



**SEXUAL HARASSMENT POLICY**  
**Revised March 2025**

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# SEXUAL HARASSMENT POLICY

If you have been subjected to Sexual Harassment, the College strongly encourages you to speak with someone so you can receive support and the College can respond appropriately. Information about reporting and confidential disclosure options is set forth in Articles II and III.

Resources available to those who have experienced Sexual Harassment (both immediately following an incident of Sexual Harassment and/or on an ongoing basis) are set forth in Exhibit A attached to this Policy.

If you are in danger, call 911.

Flagler College  
Office of Campus Safety and Security  
170 Malaga Street  
(904) 819-6200

*or other contact information, please refer to Exhibit A at the end of this policy.*

## **Non-Discrimination Statement**

*Flagler College is committed to fostering an environment that is free from discrimination, harassment, and retaliation with adherence to high ethical standards. It is the policy of Flagler College not to permit discrimination in its programs and activities on the basis of race, color, religion, national origin, sex, disability, or any other characteristic protected by federal, state, or local law. This commitment applies to all aspects of the educational experience, including admissions, academics, housing, and employment.*

## ***ARTICLE I – INTRODUCTION***

### **Section 1.01 Prohibition Against Sexual Harassment**

Flagler College (“Flagler” or “College”) is committed to providing and maintaining programs, activities, and an educational and work environment founded on civility and respect, where no one is unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination in any College program or activity on the basis of sex.

Sexual Harassment, as defined in this Policy, encompasses all forms of sex discrimination that may deny or limit an individual’s ability to participate in or benefit from College programs or activities.

It is the policy of the College to provide educational, preventative, and training programs regarding Sexual Harassment; to encourage reporting of incidents of Sexual Harassment; to take appropriate action to prevent incidents of Sexual Harassment in College programs and activities; to make services available for those who have been affected by Sexual Harassment; and to provide prompt and equitable methods of investigation and resolution to stop discrimination, address its affects, and prevent its recurrence.

Sexual Harassment and Retaliation, as defined in this Policy, are prohibited. Violations of this Policy may result in the imposition of sanctions up to and including suspension, dismissal, expulsion, or termination from employment.

### **Section 1.02 Scope and Applicability of This Policy.**

#### **A. Jurisdiction.**

This Policy applies to any Formal Complaint of Sexual Harassment made by or against a student or an employee of the College unless:

1. The conduct alleged in the Formal Complaint, even if proven true, would not constitute Sexual Harassment;
2. The conduct did not occur in the College’s education program or activity, **or**
3. The conduct did not occur in the United States.

In the case of allegations of Sexual Harassment, unless otherwise stated herein, this policy supersedes and applies in lieu of all other procedures and policies pertaining to Sexual Harassment.

#### **B. Period of Limitations on Reporting Sexual Harassment.**

Sexual Harassment may be reported at any time, regardless of the length of time between the alleged Sexual Harassment and the making of the report. However, if the Responding Party is no longer subject to the College’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

### **Section 1.03 Definitions Applicable to This Policy.**

Capitalized terms used in this Policy are defined in **Exhibit C**.

#### **Section 1.04 Sexual Harassment Education.**

The College is committed to the prevention of Sexual Harassment and routinely conducts outreach and educational programming designed to increase awareness of the prevalence of Sexual Harassment involving students and other College constituents. This College's Sexual Harassment education is designed to inform the College community about issues related to Sexual Harassment (such as substance abuse and the role of the bystander) and promote knowledge of the College's Sexual Harassment Policy.

#### **Section 1.05 Title IX Team.**

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against any party. The Title IX Team is generally comprised of the Title IX Coordinator, Reporting/Responding Party Advisors, Investigators, Appeal Officers, Decision Makers, and any person who facilitates an informal resolution process.

#### **Section 1.06 Training**

The College regularly conducts Sexual Harassment training for its constituents and Title IX Team. Training can be found on Flagler College's Title IX website ([www.flagler.edu/title-ix](http://www.flagler.edu/title-ix)). The Title IX Team will receive training on the definition of Sexual Harassment, the scope of the College's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Any materials used to train Title IX Team will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment

Decision-makers will also receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Reporting Party's sexual predisposition or prior sexual behavior are not relevant.

Investigators will also receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

#### **Section 1.07 Conflicts of Interest or Bias**

No member of the Title IX Team may have a conflict of interest or bias for or against Reporting Parties or Responding Parties or an individual Reporting Party or Responding Party.

## ARTICLE II - REPORTING POLICIES AND PROTOCOLS

### Section 2.01 Formal Complaints of Sexual Harassment.

Sexual Harassment constitutes a violation of College policy and can be a criminal offense. The College strongly encourages individuals to report alleged Sexual Harassment promptly to campus officials and to law enforcement authorities, where appropriate. The College respects an individual's decision to not report an incident of Sexual Harassment; however, subject to the Confidentiality & Privacy provisions outlined in Article III of this Policy, if information about Sexual Harassment comes to the attention of the College, the College will review all information available to it to determine if an investigation must be initiated and/or may notify appropriate law enforcement authorities if required or warranted by the nature of the information of which it becomes aware. Because reporting carries no obligation to initiate a formal response, and as the College respects when a Reporting Party requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Reporting Party is largely in control and should not fear a loss of privacy by making a report that allows the College to discuss and/or provide supportive measures.

Importantly, for alleged victims under the age of 18, Florida law requires that any Flagler College employee receiving the allegation report to the Florida Department of Children and Families any information that gives reasonable cause to suspect that a child has been abused, abandoned or neglected. Employees with reasonable cause to believe that a child has been abused, abandoned or neglected **must immediately report** such information to the DCF hotline: 1-800-962-2873. For more information, visit [www.myflfamilies.com](http://www.myflfamilies.com).

### Section 2.02 Reporting to the College.

**A. Mandatory Reporters.** The Title IX Coordinator and Responsible Employees are Mandatory Reporters. These individuals are REQUIRED to relay the allegations to the Title IX Coordinator. Individuals who are not classified as Mandatory Reporters are not subject to the same reporting requirement and, in some instances, are prohibited from reporting alleged Sexual Harassment to others absent an express directive from the individual to do so. Individuals may report information regarding Sexual Harassment on their own behalf (i.e., personal experience) or on behalf of another person individual (i.e., Third-Party reporter). Failure of a Mandatory Reporter to report an incident of harassment or discrimination of which they become aware is a violation of College policy and can be subject to disciplinary action for failure to comply.

1. Title IX Coordinator.

Title IX Coordinator is the College employee responsible for coordinating the College's efforts to comply with and carry out its responsibilities under Title IX. Contact information for the Title IX Coordinator is located in **Exhibit A** of this Policy.

2. Responsible Employees.

A Responsible Employee is an employee of the College who has the obligation to convey to the Title IX Coordinator any reports or allegations of Sexual Harassment of which they become aware. The following individuals are designated through this Policy as the College's Responsible Employees:

- a. All employees unless designated as a confidential source in Article III
- b. Residence Life Student and Professional Staff
- c. Faculty and Adjunct Instructors

d. Aramark and Flagler College Bookstore Managers

Disclosures involving alleged incidents involving Sexual Harassment during Public Awareness Events (Take Back the Night, candlelight vigils, survivor speak outs, or other public forums in which individuals may disclose incidents of Sexual Harassment) may not trigger Flagler College to conduct an investigation unless the individual making this disclosure initiates a Formal Complaint under this Policy.

3. Anonymous Reports.

Individuals may also file anonymous reports by calling (904) 826-8553 or visiting [www.flagler.edu/title-ix](http://www.flagler.edu/title-ix) and selecting "Report an Incident". Individuals who choose to file a report anonymously must understand it may limit the extent to which the College is able to address the issue.

