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Purpose


The purpose of this procedure is to establish the process to investigate and resolve all complaints of sexual misconduct against students at the College pursuant to applicable board rules and the Title IX/Sexual Misconduct/Relationship Violence Policy.

Definitions

- A. "Sexual misconduct" is a broad, non-legal term that encompasses a wide range of behaviors, including but not limited to, sexual assault, rape, stalking, sexual exploitation and relationship violence (including dating and domestic violence). It is a violation of College policy as well as applicable law to commit or to attempt to commit these acts.
1. Sexual misconduct can occur between strangers or acquaintances, or people who know each other well, including between people who are or have been involved in an intimate or sexual relationship. It can be committed by and experienced by anyone, regardless of gender or gender identity, and can occur between people of the same or different sex or gender.
- B. "Sexual Assault" (including Rape) is actual or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to:
1. Intentional touching of another person's intimate parts without that person's consent; or
 2. Other intentional sexual contact with another person without that person's consent; or
 3. Coercing or forcing, attempting to coerce or force, or threatening to coerce or force a person to touch another person's intimate parts without that person's consent; or
 4. Rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's consent.
- C. "Consent" is an understandable exchange of affirmative words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. Consent must be informed, freely and actively given. Consent is not obtained if:
1. There is a lack of a negative response, lack of protest or lack of resistance;
 2. There is silence;
 3. There is physical force, threats, intimidation or coercion;

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4. There is incapacitation due to drugs and/or alcohol (consumed voluntarily or involuntarily);
 5. An individual is unable to communicate due to a physical or mental condition;
 6. An individual is asleep, unconscious or involuntarily restrained; or
 7. An individual is not of legal age to give consent.
- D. "Sexual Harassment" is the unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:
1. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or educational experience;
 2. Submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting that individual; or
 3. Such conduct is so pervasive or severe that it has the purpose or effect of unreasonably interfering with an individual's work or academic performance or limiting participation in College programs by creating an intimidating, hostile or offensive working or educational environment;
 4. Sexual harassment does not include verbal expression or written material that is relevant and appropriately related to the subject matter of a course/curriculum or to an employee's duties. This procedure is not intended to abridge academic freedom of the College's educational mission.
- E. "Relationship Violence" includes, but is not limited to, physical, sexual, verbal, emotional and psychological abuse, and/or threats of such abuse (commonly referred to as domestic violence or dating violence) when committed by a person who is or has been:
1. In a social relationship of romantic or intimate nature with the victim;
 2. A current or former spouse or intimate partner of the victim;
 3. A person with whom the victim shares a child in common;
 4. A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; or
 5. A person related to the victim by blood or marriage.
- F. "Stalking" is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

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1. Feel fear for the person's safety or the safety of others; or
2. Suffer substantial emotional distress.

Stalking may involve individuals who are known to one another, who have a current or previous relationship, or who are strangers. Stalking can include electronic forms of communication, including texting or social media.


G. "Sexual Exploitation" is taking sexual advantage of another person without that individual's consent or in a manner that extends the bounds of consensual sexual activity without the knowledge of the other individual for any purpose, including sexual gratification, financial gain or other personal benefit. Sexual exploitation includes, but is not limited to, the following actions (including when they are done via electronic means, methods or devices):

1. Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
2. Non-consensual streaming of images, photography, video or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
3. Causing the incapacitation of another person (through alcohol, drugs or any other means) for the purpose of compromising that person's ability to consent to sexual activity;
4. Prostituting another individual;
5. Exposing one's genitals in non-consensual circumstances; or
6. Knowingly exposing another individual to a sexually-transmitted infection or sexual virus without that individual's knowledge.

H. "Interim Protective Measures" are temporary actions taken by the College to ensure equal access to its education programs and activities and to foster a stable and safe environment during the process of reporting, investigation and/or resolution of a report of sexual harassment or sexual misconduct.

I. "Reporting Party" is an individual who makes a report of gender discrimination, sexual harassment, sexual misconduct or retaliation.

J. "Responding Party" is an individual who is alleged to have violated the College policy on gender discrimination, sexual harassment, sexual misconduct or retaliation and who is named in a report alleging violation.


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K. "Title IX/Sexual Misconduct/Relationship Violence Policy" means Florida State College at Jacksonville (FSCJ) Administrative Procedure [11-0801](#), Title IX/Sexual Misconduct/Relationship Violence.

