

# Policy Rewrite

1. Comply with Title IX Regulations
2. Match Policy with Practice
3. Add detail where needed

# Sexual “Harassment” Policy (p. 1)



## **SEXUAL HARASSMENT POLICY**

**Revised August 2020**

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*ARTICLE I – INTRODUCTION*

# Definition of Sexual Harassment (p. 46)

**DD.** **Sexual Harassment** means conduct on the basis of sex/gender 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

# Jurisdiction (p. 4)

## **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.

# Two Processes

## Title IX Sexual Harassment

- Quid Pro Quo
- Behavior on basis of sex that is severe, pervasive, and objectively offensive
- Sexual Assault
- Stalking
- Dating/Domestic Violence
- Have to fall into these categories:
  - In the United States, and
  - On Campus, or
  - Within program or activity where we exercise oversight

## Discrimination and Non-Title IX Sexual Misconduct

- Discrimination based on
  - Race
  - Color
  - National Origin
  - Religion
  - Disability
- Sexual Misconduct that does not fall into the jurisdiction of Title IX
  - Off campus
  - Abroad
  - Problematic behavior that doesn't meet standards of Title IX

# Training (p. 5)

## 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.

# Privacy Language (p. 9)

## **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”):

# Advisors (p. 12)

## **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.



# Federal Obligations (p. 14)

## **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.

# Formal Complaint (p. 16)

## **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.

# Determine if conduct falls in the scope (p. 17)

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.

# Supportive Measures (p. 18)

## **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

# Emergency Removal (p. 20)

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.

# Investigation Details (p. 22-23)

**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|

# Referral for Hearing (p. 23)

**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.

# Cross Examination (p. 29)

**D. Testimony and Questioning.** At the live hearing, the Hearing Panel 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.



(p. 29)

If a party or witness does not submit to cross-examination at the live hearing, the Hearing Panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Hearing Panel 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.

Cross-examination is an all or nothing proposition, meaning that if any question is refused, no statements of that party or witness are admissible. Only if a party or witness is willing to submit to cross-examination, and answers all questions, will their statements prior to or at the hearing be fully admissible. If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Hearing Panel may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Hearing Panel will disregard all statements. Evidence provided that is something other than a statement by the party or witness may be considered.

# Full Exhibit on Advisors (p. 40)

## **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.

# Vendors/Contractors (p. 23)

## **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.

# Upcoming Training

- Final Alignment with Law and Policy
- Policy and Procedure
- Advisor Training
- Implementing Values of Restorative Practices
- Preparing an Investigative Report
- Investigator Training
- Relevance in Cross Examination
- Appeals