### **Section 2.03 Reporting to Law Enforcement.**

If you have been the victim of a crime, **please dial 911**. Additionally, individuals may contact the College or local law enforcement agencies at one of the numbers below to obtain further information on filing a criminal allegation with local law enforcement:

Flagler College Office of Campus Safety and Security: (904) 819-6200  
St. Augustine Beach Police Department: (904) 471-3600  
St. Augustine City Police Department: (904) 825-1074  
St. John's County Sheriff's Office: (904) 824-8304

Individuals also may contact Flagler's Title IX Coordinator for assistance in filing an allegation with local law enforcement. See **Exhibit A** for the Title IX Coordinator's contact information. Individuals who make a criminal allegation may also choose to pursue a Formal Complaint with the College in accordance with this Policy.

### **Section 2.04 Office for Civil Rights**

The U.S. Department of Education's Office for Civil Rights (OCR) enforces, among other statutes, Title IX of the Education Amendments of 1972. Inquiries can be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

## **WHAT HAPPENS AFTER I REPORT?**

If you reported directly to the <b>Title IX Coordinator:</b>	The Title IX Coordinator will initiate the resolution process (unless you request privacy pursuant to Section 3.02, in which case the information will be held in confidence unless the Title IX Coordinator determines that, because of the College's commitment to provide a reasonably safe and non-discriminatory environment, the request cannot be granted).
If you reported to a <b>Responsible Employee:</b>	The Responsible Employee will forward the information to the Title IX Coordinator, who will initiate the grievance process
If you confided in <b>Flagler Health Services, Counseling Services, or TCC's Counseling Center:</b>	<p>The information you provided will remain strictly confidential and will not* be reported to a Title IX Coordinator (or anyone else) for investigation and resolution.</p> <p><i>*Remember that in unusual circumstances, the information you share with Health Services or a Counseling Center (such as situations involving imminent harm to you, a member of the community or situations involving abuse of a child) may be disclosed.</i></p>
If you reported to someone else	The individual <i>may</i> or <i>may not</i> report details regarding the information you provided to the Title IX Coordinator. This is because the individual to whom you reported is not <i>obligated</i> to relay allegations of Sexual Harassment to the Title IX Coordinator.
If you made an <b>anonymous report:</b>	The information in the anonymous report will be addressed promptly. Individuals submitting an anonymous report must understand it may limit the extent to which the College is able to address the issue.



## ARTICLE III – CONFIDENTIALITY & PRIVACY

### Section 3.01 Confidentiality in Reporting and Disclosure.

The College strongly encourages individuals who have experienced Sexual Harassment to report the incident to the Title IX Coordinator. Additionally, individuals may want to talk to a professional about the incident for further support.

**A. Licensed Mental Health Counselors and Medical Staff.** Individuals may discuss Sexual Harassment in strict confidence with College employees working in the following offices (“Strictly Confidential Resources”):

1. Counseling Services
2. Health Services

Strictly Confidential Resources are not Mandatory Reporters; therefore, disclosures to these individuals will not trigger an investigation under this Policy. However, these individuals may otherwise be required to disclose certain information in accordance with applicable laws including, but not limited to, allegations of abuse, neglect or abandonment of a child or information that involves imminent threats of harm to the health and/or safety of the individual or another individual.

**B. Mandatory Reporters.** A disclosure to a Responsible Employee (defined in Section 2.02) constitutes a report to the College.

### Section 3.02 Requesting Privacy.

If information regarding alleged Sexual Harassment is shared with Responsible Employees and the individual desires that the information not be shared with other Responsible Employees, with the Responding Party, or with others, even as appropriate and necessary to address the allegations, that the College not investigate the information, or that no disciplinary action be taken, the individual must request that the College treat such information as private. This request must be made to the Title IX Coordinator.

**A. Evaluation of the Request.** The Title IX Coordinator will evaluate the request for privacy in the context of the College’s commitment to provide a reasonably safe and non-discriminatory environment and will determine whether such request may be granted. In order to make such a determination, the Title IX Coordinator may conduct a preliminary investigation into the alleged Sexual Harassment and may weigh requests for privacy against the following factors, among others:

1. the seriousness of the alleged Sexual Harassment (including, but not limited to, whether the Sexual Harassment was committed with a weapon);
2. the increased risk that the Responding Party will commit additional acts of Sexual Harassment, such as
  - a. whether there have been other reports or allegations against the Responding Party,
  - b. whether the Responding Party has a history of arrests or records from a prior school indicating a history of Sexual Harassment or a history of violence,

- c. whether the Responding Party threatened further Sexual Harassment or threatened violence against the individual or others, or
  - d. whether the Sexual Harassment was committed by multiple Responding Parties;
3. whether the information reveals a pattern at a given location or by a particular group or person;
  4. the Responding Party's right to receive information about the allegations in accordance with applicable laws;
  5. the results of a violence risk assessment shows a compelling risk to health and/or safety of the College community;
  6. whether the Reporting Party is a minor; and
  7. whether the College possesses other means to obtain relevant evidence of the Sexual Harassment (e.g., security cameras or security personnel, physical evidence).

The presence of one or more of these factors may lead the College to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the College may honor the request for privacy.

**B. Determination as to Whether Request Can Be Granted.** The Title IX Coordinator will inform the person requesting privacy if the request can be granted or if the investigation must proceed without anonymity.

1. If the College determines that it cannot maintain privacy, it will inform the individual prior to starting an investigation and will, to the extent possible, only share information with people responsible for addressing the allegations. The College will also take ongoing steps to protect the individual from Retaliation or harm and work with them to create a safety plan, if warranted, and assist the individual in accessing other services and supportive measures.
2. If the College honors the request for privacy, the College's ability to investigate and take reasonable action in response to an allegation of Sexual Harassment may be limited. A Responding Party is entitled to know the name of the accuser and information regarding the nature of the allegations in order to defend against the allegations; thus, the College may not be able both to adjudicate the Formal Complaint and to maintain privacy during that process.

Even when the College determines to abide by a request for privacy (and even if such request limits the College's ability to take disciplinary action against the Responding Party):

- a. To the extent practicable and appropriate, the College will take prompt action to limit the effects of the alleged Sexual Harassment and to prevent its recurrence. For instance, the College may take appropriate supportive measures to ensure an individual's safety even in the absence of a College proceeding. The College may also consider broader remedial action (such as increased monitoring, supervision, or security at locations where reported sexual harassment occurred, increased education and prevention efforts, including to targeted population groups, and climate assessments).
- b. Information regarding the alleged Sexual Harassment may be included in College records, as necessary and appropriate.

- c. College personnel will (and are obligated to) handle information regarding alleged Sexual Harassment in accordance with applicable local, state, and federal laws.

### **Section 3.03 Privacy in the Investigation and Resolution Processes.**

#### **A. Sharing of Information (Applicable to All Reports and Allegations).**

The College will respect and will make every feasible effort to avoid the disclosure of the information shared and the identities of the parties involved in Sexual Harassment matters. Information regarding alleged Sexual Harassment will generally be disclosed by College personnel as follows:

1. The College's Responsible Employees will report information regarding alleged Sexual Harassment to the Title IX Coordinator (see Section 2.02 for additional information on reporting to Responsible Employees).
2. College personnel will handle information regarding alleged Sexual Harassment in accordance with applicable local, state, and federal laws and may report alleged Sexual Harassment to local law enforcement if warranted by the nature of the allegations at issue.
3. College administrators will share information regarding alleged Sexual Harassment, as appropriate and necessary, in order to address and resolve the allegation(s) at issue, prevent the recurrence of similar Sexual Harassment, and address the effects of the Sexual Harassment.

## **ARTICLE IV - GENERAL PROVISIONS APPLICABLE TO ALL ALLEGATIONS OF SEXUAL HARASSMENT**

### **Section 4.01 Oversight.**

The Title IX Coordinator or designee will be responsible for overseeing the prompt, fair, and impartial investigation and resolution of Formal Complaints and other reports of Sexual Harassment that are filed with or disclosed to the College.

### **Section 4.02 Conflicts.**

If any administrator designated by this Policy to participate in the investigation or resolution of a report or Formal Complaint is the Responding Party, then the Title IX Coordinator will appoint another College administrator to perform such person's duties under this Policy. If the Title IX Coordinator is the Responding Party, then the Chief Human Resources Officer will appoint another College administrator to perform the Title IX Coordinator's duties under this Policy.