Procedure

A. General Matters

1. College Values - When the College receives notice of conduct which appears to be sexual harassment, sexual misconduct or discrimination of a student, it will promptly investigate the allegation in a fair, expeditious and equitable manner.
2. Timing of Complaints - So long as the Responding Party is a student at the College, there is no time limit to filing a complaint to engage the student conduct process. However, students are strongly encouraged to report sexual misconduct in a timely manner to maximize the College's ability to obtain evidence, and conduct a thorough, impartial and reliable investigation. Where the Responding Party is a student in the last semester of a College program, the College may withhold that student's College degree pending conclusion of the student conduct proceedings.
3. Emergency Actions Available to the College President - The College President, or designee, shall have the authority to take immediate action to suspend a student or an employee, or any person, accused of a sexual misconduct and prohibit his or her presence on any College-owned or controlled property and at any College-sponsored activity, if the College President, or designee, determines that such student or employee poses an immediate threat of danger to the College community. In the case of a student, the College President, or designee, may take into consideration recommendations made by the Dean of Students. In the case of an employee, the suspension may be with or without pay, at the discretion of the College President.
4. Effect of Criminal Proceedings - The filing and processing of a complaint of sexual misconduct is independent of any criminal investigation or proceeding. The College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation and proceedings outlined herein. Neither law enforcement's determination whether or not to prosecute a Responding Party, nor the outcome of any criminal prosecution, is determinative of whether sexual misconduct under the College policy occurred.
5. Effect of Pending Complaint on Responding Party - If the Responding Party is a current student, no notation will be placed on the Responding Party's transcript of a complaint or pending disciplinary action during the student conduct process. If the Responding Party withdraws from the College while a sexual misconduct complaint is pending, the Responding Party's transcript will reflect a withdrawal and a notation of pending disciplinary action subject to modification to reflect the outcome of the disciplinary action.

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6. **Amnesty** - An individual who files a sexual misconduct complaint or serves as a third party witness during the student conduct process will not be subject to disciplinary action by the College for his or her own personal consumption of alcohol or drugs at or near the time of the alleged sexual misconduct, provided that such violations did not and do not place the health or safety of any other person at risk. However, the College may initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.


7. **Advisor** – The Reporting Party and Responding Party both have the right to be assisted by an advisor during the student conduct process. The Reporting Party will be offered an advisor at the time the complaint is filed and the Responding Party will be offered an advisor at the time he/she/they are notified of the complaint. An advisor serves to guide the student through the pre-hearing and hearing process and may accompany the student to any meeting with a College employee and to the hearing. The advisor is not an advocate for the student and may not direct questions to or otherwise address the Sexual Misconduct Discipline Committee Hearing but may consult with the student that he/she/they are assisting.

8. **Attorneys** - The Reporting Party and Responding Party have the right to consult a private attorney, at their own expense, regarding a complaint. Attorneys cannot participate in the hearing process. Attorneys may be present on campus during a hearing; however, they are required to remain outside of any hearing room.

9. **Time Frames** - Generally the College will attempt to complete the process within sixty (60) days. However, the time frames set forth in these procedures are meant to provide guidance and the College may alter or extend time frames, with notice to the parties, as appropriate.

B. College Procedures for Handling Complaints or Allegations of Sexual Harassment

1. **Review of Complaints of Alleged Sexual Harassment**
 - a. Complaints of alleged sexual harassment of a student when the Responding Party is a student and that do not involve sexual misconduct shall be reviewed by the Title IX Coordinator (hereafter “Coordinator”) to determine if an investigation is required. In the event a student has been denied or had limited benefit from or participation in a College program, the Coordinator shall take Interim Protective Measures to ensure equal access to the College’s education programs and activities and protect the Reporting Party as necessary. If the Coordinator determines to conduct an investigation, the complaint shall be investigated and resolved in accordance with the College student disciplinary procedures. In the event the Responding Party is not a student, the complaint will be forwarded to the College Equity Officer for review and investigation. In the event a student has been denied or had limited benefit from or participation in a College program, the Equity Officer shall inform the Coordinator who shall take prompt and effective action to stop a recurrence.
 - b. The Coordinator will attempt to complete the process within sixty (60) days.

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2. Remedies-based resolution is a voluntary approach designed to eliminate a hostile environment without taking disciplinary action against a Responding Party. Where a remedies-based resolution may be appropriate, the College will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Reporting Party's access to educational, extracurricular and employment activities at the College and to eliminate a hostile environment. Other potential remedies include targeted or broad-based educational programming or training, supported direct confrontation of the Responding Party and/or indirect action by the Coordinator or the College. Additionally, the College may offer mediation for appropriate cases, but will not compel a Reporting Party to engage in mediation, to directly confront the Responding Party, or to participate in any particular form of remedies-based resolution. Mediation, even if voluntary, may not be used in cases involving sexual misconduct. The decision to pursue remedies-based resolution will be made when the College has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in remedies-based resolution is voluntary, and a Reporting Party or Responding Party can request to end remedies-based resolution and continue with an investigation at any time. The Coordinator will maintain records of all reports and conduct referred for remedies-based resolution.

