Title IX Coordinator.** The Title IX Coordinator is responsible for administering the grievance process for sexual misconduct. Reports or allegations covered in this policy will be processed upon receiving the report. The Title IX Coordinator makes an initial assessment of whether the complaint falls within the scope of this policy and/or Title IX.
- (b) **Respondent is an Employee, Vendor, or Contractor.** If the Respondent is an employee, a vendor, or a contractor, the complaint will be resolved using the procedures outlined in FPU-1.005 Discrimination and Harassment Complaint and Investigation Procedures.
- (c) **Respondent is a University Student.** If the Respondent is a student, the complaint will be resolved using the procedures outlined in FPU-3.006 Student Code of Conduct.
- (d) **Title IX Grievance Process.** Complaints that allege conduct that is within the scope of Title IX will also follow the additional provisions in section (9) below.

(9) ADDITIONAL GRIEVANCE PROCESS PROVISIONS FOR TITLE IX:

Title IX of the Higher Education Amendments of 1972, 20 USC 1681 et seq., a Federal civil rights law, prohibits sex discrimination, in any form, including sexual harassment, sexual assault, dating violence, domestic violence and stalking. The following provisions apply to allegations that conduct constitutes Sexual Harassment under Title IX. If any portion of the Title IX Final Rule is stayed or held invalid by a court of law, then the invalidated elements of the policy will be deemed revoked as of the publication date of the opinion or order.

- (a) **Title IX Coordinator and Jurisdiction.** The University has designated a Title IX Coordinator to address complaints alleging sexual harassment in a manner that ensures a prompt and equitable resolution. The Title IX Coordinator will assess each report received to determine whether the reported incident is within the jurisdiction of Title IX.
 - (i) To be considered under the jurisdiction of Title IX jurisdiction, the alleged Sexual Harassment must have occurred to persons participating or attempting to participate in the University's education program or activity in the United States.
 - (1) Education program or activity includes locations, events, or circumstances over which the University has exercised substantial control over both the Respondent and the context in which the sexual harassment occurred, and also

- includes any building owned or controlled by a student organization that is officially recognized by the University.
- (ii) The University must have jurisdiction over the Respondent and the Complainant during the time of reporting, this includes both students and employees.
 - (b) **Supportive Measures.** The Complainant and Respondent may request and receive supportive measures without filing a formal complaint and at any time during the grievance process.
 - (c) **Emergency Removal.** The University may remove a Respondent from any program or activity on an emergency basis. If the University determines such removal is necessary, the Respondent will be provided notice and an opportunity to appeal the decision immediately following the removal. An appeal must be received in writing by the Title IX Coordinator within 3 business days of Notice of Emergency Removal. The University will conduct an individualized safety and risk analysis to determine whether the Respondent is an immediate threat to the physical health or safety of any student or other member of the University community arising from the allegations of covered sexual harassment justifies a removal.
 - (d) **Formal Complaint.** The Complainant or Title IX Coordinator must sign a document acknowledging the process moving forward with an informal resolution or formal investigation. There is a presumption of innocence that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
 - (i) If a formal complaint has been signed, the Complainant can choose an Informal Resolution or Formal Investigation.
 - (e) **Notice of Allegations.** A Notice of Allegation will be sent to both parties if a Formal Complaint has been filed. The notice will provide sufficient time to prepare a response before the initial meetings. The Notice of Allegation will include, but not limited to:
 - (i) The identity of the Complainant and Respondent;
 - (ii) An explanation of the Grievance Process;
 - (iii) Information regarding the allegations of sexual misconduct, providing sufficient details known at the time, time and location if available.
 - (iv) Right to have an Advisor of the party's choice to accompany them through the grievance process (can, but does not need to be an attorney)
 - (v) A statement that knowingly making false statements or submitting false information is prohibited.
 - (vi) Right to present witnesses, including fact and expert witnesses, and other evidence and to review all evidence collected.
 - (f) **Informal Resolution.** Informal Resolution is a process that will allow for both parties to work on a resolution outside of an investigation. This can include mediation, restorative justice, or an alternative format agreed upon by both parties. Informal Resolution will not result in a policy violation but rather an agreed upon resolution by both parties.
 - (i) This process can be used at any time before or during an investigation of a complaint and allows parties to resolve a complaint through informal means such as mediation or restorative justice.
 - (ii) In order to resolve complaints through Informal Resolution, both parties must agree to resolve the complaint through Informal Resolution.
 - (iii) A Complainant or Respondent may, at any time, end the Informal Resolution process.
 - (iv) If a complaint is not resolved through Informal Resolution, the Grievance Process, as described in this policy, will continue.
 - (v) Informal Resolution cannot be used in sexual harassment allegations that involve an employee sexually harassing a student.
 - (vi) Once an Informal Resolution has been reached and both parties sign the agreed upon terms, the Grievance Process is complete.