### **Section 4.03 Advisors.**

When a Formal Complaint is received by the College, the Reporting Party and the Responding Party may have an advisor present throughout the process. The College will offer a trained advisor to the Parties; however, the Parties are not limited in their choice of advisor. The advisor may be a friend, an advocate, a lawyer, or another person. The College is not obligated to provide legal counsel on behalf of any Party.

Absent accommodations for a disability, the Parties may not be accompanied by more than one advisor or by other individuals during meetings and/or hearings (See Section 4.08).

See Exhibit B for more information on Advisors.

### **Section 4.04 Promptness.**

The College will make every reasonable effort to ensure that the investigation and resolution of a report or Formal Complaint occurs in as timely and efficient manner as possible. The process can take 60-90 days to resolve, typically. Throughout the investigation, the Parties will receive periodic status updates and notice of any delays from the Title IX Coordinator.

Any Party may request an extension of any deadline by providing the Title IX Coordinator with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request.

The Title IX Coordinator may modify any deadline contained in this Policy as necessary and for good cause. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

### **Section 4.05 Prohibition on Retaliation.**

Neither the College nor any other person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation,

proceeding, or hearing under Title IX, its implementing regulations, and this Policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for Code of Conduct violations that do not Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of Sexual Harassment, or a Formal Complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, constitutes retaliation.

The College will keep confidential the identity of any individual who has made a report or complaint of Sexual Harassment, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment, any Reporting Party, any individual who has been reported to be the perpetrator of Sexual Harassment, any Responding Party, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for Sexual Harassment.

The exercise of rights protected under the First Amendment does not constitute Retaliation. Violations of this prohibition may be addressed through this Policy or the Student Handbook. Any person who feels that they have been subjected to Retaliation should make a report to the College's Title IX Coordinator.

Charging an individual with a Code of Conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation.

#### **Section 4.06 Prohibition on Providing False Information.**

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under College policy.

#### **Section 4.07 Amnesty for Students.**

The College considers the reporting and resolution of Sexual Harassment to be of paramount importance. Sometimes, individuals are hesitant to report or participate in the process because they fear that they may be accused of policy violations, such as underage drinking and drug use at the time of the incident. It is in the best interest of this community that as many people as possible choose to report allegations of Sexual Harassment and witnesses come forward to share what they know with the College.

To encourage reporting, the College pursues a policy of offering amnesty from minor policy violations at the time of an incident (i.e. drinking, drug use, interhall visitation) as determined by the Dean of Students in conjunction with the Title IX Coordinator.

#### **Section 4.08 Individuals with Disabilities.**

The College is dedicated to providing an inclusive campus. The College will make arrangements

to ensure that individuals with disabilities are provided appropriate accommodations to participate in the steps and procedures outlined in this Policy.

Requests for accommodations must be made to the Disability Resource Center. The supporting documentation will be reviewed by one of the above offices and inform the Student and the Title IX Coordinator about approved accommodations, and work with the Title IX Coordinator to make arrangements for the accommodations. The Disability Resource Center is located in Proctor Library Room 211, and can be contacted by phone at (904) 819-6460 or email at [disabilityservices@flagler.edu](mailto:disabilityservices@flagler.edu).

#### **Section 4.09 Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Flagler College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The College will ensure that a Reporting Party's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

#### **Section 4.10 Federal Statistical Reporting Obligations**

The College has a duty to report statistics for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept private, but statistical information must be shared with Safety and Security regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report.

#### **Section 4.11 Revisions to this Policy**

This Policy supersedes any previous policy(ies) addressing harassment, sexual harassment, discrimination, and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this Policy as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings. This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

#### **Section 4.12 Privileged Communications**

At no time does the College require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

## **ARTICLE V – FORMAL COMPLAINTS AND FORMAL GRIEVANCE PROCESS**

### **Section 5.01 Formal Complaints**

A Formal Complaint means a document submitted or signed by the Reporting Party or signed by the Title IX Coordinator alleging a policy violation by a Responding Party and requesting that the College investigate the allegation(s). A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in this policy, or as described in this section. As used in this paragraph, the phrase “document filed by a Reporting Party” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the College) that contains the Reporting Party’s physical or digital signature, or otherwise indicates that the Reporting Party is the person filing the complaint, and requests that the College investigate the allegations.

The College may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Responding Party, or by more than one Reporting Party against one or more Responding Party’s, or by one Party against the other Party, where the allegations of Sexual Harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Reporting Party or more than one Responding Party, references to the singular “Party,” “Reporting Party,” or “Responding Party” include the plural, as applicable.

Once a Formal Complaint is initiated, the individual who brought forward the allegation of Sexual Harassment will be referred to as a “Reporting Party” and the person whom the Formal Complaint is directed will be referred to as a “Responding Party.”

Upon receipt of a Formal Complaint to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator will initiate a prompt initial assessment to determine the next steps and will initiate at least one of three responses:

- A. Offering supportive measures because the Reporting Party does not want to file a formal complaint; and/or

If a supportive and remedial response is preferred, the Title IX Coordinator works with the Reporting Party to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Reporting Party can elect to initiate one later, if desired.

- B. An informal resolution; and/or

If an informal resolution option is preferred, the Title IX Coordinator assesses whether the Formal Complaint is suitable for informal resolution, [which informal mechanism may serve the situation best or is available] and may seek to determine if the Responding Party is also willing to engage in informal resolution. An informal resolution may not be offered unless a Formal Complaint is filed.

- C. A Formal Grievance Process including an investigation and a hearing upon submission of a formal complaint.

If a Formal Grievance Process is preferred, the Title IX Coordinator must initially determine if the conduct alleged in the Formal Complaint falls within the scope of Title IX



1. If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
  - a. an incident, and/or
  - b. a pattern of alleged harassment, and/or
  - c. a culture/climate issue, based on the nature of the complaint.
2. If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the Formal Complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly. Please note that dismissing a Formal Complaint under Title IX is solely a procedural requirement under Title IX and does not limit the College’s authority to address a Formal Complaint under a separate process.

The Title IX Coordinator can determine, based on information reported, that it is necessary and/or appropriate for the College to investigate the information available to it. When the Title IX Coordinator executes the written complaint, they do not become the Reporting Party. The Reporting Party is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy and retains all rights of a Reporting Party under this Policy irrespective of their level of participation.

In all proceedings under this Policy, the College requires an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person’s status as a Reporting Party, Responding Party, or witness.

### **Section 5.02 Objecting of the Formal Grievance Process**

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Responding Party engaged in a policy violation and evidence that supports that the Responding Party did not engage in a policy violation. Credibility determinations may not be based solely on an individual’s status or participation as a Reporting Party, Responding Party, or witness. The College operates with the presumption that the Responding Party is not responsible for the reported Sexual Harassment unless and until the Responding Party is determined to be responsible for a policy violation by the applicable standard of proof.

### **Section 5.03 Notice of Investigation and Allegations**

Upon receipt of a Formal Complaint, the College will provide a written Notice of Allegations to the parties who are known. The Notice of Allegations will include the following information:

- A. Notice of the College’s grievance process, including any informal resolution process;
- B. Notice of the allegations of Sexual Harassment potentially constituting Sexual Harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.
- C. A statement that the Responding Party is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the

grievance process.

- D. Notice that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
- E. Provisions in the Code of Conduct that prohibit knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the College decides to investigate allegations about the Reporting Party or Responding Party that are not included in the Notice of Allegations, the College will provide an Amended Notice of Allegations to the parties whose identities are known.

#### **Section 5.04 Dismissal of a Formal Complaint**

The College shall dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- A. The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined herein, even if proved;
- B. The conduct did not occur in the College's education program or activity; or
- C. The conduct did not occur against a person in the United States.

Dismissal for any of the reasons herein shall not preclude action under another provision of the College's Code of Conduct.

The College may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- A. The Reporting Party notifies the Title IX Coordinator in writing that the Reporting Party wants to withdraw the Formal Complaint or any allegations therein;
- B. The Responding Party is no longer enrolled or employed by the College; or
- C. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon any dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties. This dismissal decision is appealable by any Party under the procedures for appeal in Article VIII. [The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.]

