

**NEW COLLEGE OF FLORIDA  
REGULATIONS MANUAL**

**CHAPTER 3 - Administrative Affairs**

**3-4018 Sexual Discrimination / Harassment**

- (1) This regulation applies to all employees and students of NCF and shall be commonly known as The New College of Florida Title IX Compliance Policy. This policy also covers harassment involving patrons, vendors, and other individuals with whom employees or students of NCF have interaction as a condition of their employment or educational experience.
- (2) The New College of Florida Title IX Compliance Policy is set forth below.

**New College of Florida Title IX Compliance Policy**

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## I. Introduction

Sexual Misconduct (also referred to as “Prohibited Conduct”) is contrary to New College of Florida’s (“NCF” or “the College”) mission and vision, Title IX of the Education Amendments of 1972, and the Violence Against Women Act (VAWA) Amendments to the Clery Act. The College is committed to providing and maintaining programs, activities, and an educational, work, living, and social 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. The College strongly promotes the involvement of everyone, regardless of status with the College, in making NCF a safe and welcoming environment. In order for the College to address allegations of Sexual Misconduct, individuals should promptly report an incident.

## II. Policy Statement

This Policy sets forth resources available to all members of the College community, describes prohibited conduct, and establishes procedures for responding to reports of Prohibited Conduct. This Policy operates in conjunction with additional College regulations and policies, including, but not limited to:

2-1007 Delegation of Authority  
2-2001 General Provisions – The President  
3-4002 Equal Education and Employment Opportunity  
3-4010 Allegation Intake, Investigation, and Discipline  
3-4027 Discrimination/Harassment  
6-3003 Student Ombudsperson  
6-3005 Student Code of Conduct

## III. Scope and Applicability

Authority for scope and applicability of this Policy is delegated to the Title IX Coordinator by the President of New College of Florida. The Title IX Coordinator has the authority to determine which procedural standards and jurisdiction apply to specific instances of reported conduct. Any reference in this Policy to the role or responsibilities of a specific College official may be delegated by the College official to an appropriate designee.

This Policy applies to any reported Prohibited Conduct, as defined herein, committed by students, employees (faculty, staff, or other paid employees), volunteers, visitors, contractors/vendors, or others, that occurs:

- on College premises;
- at College sponsored programs or activities;
- in any building owned or controlled by a student organization and
- off-campus as determined by the following factors (including, but not limited to):
  - Any action that constitutes a criminal offense as defined by law. This includes,

- but is not limited to, single or repeat violations of any local, state, or federal law.
- Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual affiliated with the College.
  - Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
  - Any situation that substantially interferes with the College's educational interests or mission.

In the instance of allegations of Sexual Misconduct (unless otherwise stated) this Policy supersedes and applies in lieu of all other policies and procedures set forth in any other College document. In instances of a formal Title IX complaint, the allegations will be reviewed to determine applicability of the College's Title IX Compliance Policy or other applicable processes. Other College resources may be available to address situations not covered by this Policy. Any identified individual adversely affected by Prohibited Conduct, will be offered information about applicable supportive measures and resolution processes.

**A. Online Harassment and Misconduct:** The College's policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the College's education program and activities or when they involve the use of College networks, technology, or equipment.

Although the College may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; unwelcome sexual or sex-based messaging; distributing, or threatening to distribute, nude or semi-nude photos or recordings; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the College community.

Nothing in this Policy is intended to infringe upon or limit a person's rights to free speech. Any online posting or other electronic communication by students, including technology-facilitated stalking, harassment, etc., occurring completely outside of the College's control (*e.g.*, not on College networks, websites, or between College email accounts) will only be subject to this Policy when such online conduct can be shown to cause (or will likely cause) a substantial in-program disruption or infringement on/harm to the rights of others. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided.

Off-campus harassing speech by employees, whether online or in person, may be regulated

by the College only when such speech is made in an employee's official or work-related capacity.

#### IV. Oversight of Response Procedures

The Title IX Coordinator is the designated College authority responsible for ensuring compliance with this Policy. This will be accomplished through collaboration and coordination with the Deputy Title IX Coordinators and all College divisions, colleges, and departments. Information will be shared regarding response procedures on an educational need-to-know basis in compliance with the Family Education Rights and Privacy Act (FERPA) and Florida Statutes.