- (vii) However, if a party violates the agreed upon terms, the parties have the option to re-enter Informal Resolution or continue with a Formal Investigation. The party that violates the terms, may receive additional charges under University policies.
- (g) **Privileged Information.** Information protected under a privilege recognized by state or federal law cannot be disclosed, used, or relied upon unless the person who holds the right to exercise the privilege waives the application of the privilege.
- (h) **Formal Investigation and Investigative Report.** Prior to completion of the Formal Investigative Report, the Complainant and Respondent are both provided an equal opportunity to inspect and review any evidence obtained as part of the Formal Investigation that is directly related to the allegations raised in the Formal Complaint so that each party can meaningfully respond to the evidence prior to conclusion of the Formal Investigation.
 - (i) This includes evidence that is not intended to be relied upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. This means evidence that favors both the Complainant (inculpatory) and Respondent (exculpatory).
 - (ii) The evidence subject to inspection and review is provided to each party and their advisors in an electronic format or a hard copy. Each party has ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report.
 - (iii) The Investigative Report fairly summarizes relevant evidence determined by the Investigator and, is provided to each party and the party's advisor in electronic format or hard copy at least ten (10) business days prior to the live hearing for their review and written response.
- (i) **Live Hearing.** A live hearing must be conducted for all Formal Complaints unless the Formal Complaint has been dismissed or resolved through the Informal Resolution process. This includes allegations between employees, employees and students, and students. For Formal Complaints where the Respondent is a student, the following provisions also apply to the Formal Hearing process in FPU-3.006 Student Code of Conduct.
 - (i) **Remote Participation.** Live hearings may be conducted virtually, with technology enabling participants simultaneously to see and hear each other.
 - (ii) **Hearing Body.** The Hearing Body is comprised of up to three (3) staff and/or faculty members that have been trained to be a part of this process and are appointed by the President or President's designee. The Title IX Coordinator, investigator, or other person who participated in the informal resolution process, if any, may not be a member of the Hearing Body.
 - (1) The parties may opt to waive a Hearing Body for a single Hearing Officer. Both parties must agree and a written request must be made outlining the reason.
 - (2) Both parties may have an advisor of their choice at the live hearing. An Advisor may conduct cross examination only. An Advisor may not participate in any other part of the live hearing.
 - (3) During the Live Hearing, if either party does not have an advisor with them, the University will provide an advisor of the University's choosing at no cost to the party.
 - (iii) **Cross Examination.**
 - (1) Before a Complainant, Respondent, or Witness answers a cross-examination or other question from the respective Advisor, the Hearing Body must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
 - (2) Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone

other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

- (3) Repetitive questions to the Complainant, Respondent, or Witness may be deemed not relevant if the questions have already been answered throughout the Hearing.
- (j) **Determination of Responsibility and Written Determination.** The Hearing Body determines whether alleged conduct constitutes a policy violation and will determine sanction(s) as appropriate. All information must be objectively evaluated, and the Hearing Panel must avoid credibility determinations based on a person's status as a complainant, respondent, or witness. The conduct will be evaluated based on the facts gathered from the live hearing on a case-by-case basis. The Hearing Body will consider the totality of the circumstances and use the preponderance of the evidence standard in its determination. The Hearing Body must issue a written determination regarding responsibility. The written determination must include:
- (i) Identification of the allegations potentially constituting sexual harassment;
 - (ii) A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - (iii) Findings of fact supporting the determination;
 - (iv) Conclusions regarding the application of FPU-3.006 Student Code of Conduct to the facts if the Respondent is a student;
 - (v) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and
 - (vi) The procedures and permissible bases for the Complainant and Respondent to appeal.
- (k) **Appeal.** A Complainant or Respondent may appeal the findings and sanction(s) after receiving the Notice of the Determination or a dismissal of the Final Complaint or any allegations in a Formal Complaint.
- (i) An appeal must be submitted to the Title IX Office, in writing, within ten (10) business days of receipt of the issued findings and sanction(s) and must specify the basis of the appeal.
 - (ii) Appeals must be based on one or more of the following provisions and that had an effect on the outcome of the matter:
 - i. Procedural irregularity;
 - ii. New evidence that was not reasonably available at the time of the Live Hearing or when the determination regarding responsibility or dismissal was made; and
 - iii. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent.
 - (iii) Written notice of an appeal is provided to the other party. The Complainant or Respondent may submit a written response to an appeal to the Title IX Office. Such response will be attached to the final report and maintained in the same file.
 - (iv) The President or designee may designate a person with appropriate training to serve as an appellate officer to review the appeal and issue a written decision that describes the result of the appeal and the rationale for the result. A person that reached the determination regarding responsibility (Hearing Body) or dismissal, the investigator(s), nor the Title IX Coordinator can be an appellate officer.
 - (v) The written decision is provided to both parties simultaneously.

(10) RETALIATION PROHIBITED:

Retaliation, or otherwise taking adverse employment or educational action, against a member of the University Community because the member, in good faith, reported an allegation of sexual harassment, participated in an investigation or review regarding a complaint, participated in the resolution process, supported a Complainant or Respondent, or assisted in providing information relevant to an investigation is strictly prohibited and a violation of this policy. Retaliation includes adverse action, harassment, intimidation, threats or coercion in any employment, educational, program or activity.

(11) FRIVOLOUS OR MALICIOUS COMPLAINTS:

In the event that a claim of sexual misconduct is found to be frivolous or malicious, the person making the frivolous or malicious complaint may be subject to disciplinary and other action.

(12) EDUCATION AND NOTIFICATION:

Copies of this policy are widely disseminated to the University Community so that all members are aware of acts which constitute sexual misconduct and shall recognize that the University regards sexual misconduct to be a serious offense and will not be tolerated. Periodic workshops and other educational programs are offered to University personnel regarding the topic of sexual misconduct.

For Title IX purposes, those that are part of the process must be appropriately trained. This may include the Title IX Coordinator, investigators, decision makers, appellate officers, and advisors. All trainings for these individuals are located on the Title IX Webpage.

POLICY APPROVAL	
Policy No.: FPU-1.005P	
_____	Date _____
Initiating Authority	
_____	Date _____
Policies Committee Chair	
_____	Date _____
President	
Approved by Florida Polytechnic University BOT, if required	Date _____
EXECUTED SIGNATURE PAGES ARE AVAILABLE IN THE OFFICE OF THE GENERAL COUNSEL	