A Reporting Party who decides to withdraw a complaint may later request to reinstate it or refile it.

#### **Section 5.05 Supportive Measures**

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving a Formal Complaint. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Parties to restore or preserve access to the College's education program or activity, including measures designed to protect the safety of all parties or the College's educational environment,

and/or deter harassment, discrimination, and/or retaliation.

The College will maintain the privacy of the supportive measures, provided that privacy does not impair the College's ability to provide the supportive measures. The College will act to ensure as minimal an academic/occupational impact on the Parties as possible. The College will implement measures in a way that does not unreasonably burden the other Party.

These measures include, but are not limited to the following:

#### **A. Students**

1. Issuing no-contact orders to prevent any contact between the Reporting Party, the Responding Party, witnesses, and/or Third Parties;
2. Changing on-campus housing, if any, to a different on-campus location and providing assistance from College personnel in completing the relocation;
3. Assigning dining facilities and/or study areas;
4. Changing on campus work arrangements or schedules;
5. Changing academic schedules;
6. Provide alternate course completion options;
7. Excusing class absences;
8. Providing security escorts as determined by the Title IX Coordinator;
9. Provide counseling services by the College through campus resources;
10. Prohibiting from being on College property and/or using College facilities (including residence halls and all other areas controlled, leased, or used by the College);
11. Prohibiting from attending classes or limiting class attendance;
12. Prohibiting from participating in and/or attending Student programs and activities;
13. Prohibiting from representing the College on athletic teams or in leadership positions; and/or
14. Emergency removal.

The Title IX Coordinator will notify the Parties of the supportive measures, if any. If a Party wishes to challenge a supportive measure decision, they must submit the challenge in writing to the Title IX Coordinator within 3 days of receipt of supportive measures. The Title IX Coordinator will reply promptly with a final decision.

**B. Employees.** When an employee's alleged actions or behaviors affect the safety, health, or general welfare of the Reporting Party, the Responding Party, students, other employees, and/or the College community, the Title IX Coordinator may:

1. take such steps as are reasonable, appropriate, and necessary to restrict Parties' movement on campus;
2. take such steps as are reasonable, appropriate, and necessary to re-assign or place on administrative leave. Determinations regarding employee discipline will be made in accordance with the College's policies and procedures governing such matters; or
3. take any other reasonable actions necessary to protect the safety, health, or general welfare of the Reporting Party, Responding Party, students, other employees, and/or the College Community.

## **Section 5.06    Emergency Removal**

In certain circumstances, the College may need to immediately remove an individual from an education program or activity. If an emergency removal is necessary, the College will undertake an individualized safety and risk analysis to determine whether an immediate threat to the physical health or safety of any student or other individual arising from allegations of sexual harassment exists prior to removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the CARE Team using its standard objective violence risk assessment procedures.

If an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the Formal Complaint but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. A Reporting Party and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX.

A Responding Party may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator regarding an emergency removal. The Responding Party will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion to implement or stay an emergency removal and to determine the conditions and duration. There is no appeal process for emergency removal decisions.

Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, restricting a student's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics. At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

When the Responding Party is an employee, the Title IX Coordinator will work with the Chief Human Resource Officer to determine and implement the least restrictive emergency actions possible in light of the circumstances and safety concerns.

## **Section 5.07 Meetings with the Title IX Coordinator**

The Parties and any witness may contact the Title IX Coordinator at any time to schedule a meeting to discuss the procedures set forth in this Policy or any other matters under this Policy. The Title IX Coordinator is not an investigator or decision-maker.

## **Section 5.08 The Investigation.**

- A. The Investigator.** Once the decision to initiate a formal investigation is made, the Title IX Coordinator appoints an Investigator(s) to conduct the investigation. The Title IX Coordinator will vet the Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Vice President of Human Resources.
- B. Investigation Steps.** All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.
- C. Timeliness of Investigation.** Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.
- D. Delays.** The College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions. The College will communicate in writing the anticipated duration of the delay and reason to the parties, and provide the parties with status updates if necessary. The College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, College will implement supportive measures as deemed appropriate. College action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.
- E. Witnesses.** Each Party shall have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Witnesses may provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may still be used as evidence.

- F. Recording.** No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.
- G. Evidence.** The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Reporting Party's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Reporting Party's prior sexual behavior are offered to prove that someone other than the Responding Party committed the conduct alleged by the Reporting Party, or if the questions and evidence concern specific incidents of the Reporting Party's prior sexual behavior with respect to the Responding Party and are offered to prove consent.
- H. Burden of Proof and Burden of Gathering Evidence During the Investigation.** The burden of proof and the burden of gathering evidence rests on the College and not on the parties provided that the College cannot access, consider, disclose, or otherwise use a party's records 2023 that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the College obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the College will obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3).
- I. Effect of Criminal Investigation.** The College's investigation may be delayed temporarily while criminal investigators are gathering evidence. In the event of such a delay, the College may take supportive measures when necessary. Both Parties will be notified of the delay. Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate a matter is determinative of whether Sexual Harassment, for the purposes of this Policy, has occurred.
- J. Notice.** A party whose participation is invited or expected shall receive written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time to prepare to participate.
- K. Restrictions on Communications.** The Parties are not restricted or prohibited from discussing the allegations under investigation or to gather and present relevant evidence.
- L. Advisors.** The Parties have equal rights to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The College shall not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the College may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
- M. Inspection and Review of Investigatory Evidence.** The parties shall have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a Party or

other source, so that each Party can meaningfully respond to the evidence prior to conclusion of the investigation.

Prior to completion of the investigative report, the College will send to each Party and the Party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy.

The Parties will have ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report.

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

**N. The Investigator's Report.** The Investigator will complete a written investigative report related to the allegations in the Formal Complaint. The Investigative Report will fairly summarize relevant evidence and, at least ten (10) days prior to a hearing (if a hearing is required or otherwise provided) or other time of determination regarding responsibility, the College will send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

**O. Referral for Hearing.** Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

**P. Withdrawal or Resignation While Formal Complaint Pending.**

1. Students: Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. A student who withdraws or leaves while the process is pending may not return to the College. Such exclusion applies to all campuses of Flagler College. Admissions will also be notified that the student shall not be readmitted, and the student will be barred from College property and/or events.

If a student Responding Party only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return unless and until the Formal Complaint is resolved.

2. Employees: An employee who resigns while a Formal Complaint is pending is not eligible for rehire with the College or any campus of Flagler College and the records retained by the Title IX Coordinator and HR will reflect that status.

**Section 5.09 Formal Complaints Against Vendors/Contractors.**

If the Responding Party is a Vendor/Contractor (and not a student or employee), the Title IX Coordinator will conduct interviews and evidence, conduct additional interviews as they see fit, and will determine whether the evidence establishes that it is more likely than not the Responding Party committed Sexual Harassment. The Title IX Coordinator will issue a recommendation letter to the Vice President of Business Services (or the contract supervisor), who will issue a written decision letter concurrently to the Parties. There will be no appeal permitted.

## **ARTICLE VI – ADMISSION OF RESPONSIBILITY AND INFORMAL RESOLUTIONS**

### **Section 6.01 Responding Party Admission of Responsibility Prior to Hearing.**

At any time prior to a hearing, the Responding Party may elect to admit responsibility for their actions. In such a situation, the Responding Party must admit to having engaged in Sexual Harassment and violating this Policy.

The Title IX Coordinator will propose sanction(s) for the Responding Party. If the Reporting Party and the Responding Party agree to such proposed sanction(s), then the Formal Complaint will be resolved without a hearing and without any further rights of appeal by any Party.

If either the Reporting Party or the Responding Party objects to such proposed sanction(s), a Decision Maker will convene for the exclusive purpose of determining an appropriate sanction in accordance with Article VII, as applicable, of this Policy.

The sanction(s) may be subject to appeal pursuant to Article VIII of this Policy. For purposes of this paragraph, all of the other provisions of this Policy relating to the recommendation and imposition of a sanction for Sexual Harassment shall apply.