Reports of Prohibited Conduct will be processed as follows:

- 1) The Title IX and Civil Rights Compliance Office is the internal authority designated by NCF as responsible for responding to reports of Prohibited Conduct under this Policy.
- 2) The NCF Campus Police Department ("NCF Campus Police") is responsible for responding to reports of crimes within their jurisdiction. In the event of an incident occurring outside the jurisdiction of the NCF Campus Police, the law enforcement agency with jurisdiction is responsible for investigating the crime and making any subsequent arrests.
- 3) In the event a Respondent is unknown or has no College affiliation, the Title IX Coordinator will determine which offices are appropriate to be notified in order to respond to the Report.
- 4) On campus crimes may be subject to Timely Warning Notice (as determined by the NCF Campus Police) to enable members of the campus to engage in self-protection.

An administrative investigation will be conducted simultaneously with and independent from any criminal investigation, upon receipt of a Formal Complaint or in support of College safety measures. As prudent for the criminal investigation, the administrative investigation may be delayed.

#### V. How and Where to Report Sexual Misconduct and Other Prohibited Conduct

Individuals may report incidents of Prohibited Conduct on their own behalf (*i.e.*, as the Complainant) or on behalf of the Complainant (*i.e.*, as third-party reporters and Mandated Reporters).

The College has two main administrative reporting options:

- [Submit a Report online.](#)
- Submit a Report to [titleix@ncf.edu](mailto:titleix@ncf.edu).

- A. Other Resolution Sources:** Individuals with Reports involving Prohibited Conduct may pursue remedies with outside agencies such as:

**U.S. Department of Education, Office for Civil Rights, Atlanta, GA**

(404) 562-7886

TDD (404) 562-7884

<http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

**U.S. Equal Employment Opportunity Commission, Tampa, FL**

(813) 228-2310

(800) 669-4000

TTY (800) 669-6820

[www.eeoc.gov](http://www.eeoc.gov)

**Florida Commission on Human Relations, Tallahassee, FL**

(850) 488-7082

(800) 342-8170

TDD ASCII (800) 955-1339

TDD BAUDOT (800) 955-8771

<http://fchr.state.fl.us/>

**VI. Prohibited Conduct**

This Policy prohibits the below forms of sex-based misconduct including:

**A. Sex Discrimination**

1. **Disparate Treatment** toward a person on the basis of sex which materially adversely impacts academic, employment, or other decisions related to College programs and activities. Disparate treatment, including stereotyping and animosity, may result in the creation of a hostile environment, adverse employment or academic actions, or inequitable access to College programs or opportunities.
2. **Disparate Impact** occurs when policies or practices that appear to be neutral unintentionally result in disproportionate impact on the basis of sex that (1) excludes an individual from participation in; (2) denies the person benefits of; or (3) otherwise adversely affects a term or condition of a person's participation in an NCF program or activity.
3. In the case of pregnancy, loss of pregnancy, termination of pregnancy, or childbirth, failure to provide reasonable accommodation(s) upon request.

- B. Sexual Harassment:** The Department of Education's Office for Civil Rights ("OCR"), the Equal Employment Opportunity Commission ("EEOC"), and the State of Florida regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory

practice.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

NCF has adopted the following definitions of Sexual Harassment order to address the unique environment of an academic community. While they overlap, they are not identical, and they each apply as noted.

1. **Title VII/FHA Sexual Harassment:** Unwelcome verbal, written, graphic, and/or physical conduct, on the basis of sex, that is severe or pervasive and objectively offensive that it unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.<sup>1</sup>
2. **Title IX Sexual Harassment** as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. This definition applies to all formal Title IX complaints that fall within Title IX jurisdiction as determined by the Title IX Coordinator. Title IX Sexual Harassment includes:
  - a. **Quid Pro Quo:** an employee of NCF who conditions<sup>2</sup> the provision of an aid, benefit, or service of NCF on an individual's participation in unwelcome sexual conduct.
  - b. **Sexual Harassment (Hostile Environment):** unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a Complainant equal access to NCF's education program or activity.<sup>3</sup>
  - c. **Sexual Assault:**
    - 1) **Rape:** penetration by the Respondent, no matter how slight, of the vagina or anus of the Complainant, with any body part or object, or oral penetration by the Respondent of a sex organ of the Complainant or oral penetration of the Complainant by the Respondent's sex organ, without the consent of the Complainant.

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<sup>1</sup> This definition applies to situations where an employee is subjected to workplace sexual harassment or where a situation involves a residential Complainant in NCF provided housing.

<sup>2</sup> Implicitly or explicitly.

<sup>3</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. This definition is broad enough to potentially encompass forms of sex-based disparate treatment, even if not harassing in nature.