C. College Procedures for Handling Complaints or Allegations of Sexual Misconduct

1. Initial Meetings with the Title IX Coordinator

a. Reporting Party Initial Meeting

- i. Within five (5) days (or as soon as reasonably practical) following the filing of a sexual misconduct complaint, the Coordinator will contact the Reporting Party to schedule an initial meeting to discuss the complaint and explain avenues for formal resolution of the complaint, the steps involved in a sexual misconduct investigation, and confidentiality standards. The Coordinator will also assign the Reporting Party an advisor. (If a third party reported the complaint on behalf of the Reporting Party, the Coordinator will attempt to meet with the third party and gather information before speaking with the Reporting Party). During the initial meeting the Coordinator will also discuss, as appropriate, possible Interim Protective Measures that can be provided to the Reporting Party during the investigative and resolution processes. Interim Protective Measures may include, but are not limited to:
 - 1) Issuing no-contact orders to prevent any contact between the Reporting Party, Responding Party, witnesses, and/or third parties;
 - 2) changing campus work arrangements or schedules;
 - 3) changing academic schedules;
 - 4) providing academic support services; and/or
 - 5) providing security escorts.

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- ii. The College will honor requests made by the Reporting Party for accommodations, such as changes to academic or employment situations, if such accommodations are reasonably available, regardless of whether the Reporting Party chooses to report the crime to Campus security or local law enforcement.

- b. Responding Party Initial Meeting - Within five (5) days (or as soon as reasonably practical) following the Coordinator's initial meeting with the Reporting Party, the Coordinator will schedule an initial meeting with the Responding Party to discuss the complaint, the College's procedures for formal resolution of the complaint, the steps involved in a sexual misconduct investigation, confidentiality standards and requirements for non-retaliation. The Coordinator will also assign the Responding Party an advisor.
- c. The Coordinator will determine whether an investigation of the complaint should be conducted. The Coordinator will consider the following factors in determining whether it is reasonable to investigate the complaint:
 - i. The source and nature of the information;
 - ii. the seriousness of the alleged incident;
 - iii. the specificity of the information;
 - iv. the objectivity and credibility of the source of the information;
 - v. whether the individuals allegedly subjected to the sexual misconduct can be identified; and
 - vi. whether those individuals wish to pursue the matter.

- d. In the event that the Coordinator determines that an investigation of the complaint should not be conducted, the Coordinator will determine and document (in consultation, as necessary, with the Reporting Party, the Responding Party, and other College administrators) the appropriate resolution of the complaint and inform the parties.
- e. If the College knows about possible sexual misconduct of a student, the Coordinator shall promptly investigate to determine what occurred and then take appropriate steps to resolve the situation even if no complaint has been filed. Cases involving sexual misconduct shall always be referred to the Coordinator. In the event that no complaint has been filed the Coordinator shall follow the same procedures for the formal complaints except that there will be no Reporting Party.

2. Investigation

- a. The College will use the following procedures to investigate alleged cases of sexual misconduct on a student:
 - i. Primary Investigator's Activities
 - 1) The College Director of Security shall serve as the Primary Investigator for cases involving sexual misconduct. The College may contract with a qualified third party to


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conduct or support investigations as determined by the Coordinator. Upon receiving the complaint, the Primary Investigator will begin the investigation, taking steps such as:

- a) Conducting separate interviews with the Reporting Party, the Responding Party, and third-party witnesses;
 - b) reviewing available files and documents; and
 - c) gathering and examining other documents or evidence as appropriate.
- 2) The Primary Investigator will complete a written investigative report of the events in question and will share this report with the Coordinator. This report shall include, at a minimum:
- a) A statement of the allegations and issues;
 - b) the positions of the parties involved;
 - c) a summary of the evidence; and
 - d) the findings of fact.
- ii. The Coordinator shall ensure the College conducts a prompt and equitable investigation. A typical investigation takes approximately sixty (60) calendar days following receipt of the complaint, but it may vary depending on the complexity of the investigation and the severity of the situation. If the investigation takes longer than sixty (60) days, the Coordinator will alert the Reporting Party. The Coordinator will document that notice to the Reporting Party, as well as the reasons the investigation is taking longer than sixty (60) days.
 - iii. The Coordinator will ensure that all employees assisting and conducting the investigations receive annual training to ensure that they have necessary credentials and experience
 - iv. The College shall share information received from the Reporting Party only on a need-to-know basis. The College shall not disseminate or share records with personally-identifiable information included, except as noted in this procedure, and as required by law. Further, the Reporting Party's identity will be kept confidential in any emergency notification or timely warning to the College or Campus community.