### **Section 6.02 Informal Resolution**

Informal Resolution is available at any time after the filing of a Formal Complaint and prior to a determination regarding responsibility. Informal Resolution is not available in cases where a student is the Reporting Party and an employee is the Responding Party.

The College will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of Sexual Harassment consistent with this Policy. Similarly, the College will not require the Parties to participate in an Informal Resolution under this section and may not offer an Informal Resolution unless a Formal Complaint is filed. However, at any time prior to reaching a determination regarding responsibility, the College may facilitate an Informal Resolution, that does not involve a full investigation and adjudication.

**A. Process.** When the parties voluntarily elect to participate in Informal Resolution, the Title IX Coordinator will facilitate the process to determine whether the parties can voluntarily agree on a mutually acceptable resolution of the Formal Complaint.

1. Provides to the parties a written notice disclosing:
  - a. the allegations,
  - b. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and
  - c. any outcome resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
2. Obtains the parties' voluntary, written consent to the informal resolution process; and



3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

The Title IX Coordinator will gather relevant information as necessary from the Parties and other individuals. The Title IX Coordinator will meet with the Parties separately. During their meeting with the Title IX Coordinator, the Parties will have an opportunity to discuss the Formal Complaint, their desired outcome, and any other matters pertinent to the Formal Complaint. Both the Reporting Party and the Responding Party may have an advisor present during the meeting with the Title IX Coordinator.

After gathering relevant information and meeting with the Parties, the Title IX Coordinator will propose a resolution in writing to the Parties. The proposed resolution may include (a) sanction(s) for the Responding Party. If either the Reporting Party or the Responding Party object to the proposed outcome, then Informal Resolution will be terminated, and the Formal Complaint will continue in accordance with this Policy.

**B. Informal Resolution Agreement.** If the Parties agree to the Title IX Coordinator's proposed outcome, a written Informal Resolution Agreement will be prepared by the Title IX Coordinator and distributed to the Parties. The Informal Resolution Agreement will set forth the proposed resolution and must be signed by the Parties with an acknowledgement that the agreed-upon resolution is voluntary and mutually acceptable within three (3) days of receipt.

If either Party elects to not sign the Informal Resolution Agreement, then Informal Resolution will be terminated, and the Formal Complaint will continue in accordance with this Policy.

If the Informal Resolution Agreement is timely signed by both Parties, the Formal Complaint will be considered resolved, and the Informal Resolution Agreement will be considered the final outcome. The Parties shall not have any further right to appeal.

## ARTICLE VII – HEARINGS

### Section 7.01 Hearing Preparation (What Happens Before the Hearing)

- A. Advisors.** If a party does not have an advisor present at the live hearing, the College will provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- B. The Decision Maker(s).** The Title IX Coordinator will select the Decision Maker(s). There can be one Decision Maker, or a panel of three faculty and/or staff members (none of whom shall be from the same academic department or office as the Reporting Party or the Responding Party, if applicable), who will serve as the Decision Maker. If a panel is assigned, one of the three Hearing Panel members will be appointed by the Title IX Coordinator as the Chair.
- C. Notice of Hearing.** The Title IX Coordinator will provide concurrently provide the Reporting Party and the Responding Party with a written Notice of Hearing no less than ten (10) days prior to the hearing. The Notice of Hearing will include:
1. A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
  2. The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
  3. Any technology that will be used to facilitate the hearing.
  4. Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision Maker and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
  5. A list of all those who will attend the hearing, along with an invitation to object to any Decision Maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
  6. Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
  7. A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will be considered by the Decision Maker(s). The hearing may only be rescheduled if the Decision Maker(s) determines that good cause exists.
  8. Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the College will appoint one. Each party must have an Advisor present. There are no exceptions.
  9. A copy of all the materials provided to the Decision Maker(s) about the matter, unless they have been provided already.
  10. An invitation to each party to submit to the Chair an impact statement one (1) day before the hearing that the Decision Maker(s) will review during any sanction determination.
  11. An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

12. A statement that parties may not bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic semester and are unable to be resolved prior to the end of term will typically be held immediately after the end of the semester or during the summer, as needed, to meet the resolution timeline.

In these cases, if the Responding Party is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

**D. Objections to the Composition of the Decision Maker(s).** The Parties may challenge the participation of the Decision Maker(s) by submitting a written objection to the Title IX Coordinator within three days of receipt of the notice of the hearing. Such objection must state the specific reason(s) for the objection. The Title IX Coordinator will evaluate the objection and determine whether to alter the selection of the Decision Maker(s). Failure to submit a proper objection will constitute a waiver of any right of objection to the Decision Maker(s). Any changes of the Decision Maker(s) must be provided in writing from the Title IX Coordinator to both Parties at least one day prior to the date of the hearing.

**E. Joint Hearings.** In hearings involving more than one Responding Party or in which two (2) or more Reporting Parties have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Responding Party to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Responding Party with respect to each alleged policy violation.

**F. Information to Be Provided Prior to the Hearing.**

1. **By the Parties.** No fewer than five days prior to the hearing date, the Reporting Party and the Responding Party must provide the Title IX Coordinator with:
  - a. a list of witnesses, if any, that they propose the Decision Maker(s) call and a list of questions, if any, for the Decision Maker(s) to ask such witnesses,
    - (1) Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) [or have offered a written statement or answered written questions], unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not agree to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.
  - b. copies of documents and a description of any other information they propose to present,
  - c. the name of the advisor, if any, that will accompany them to the hearing, and
  - d. if desired, an impact statement, and
  - e. request to participate remotely or with alternate arrangements.

In the absence of good cause, which shall be determined by the Decision Maker(s) in their sole discretion, neither the Reporting Party or the Responding

Party may introduce witnesses or documents at the hearing that were not provided to the Decision Maker(s) by the proper deadline (five days prior).

2. **By the Decision Maker(s).** No fewer than three days prior to the hearing date, the Decision Maker(s) will provide written notice of the witnesses the Decision Maker(s) plans to call to the Title IX Coordinator.
3. **By the Title IX Coordinator.** No fewer than three days prior to the hearing date, the Title IX Coordinator will provide each Party with a packet containing copies of the Formal Complaint, the Investigative Report, the other Party's list of witnesses, the name of the other Party's advisor, if any, and a list of witnesses the Decision Maker(s) plans to call.

The Title IX Coordinator will hold a pre-hearing conference with the members of the Decision Maker(s). They will be provided with copies of the Formal Complaint, the Investigative Report, all evidence, the Parties lists of witnesses, and the name of the advisors, if any.

- G. Hearing Location.** The Parties are permitted to request to view the hearing room in advance of the hearing. Such requests should be directed to the Title IX Coordinator.

#### **Section 7.02 The Hearing (What Happens During the Hearing).**

All hearings under this Policy shall be live hearings. At the request of either party, the College will provide for the hearing to occur with the parties located in separate rooms with technology enabling the Decision Maker(s) and parties to simultaneously see and hear the party or witness answer questions.

Live hearings may be conducted with all parties physically present in the same geographic location or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

- A. Failure to Appear.** If the Reporting Party and/or the Responding Party fails to appear at the scheduled hearing, and such Party was provided proper notice of the hearing, then absent extenuating circumstances, the Decision Maker(s) will direct the Hearing to proceed with the hearing and determine the resolution of the Formal Complaint.
- B. Recording of the Hearing.** The College will audio record the actions of the hearing. This audio recording will be the property of the College. The parties may not record the proceedings and no unauthorized recordings are permitted. The parties, their Advisors, and appropriate administrators of the College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

In order to comply with FERPA, Title IX, and other applicable laws, and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, any hearing held is not open to the public.

- C. Introductions and Explanation of Procedure.** The Chair explains the procedures and introduces the participants. At the hearing, the logistics are facilitated by a hearing

facilitator who will be the Title IX Coordinator or designee. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc. The Decision Maker(s) will resolve any questions concerning procedure or the admission of evidence or testimony.

- D. Testimony and Questioning.** At the live hearing, the Decision Maker(s) shall permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the College to otherwise restrict the extent to which advisors may participate in the proceedings.

Only relevant cross-examination and other questions may be asked of a party or witness.

Before a Reporting Party, Responding Party, or witness answers a cross-examination or other question, the Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious, or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

Even if a party or witness does not submit to cross-examination at the live hearing, the Decision Maker(s) may rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Decision Maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Whether a party or witness does or does not answer questions from the Decision Maker(s), their statements will be admissible as long as they are willing to submit to cross-examination questions, even if they are not asked such questions. The Decision Maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

- E. Participation.** Participants in the hearing process must provide truthful testimony and may be subject to disciplinary action for failing to do so.

- 1. Of the Reporting Party and Responding Party.** The Reporting Party and/or the Responding Party may request to testify in a separate room from the other Party. They may choose not to participate in the hearing or answer some or all questions posed by the Decision Maker(s); however, their exercise of that option will not preclude the Decision Maker(s) from making a determination regarding the Formal Complaint.
- 2. Of Witnesses and Order of Presentation.** The Decision Maker(s) will attempt to produce witnesses identified on the Decision Maker(s)'s witness list first. The Parties shall have an equal opportunity to present any witnesses on their behalf. Parties are

responsible for securing the attendance of those witnesses that are not identified on the Decision Maker(s)'s witness list. After the Decision Maker(s) produces its witnesses, the Reporting Party will be given an opportunity to present their witnesses then the Responding Party will present their witnesses. Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator [or have proffered a written statement or answered written questions], unless all parties and the Chair assent to the witness's participation in the hearing.

**F. Evidentiary Matters.**

1. **Presentation of Evidence.** The Reporting Party and the Responding Party will have an equal opportunity to present evidence, including presenting witnesses, if available, and/or signed written statements from witnesses, and other documentary evidence. Formal rules of evidence will not be observed during the hearing.
2. **Standard of Evidence.** The standard of evidence applied to the hearing will be the preponderance of evidence standard (i.e., more likely than not).
3. **Specific Types of Evidence.**
  - a. **Written Witness Statements.** Live witness testimony is not required; however, the Decision Maker(s) has the discretion to give lesser weight to written witness statements than to live witness testimony. The Title IX Coordinator will provide a form for written witness statements that will include a signed verification that the information provided is true and to the best of the witness's knowledge.
  - b. **Evidence Regarding Past Sexual Histories.** The hearing does not consider questions and evidence about the Reporting Party's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Reporting Party's prior sexual behavior are offered to prove that someone other than the Responding Party committed the conduct alleged by the Reporting Party, or if the questions and evidence concern specific incidents of the Reporting Party's prior sexual behavior with respect to the Responding Party and are offered to prove consent.
  - c. **Previous Disciplinary Action.** Previous disciplinary action of any kind involving the Responding Party may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then.
  - d. **Impact Statements.** The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision Maker(s) at the sanction stage of the process when a determination of responsibility is reached.

- G. Closing Statements.** After all Parties and witnesses have been questioned, the Decision Maker(s) will determine whether there are any unresolved issues that may be clarified by the presentation of additional information. If so, the Decision Maker(s) will suspend the hearing and reconvene it in a timely manner in order to receive such additional information. A suspension may not be based on the failure of witnesses to appear without good cause or on the proposed introduction of documents or other information that could and should have been submitted before the hearing.

Once the Decision Maker(s) deem(s) that all relevant evidence has been submitted, the Reporting Party and the Responding Party may make a closing statement. The Decision Maker(s) may permit them a short recess to allow the parties an opportunity to prepare their closing statements.

If both the Reporting Party and the Responding Party choose to make a closing statement, the Reporting Party will make their statement first.

### **Section 7.03 The Outcome (What Happens After the Hearing).**

- A. The Decision.** Following the conclusion of the hearing, the Decision Maker(s) will determine whether the evidence establishes that it is more likely than not the Responding Party is responsible for having engaged in Sexual Harassment in violation of this Policy.

The written decision of the Decision Maker(s) will include the following:

1. Identification of the allegations potentially constituting Sexual Harassment;
2. 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;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the College's Code of Conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Responding Party, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the complainant; and
6. The College's procedures and permissible bases for the Reporting Party and Responding Party to appeal.

A recommendation of expulsion or termination of employment must be a unanimous decision of the Decision Maker(s). All other disciplinary outcomes must be by majority decision.

**Sanctions.** Possible sanctions depend upon the nature and gravity of the Sexual Harassment, any record of prior discipline for Sexual Harassment, and/or any record of prior discipline for violating the Student Code of Conduct. Sanctions may include, without limitation:

For students: referral to counseling, training, written reprimand, suspension, dismissal, expulsion from the College, disciplinary probation, expulsion from campus housing, and/or other educational sanctions as are deemed appropriate by the Decision Maker(s).

For employees: training, referral to counseling, and recommending disciplinary actions such as warning, written reprimand, withholding of a promotion or pay

increase, reassignment, temporary suspension without pay, compensation adjustment, termination, and/or other employment sanctions as are deemed appropriate by the Decision Maker(s).

In determining sanctions, the Decision Maker(s) will give consideration to whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation.

**B. Notice of Decision.** No later than ten (10) days from the date the Decision Maker(s) completes its written decision, the Title IX Coordinator will simultaneously provide the parties with a Notice of Outcome signed by the Decision Maker or the Chair of the Hearing Panel through the College-issued email address or otherwise approved account. Included with the Notice of Outcome will be a copy of the Decision Maker(s)'s written decision and a Final Outcome Letter. The Final Outcome letter will set forth:

1. the violation(s) of this Policy for which "Sufficient Evidence" was determined, or a statement that indicated "Insufficient Evidence" for a violation of this Policy,
2. the sanctions imposed on the Responding Party, if any (setting forth only a description of the disciplinary action taken, the date of its imposition, its duration, and the rationale for such action),
3. final measures to be provided to the Parties, and
4. information on when the results are considered to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

**C. Prevention of Retaliation.** The Title IX Coordinator will also take steps, where necessary, to prevent potential harassment of or Retaliation against all Parties, such as informing them about how to report subsequent problems, following up with them to ensure there are no subsequent problems, providing trainings for the school community, and providing Sexual Harassment or other counseling.

Furthermore, the Title IX Coordinator will take prompt corrective action if any Party experiences Retaliation or is subjected to further Sexual Harassment or if the original sanctions imposed on the Responding Party are ineffective to protect the safety and well-being of members of the College community. The Title IX Coordinator will also take reasonable steps to eliminate any hostile environment that has been created, such as conducting trainings and disseminating informational materials. In taking the above-outlined steps, the Title IX Coordinator will make every reasonable effort to minimize the burden on the Parties.



## **ARTICLE VIII – APPEALS**

### **Section 8.01   Appealing Supportive Measures.**

Supportive measures may be appealed to the Title IX Coordinator, whose decision regarding their imposition will be final.

### **Section 8.02   Appealing the Dismissal or Non-Dismissal of a Formal Complaint.**

The Reporting Party may appeal the Title IX Coordinator's decision to dismiss a Formal Complaint, and the Responding Party may appeal the Title IX Coordinator's decision not to dismiss a Formal Complaint. The appeal may be initiated by submitting a written appeal to the Vice President of Student Affairs (and providing a copy of the appeal to the Title IX Coordinator) within five days of receipt of the decision. The Title IX Coordinator will promptly inform the other Party of the appeal.

Within 15 days following receipt of the appeal absent extenuating circumstances, the Vice President of Student Affairs will make a determination as to whether the Formal Complaint should or should not have been dismissed. The Vice President of Student Affairs will notify the Reporting Party and the Responding Party concurrently of their decision.

### **Section 8.03   Appealing the Decision Maker(s)'s Written Decision.**

Any Party may appeal the decision of the Decision Maker(s) and/or the sanction imposed. The decision of the Decision Maker(s) and the sanction imposed on the Responding Party may, if desired, be appealed simultaneously.

Aside from supportive measures instituted pursuant to Section 5.05, the Responding Party's status will remain unchanged until the appellate process is final except in cases where sufficient evidence exists to demonstrate that the Responding Party is a danger to themselves or others.