3. Sexual Misconduct Discipline Committee Hearing

- a. Following the investigation, the College will hold a Discipline Committee Hearing, which includes the following:
 - i. The Coordinator will notify the Reporting Party and Responding Party of the Discipline Committee Hearing via email, read receipt requested. The email shall direct both parties to appear at a specific time and place, not more than ten (10) business days following the date

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of the email. The email shall also describe briefly the alleged violation(s) and provide information on the following:

- 1) The Reporting Party and Responding Party are entitled to and may have one advisor with them during the Discipline Committee Hearing.
 - 2) The College will use the “preponderance of the evidence” standard (i.e. more likely than not) in adjudicating the claims.
 - 3) The Discipline Committee shall have no authority to compel the attendance of either party or any witness. If any party or witness fails to appear for the Discipline Committee Hearing, the hearing will be conducted in their absence.
 - 4) If requested, or appropriate, alternative testimony options will be provided for the Discipline Committee Hearing, such as placing a privacy screen in the hearing room, or allowing the Reporting Party or any witness to testify outside of the physical presence of the Responding Party, such as by video chat or phone. While these options are intended to help make the Reporting Party or witness more comfortable, they are not intended to work to the disadvantage of the Responding Party. All requests for alternative testimony options must be received by the chairperson for the Discipline Committee (i.e. the Coordinator) at least seventy-two (72) hours prior to the Discipline Committee Hearing.
 - 5) Each party will have the opportunity to present any relevant information during the Discipline Committee Hearing.
 - 6) Neither party, nor their advisor, may personally question or cross-examine the other party or witness. Any questions for cross-examination must be submitted to the Discipline Committee, who shall have the sole discretion to ask or not ask a particular question as they deem appropriate.
 - 7) The College will tape record the Discipline Committee Hearing; however, the parties and witnesses identities will not be released outside of the individuals involved in the hearing and the tape will be securely locked with the Coordinator.
- ii. The Discipline Committee shall be made up from a pool of five (5) designated faculty members and the five (5) Deputy Title IX Coordinators. The Discipline Committee pool members must receive annual training on the issues related to sexual harassment, sexual assault, sexual exploitation, consent, relationship violence and stalking.
 - iii. The Coordinator will appoint three (3) persons from the pool to serve on the Discipline Committee and each will review the investigative report prior to the hearing.
 - iv. The Coordinator will serve as the chairperson for the Discipline Committee.
 - v. Within five (5) days following the Discipline Committee Hearing, the chairperson for the Discipline Committee will send their findings and recommended sanctions, if appropriate, to the Associate Vice President (AVP) of Student Success to review and determine what sanctions to be imposed pursuant to applicable board rules and APMs. In determining sanctions, consideration may be given to the nature of, and the circumstances surrounding the sexual misconduct, prior disciplinary violations, and/or campus safety concerns.


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Sanctions may include, but are not limited to: training, written reprimand, suspension or expulsion from the College or termination from employment. Within five (5) days of receiving the findings and recommended sanctions, the AVP of Student Success will determine the sanctions to be imposed and send their determination to the Coordinator.

- vi. The Coordinator will send by email, read receipt requested, the Reporting Party and the Responding Party the results of the Discipline Committee Hearing, any sanctions to be imposed, and the procedures for filing an appeal.

4. Appeal Process

- a. Within twenty (20) days following the parties receipt of the Coordinator's email detailing the Discipline Committee's final decision, the Reporting Party and the Responding Party have the opportunity to appeal the decision, as follows:
 - i. The Reporting Party or Responding Party may file a written appeal to the Coordinator. The Coordinator will share the appeal with the opposing party.
 - ii. The written appeal must state in detail the reason(s) for the appeal and shall address one or more of the following:
 - 1) the Discipline Committee did not review relevant evidence;
 - 2) the Discipline Committee Hearing included factual errors;
 - 3) the process includes substantial procedural errors;
 - 4) new evidence is available; or
 - 5) the factual evidence was insufficient to support the findings.
 - iii. The opposing party and the investigating official may file a response to the appeal with the Coordinator within ten (10) days of receipt of the appeal.
 - iv. Within five (5) days of receipt of the response to the appeal or at the elapse of the opposing party's ten (10) days, the Coordinator will ensemble the information from the Discipline Committee Hearing, and provide the entire appeal file to the Vice President (VP) of Student Services.
 - v. Within ten (10) days of receipt of the appeal file, the VP of Student Services will review the record and render final decision.
 - vi. The VP of Student Services will simultaneously send the Reporting Party and Responding Party the final decisions by email, read receipt requested.

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REFERENCES: Title IX of the Higher Education Amendments of 1972, Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, F.S. 1001.64, 1001.65

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