#### **A. Grounds for Appeal.**

The Decision Maker(s)'s (or, if applicable, the Human Resources Officer's) finding of evidence or lack of evidence may be appealed on the following grounds:

1. Procedural irregularities that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
3. The Title IX Coordinator, investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against Reporting Party's or Responding Party's generally or the individual Reporting Party or Responding Party that affected the outcome of the matter; and
4. The severity of the sanction imposed is extraordinarily disproportionate to the gravity of the Sexual Harassment for which the Responding Party was found responsible.

## **B. Process.**

1. **Filing an Appeal.** Appeals must be made in writing to the Title IX Coordinator within five days from the date of the Final Outcome Letter. The Title IX Coordinator will share the appeal with the appellate officer. The appeal must state the reason(s) for the appeal (from among those listed above), the facts supporting the appeal, and the recommended way to correct the error. The Title IX Coordinator will promptly inform the other Party of the filing of the appeal and provide a copy of the appeal.
  - a. Appellate Officer for Students: Vice President of Student Affairs
  - b. Appellate Officer for Employees: President of the College
2. **Initial File Review.** The appellate officer will begin by reviewing the Formal Complaint file (which includes but is not limited to the Formal Complaint, the Investigative Report, Decision Maker(s)'s written decision, the Parties' written statements, and any transcripts or recordings of the hearing).
3. **Written Statements.** No later than ten (10) days from the date on which the non-appealing party receives a copy of the appeal, the parties may submit written statements supporting or challenging the outcome.
4. **Decision.**
  - a. **Regarding Responsibility.** If the Decision Maker(s) issued a finding of "Sufficient Evidence," the appellate officer may recommend (i) that the finding be affirmed or reversed, or (ii) that a new hearing be conducted. If the Decision Maker(s) issued a finding of "Insufficient Evidence" the appellate officer may recommend (i) that the finding be affirmed, or (ii) that a new hearing be conducted.
  - b. **Regarding Sanctions.** The appellate officer may recommend that the Decision Maker(s)'s determination regarding sanctions be affirmed or overturned. If the appellate officer determines that the sanctioning decision of the Decision Maker(s) should be overturned, the appellate officer will find either (1) the final sanctions to be imposed on the Responding Party, which will not be subject to further appeal, or (2) that another hearing (or, if applicable, series of adjudicatory interviews) will be convened before the Decision Maker(s) for the sole purpose of considering sanctions, in which case the final sanctions set by the Decision Maker(s) and approved by the Title IX Coordinator will not be subject to further appeal. The Title IX Coordinator will notify the Reporting Party and the Responding Party concurrently of the decision.
5. **Notification.** Within fifteen days from the later of the date of the initial file review, the appellate officer's receipt of additional written materials, or any appeal hearing, (or longer, if reasonably necessary), the appellate officer (or designee) will communicate their final decision simultaneously to the Reporting Party and the Responding Party.

## **ARTICLE IX – RECORDKEEPING**

### **Section 9.01 Recordkeeping.**

The College will maintain for seven years records of the following:

- A.** Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the College's education program or activity;
- B.** Any appeal and the result therefrom;
- C.** Any informal resolution and the result therefrom; and
- D.** All materials used to train the Title IX Team.

For each response required under § 106.44, the College will create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the College will 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 College's education program or activity. If the College does not provide a complainant with supportive measures, then the College will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

## **EXHIBIT A: RESOURCES AND CONTACT INFORMATION**

The College's first priority is to help you take steps to address your safety, medical needs and emotional well-being if you have been involved in an incident of sexual violence. You are encouraged to take the following actions regardless of whether you have made a decision about whether to pursue criminal or College disciplinary charges.

### **1. Ensure Your Physical Safety.**

If you are in immediate crisis call 911.

Office of Campus Safety and Security  
170 Malaga Street  
(904) 819-6200

### **2. Seek Medical Assistance and Treatment.**

Get medical attention as soon as possible after a sexual assault to determine the possibilities of physical injury, to prevent or treat sexually transmitted diseases, and, if applicable, to prevent pregnancy. Medical facilities can also screen for the presence of drugs given to you without your knowledge. Local options for medical care can be found on the next page.

You can immediately notify law enforcement of the incident or you may wish to maintain confidentiality while you consider what options to pursue. Regardless, it is advisable to have an evidence collection kit, free of charge, completed as soon as possible after the incident. You have the option of maintaining anonymity while you consider your options to report the incident to the police. The hospitals listed on the next page administer evidence collection kits.

In order to best preserve evidence for a collection kit, you should avoid showering, bathing, going to the bathroom or brushing your teeth before the kit is completed. You should also wear (or take with you in a paper – not plastic – bag) to the hospital the same clothing that you were wearing during the assault. An evidence collection kit can still be completed if you have showered or bathed. You may be accompanied to the hospital by a friend or other support person. A physician will briefly screen you, and a forensic nurse trained in evidence collection procedures will conduct the examination, collecting hair, fluid and tissue samples. The costs associated with evidence collection kits, including their administration, are paid by the State of Florida and are therefore free of charge.

### **3. Obtain Emotional Support**

Counseling Services can assist as you begin the recovery process. Counselors are trained to provide crisis intervention on short-term and emergency issues. Counseling can also offer a referral to you for outside providers, law enforcement, and/or put you in touch with an advocate. Counseling is free of charge to all Students. In some instances, the law may require the disclosure of information shared by Students with counselors. However, absent such a legal mandate, counseling services are strictly confidential and will not be reported to other College personnel.

See below for the contact information for the Counseling services on each campus.

### **4. Obtain Information**

You are encouraged to report incidents of Sexual Harassment to the College's Title IX Coordinator even if you filed a report directly with law enforcement. College personnel can help you access resources and can provide you with support and information, including information on the College's procedures for investigating and addressing instances of Sexual Harassment.

**Mandatory Reporting Resources** - *A Mandatory Reporting Resource is obligated to disclose any information about Sexual Harassment to the Title IX Coordinator.*

Title IX Coordinator Dr. Jessica Kobryn (904) 826-8553 Lightner Museum, Lobby D, 3 <sup>rd</sup> Floor <a href="mailto:JKobryn@flagler.edu">JKobryn@flagler.edu</a>	Office of Campus Safety and Security (904) 819-6200 170 Malaga Street Security Officers are available 24/7 <a href="mailto:Security@flagler.edu">Security@flagler.edu</a>
Human Resources (904) 826-8605 Lightner Museum, Lobby D, 3 <sup>rd</sup> Floor <a href="mailto:humanresources@flagler.edu">humanresources@flagler.edu</a>	CARE Team (904) 819-6308 <a href="mailto:Care@flagler.edu">Care@flagler.edu</a> <a href="http://www.flagler.edu/care">www.flagler.edu/care</a>
Dean of Students Dr. Andrea Adams-Manning (904) 819-6336 Student Affairs Suite, Student Center <a href="mailto:AAdamsManning@flagler.edu">AAdamsManning@flagler.edu</a>	Vice President of Student Affairs Tara Stevenson (904) 819-6238 <a href="mailto:TStevenson@flagler.edu">TStevenson@flagler.edu</a>
All Faculty and Staff members with the exception of those included in the non-reporting resources.	

**Non-Reporting Resources** - *A non-reporting resource will not disclose information about Sexual Harassment to the Title IX Coordinator without the student's permission.*

Flagler College Counseling Center (904) 819-6305 65 Valencia St., Tinlin Cottage <a href="mailto:Counseling@flagler.edu">Counseling@flagler.edu</a> 8:00 a.m. until 5:00 p.m. Monday through Friday while classes are in session	Flagler College Health Services (904) 819-6211 74 King St., located at the southwest side of the Ponce Breezeway <a href="mailto:healthservices@flagler.edu">healthservices@flagler.edu</a> 7:00 a.m. until 4:00 p.m. Monday through Friday while classes are in session
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**Community Resources** - *Community Resources are organizations that are available in addition to on campus resources.*

St. Augustine Police Department 911 (Emergency) (904) 825-1074 (Non-emergency) 2300 A1A S, St. Augustine, FL	St. John's County Sheriff's Office 911 (Emergency) (904) 824-8304 (Non-emergency) 4015 Lewis Speedway, St. Augustine, FL
St. Augustine Beach Police 911 (Emergency) (904) 471-3600 (Non-emergency) 2300 A1AS, St. Augustine, FL	UF Health Flagler Hospital (904) 819-5155 (Emergency Department) 400 Health Park Blvd., St. Augustine, FL
Betty Griffin Center (904) 824-1555 <a href="http://www.bettygriffincenter.org">www.bettygriffincenter.org</a> Assistance is available 24/7	Betty Griffin 24-hour Help Line (904) 824-1555
RAINN Sexual Violence Crisis Hotline 1-800-656-HOPE (4673)	RAINN National Sexual Assault Online Live Chat <a href="https://www.rainn.org/">https://www.rainn.org/</a>

**Outside resources on Title IX and your rights**

The Office of Civil Rights' mission is to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools.  
<https://www.ed.gov/>

Know Your IX is a survivor and youth-led project of Advocates for Youth that aims to empower students to end sexual and dating violence in their schools.  
<https://www.advocatesforyouth.org/>

Title IX includes discrimination on the basis of pregnancy, childbirth, false pregnancy, miscarriage, abortion, or related conditions, including recovery.  
<https://thepregnantscholar.org/>

## **EXHIBIT B: THE ROLE OF AN ADVISOR**

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision Maker(s).

### **A. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the College community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the College, the Advisor will be trained by the College and be familiar with the College's resolution process.

If the parties choose an Advisor from outside the pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with College policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

### **B. Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The College cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the College is not obligated to provide an attorney.

### **C. Advisors in Hearings/ College -Appointed Advisor**

Under the U.S. Department of Education's Title IX regulations, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, the College will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses may also be conducted by the Decision Maker(s) members during the hearing.

#### **D. Pre-Interview Meetings**

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and College's policies and procedures.

#### **E. Advisor Violations of College Policy**

All Advisors are subject to the College policies and procedures regardless of whether they are an attorney or non-attorney. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address College officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator or Decision Maker(s) members except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### **F. Sharing Information with the Advisor**

The College expects that the parties may wish to have the College share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

Upon request, the Title IX Coordinator will provide a consent form that authorizes the Title IX Coordinator to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator before the College is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, the College will not comply with that request.

#### **G. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. Title IX Coordinator may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.



## **H. Expectations of an Advisor**

The College generally expects an Advisor to adjust their schedule to allow them to attend meetings when planned but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The Title IX Coordinator may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

## **I. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

## EXHIBIT C: DEFINITIONS

- A. **Advisor** means a person chose by a party or appointed by Flagler College to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- B. **Coercion** is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- C. **College Community** includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers.
- D. **Complainant** See Reporting Party.
- E. **Consent** means clear and unambiguous agreement, expressed in mutually understandable words or actions, to engage in a particular activity. Consent can be withdrawn by either Party at any point. Consent must be voluntarily given and may not be valid if a person is being subjected to actions or behaviors that elicit emotional or psychological pressure, intimidation, or fear. Consent to engage in one sexual activity, or past agreement to engage in a particular sexual activity, cannot be presumed to constitute consent to engage in a different sexual activity or to engage again in a sexual activity.

Consent cannot be validly given by:

1. A person who is Incapacitated;
  2. A child under the age of 16, even if the other participant did not know the child's age;
  3. A child who is at least 16 years of age and less than 18 years of age, if the other participant is 24 years of age or older;
  4. Mentally disabled persons, if their disability was reasonably knowable to a person who is not disabled.
- F. **Dating Violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Reporting Party. The existence of such a relationship shall be determined based on the consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
  - G. **Day** means a Flagler College business day, unless otherwise specified.
  - H. **Decision Maker(s)** means the individual or individuals selected to conduct a hearing on a Formal Complaint under this Policy. There can be a single decision maker, or a panel of three decision makers made up of faculty, staff, and /or an external agency.
  - I. **Directly Related Evidence** is evidence connected to the complaint but is neither inculpatory nor exculpatory and will not be relied upon by the investigation report.
  - J. **Domestic Violence** includes felony or misdemeanor crimes 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 receiving grant monies, or 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 Florida.

- K. Education Program or Activity** means locations, events, or circumstances over which Flagler College exercises substantial control over both the Responding Party and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the College.
  - L. Education Record** has the meaning assigned to it under FERPA
  - M. Employee** is a person employed by Flagler College regardless of whether they are at-will or employed pursuant to a contract.
  - N. FERPA.** The Family Educational Rights and Privacy Act ("FERPA") is a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 C.F.R. 99. FERPA protects the privacy of student education records. FERPA grants to parents or eligible students the right to access, inspect, and review education records, the right to challenge the content of education records, and the right to consent to the disclosure of education records.
  - O. Formal Complaint** means a document submitted or signed by a Reporting Party or the Title IX Coordinator requesting that Flagler College investigate the allegation(s).
  - P. Force** is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").
- Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.
- Q. Hearing Panel** means the individuals selected to include three faculty, staff and/or external agency to conduct a hearing on a Formal Complaint under this Policy. The Hearing Panel is considered the decision-maker. See also Decision Maker(s).
  - R. Hostile Environment** exists when Sexual Harassment is so severe, persistent, or pervasive as to deny or limit a student's or employee's ability to participate in or benefit from the school's programs or activities.
  - S. Incapacitated** means lacking the physical and/or mental ability to make informed, rational judgments. Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of the policy. The question of what the responding Party should have known is objectively based on what a reasonable person in the place of the responding Party- sober and exercising good judgement- would have known about the condition of the reporting Party.
  - T. Informal Resolution** See Section 6.02.

- U. **Investigator** is an impartial person designated by the Title IX Coordinator to investigate a Formal Complaint.
- V. **Parties** refers to the Reporting Party and the Responding Party.
- W. **Party** refers to either the Reporting Party or the Responding Party.
- X. **Public Awareness Events** are events or public forums in which students may disclose incidents of Sexual Harassment. Examples can include Take Back the Night, candlelight vigils, and survivor speak outs.
- Y. **Reporting Party** is a person who has provided the College with a Formal Complaint of alleging Sexual Harassment against a Responding Party.
- Z. **Respondent** See Responding Party
- AA. **Responding Party** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- BB. **Responsible Employee** is defined in Section 2.02.
- CC. **Retaliation** means any adverse action threatened or taken against a person because they have filed, supported, or provided information in connection with an allegation of Sexual Harassment, including but not limited to intimidation, threats, and harassment.
- DD. **Sexual Assault** means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, which are as follows:

any sexual act including Rape, Sodomy, Sexual Assault With An Object, or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse.

**Rape** — (Except Statutory Rape) The carnal knowledge of a person, 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 or physical incapacity

**Sexual Assault With An Object** — To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, 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 or physical incapacity

**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 or physical incapacity.

**Incest** — Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape** — Nonforcible sexual intercourse with a person who is under the statutory age of consent

**EE. Sexual Harassment** means conduct on the basis of sex that includes one or more of the following:

1. An employee of the College conditioning the provision of an aid, benefit, or service of the College 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 College's education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).
  - a. Sexual assault, dating violence, domestic violence, and stalking are defined in this policy

**FF. Sexual Harassment Board** is a standing group composed of Employees who are specially trained to handle cases involving Sexual Harassment.

**GG. Stalking** means 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.

**HH. Student** is an individual who is either:

1. registered to be enrolled or is currently enrolled at the College on a full-time basis, or
2. registered to be enrolled or is currently enrolled at the College on less than a full-time basis and is not employed by the College. (For the avoidance of doubt, an individual who is employed by the College through a work-study or similar program is not considered to be "employed by the College" for purposes of this definition.)

**II. Supportive Measures** mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Reporting Party or Responding Party 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 College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

**JJ. Third Party** is a person who is not the Reporting Party or Responding Party.

**KK. Title IX Coordinator** is the Flagler College employee responsible for coordinating the College's efforts to comply with and carry out its responsibilities under Title IX. Contact information can be found in Exhibit A of this Policy.

**LL. Vendor/Contractor** is a person or entity not employed by Flagler College who has a contract with or otherwise performs services for the College.