- 2) **Fondling:** the touching of the private body parts of the Complainant (buttocks, groin, breasts) by the Respondent, for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or because of a temporary or permanent mental incapacity.<sup>4</sup>
- 3) **Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Florida law.
- 4) **Statutory Rape:** sexual intercourse with a person who is under the statutory age of consent of 18 of age.<sup>5</sup>
- d. **Dating Violence:** violence committed by a person who is or has been in a social relationship of a romantic nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:
- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - Dating violence does not include acts covered under the definition of domestic violence.
- e. **Domestic Violence:** violence committed by a current or former spouse or intimate partner of the Complainant; by a person with whom the Complainant shares a child in common; by a person who is cohabitating with, or has cohabitated with the Complainant as a spouse or intimate partner; by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Florida; or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Florida.<sup>6</sup>
- f. **Stalking:** engaging in a course of conduct directed at the Complainant that would cause a reasonable person to:
- Fear for the person's safety,
  - the safety of others, or
  - suffer substantial emotional distress.

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<sup>4</sup> This would include having another person touch you sexually, forcibly, and/or without their consent.

<sup>5</sup> Legal Age: The legal age of consent in Florida is 18; however, this Policy recognizes exceptions as defined by section 794.05, Florida Statutes. Legal age of consent may differ in various jurisdictions.

<sup>6</sup> To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.



For purposes of this definition:

- Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third-parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.
- Acts that together constitute stalking may be direct actions or may be communicated by a third party, and can include, but are not limited to, threats of harm to self, another, or property; pursuing or following; non-consensual communication by any means; unwanted gifts; trespassing; and surveillance or other related types of observation. Stalking also includes cyber-stalking through electronic means including electronic mail, social media, cell phones, text messages, other communication applications, or the internet.

**3. Sexual Exploitation:** Any act where one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another without their consent for their own benefit or for the benefit of anyone other than the person being exploited. Sexual exploitation includes but is not limited to:

- Causing or attempting to cause the incapacitation of another person for the purpose of gaining sexual advantage;
- Prostituting another person (*i.e.*, personally gaining money, privilege or power from the sexual activities of another) or sex trafficking;
- Where there is a reasonable expectation of privacy, or without consent, the videotaping photographing or audio-recording of intimate, nude or sexual activity and/or distribution of these materials via media such as, but not limited to, the internet and other electronic/digital media;
- Exceeding the boundaries of consent. Including but not limited to: deviation from the agreed upon sexual contact with regards to use of a birth control method/option or other medication for prevention of pregnancy and sexually transmitted disease/infection transmission; knowingly exposing another to a sexually transmitted disease/infection without their knowledge or consent; or other omissions or falsifications that would imminently endanger the health or safety of the other party.
- Engaging in indecent exposure (*i.e.*, intentionally exposing one's genitals in public, or via electronic communication) with the intention of alarming, distressing, and/or offending others.

- Soliciting a minor, or creation, possession, transmission, or distribution of child sexual abuse material.
- Voyeurism, such as, watching a person undressing, using the bathroom, or engaging in sexual acts without the consent of the person being observed.

4. **Retaliation:** NCF or any member of NCF's community, taking or attempting to take materially adverse action, by intimidating threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or Policy, 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 this Policy and procedure.

The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the College to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

5. **Failure to Comply/Process Interference:** it is a violation of this Policy to engage in any of the following,
- Intentional failure to comply with the reasonable directives of the Title IX Coordinator or other College Official in the performance of their official duties, including with the terms of a no contact order.
  - Intentional failure to comply with emergency removal or interim suspension terms.
  - Intentional failure to comply with sanctions.
  - Intentional failure to adhere to the terms of an Informal Resolution agreement.
  - Intentional failure to comply with mandated reporting duties as defined in this Policy.
  - Intentional interference with the Resolution Process, including, but not limited to:
    - Destroying or concealing of evidence.
    - Seeking or encouraging false testimony or providing false testimony or evidence.
    - Intimidating or bribing a witness or party.
    - Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by the College; or
    - Publicly disclosing institutional work product that contains personally identifiable information without authorization or consent.

6. **False Reports or Complaints:** it is a violation of this Policy to knowingly file a false

report or complaint, provide false information to the College, or mislead College Officials in proceedings pursuant to the Policy.<sup>7</sup>

## VII. Sanction Ranges

The following sanction ranges apply for Prohibited Conduct under this Policy. Sanctions can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the Respondent's cumulative conduct record.

- **Discrimination:** reprimand/warning through expulsion or termination.
- **Title VII/FHA Sexual Harassment:** reprimand/warning through expulsion or termination.
- **Quid Pro Quo Harassment:** reprimand/warning through expulsion or termination.
- **Title IX Sexual Harassment:** reprimand/warning through expulsion or termination.
- **Rape:** suspension through expulsion or termination.
- **Fondling:** reprimand/warning through suspension (termination for employees).
- **Incest:** reprimand/warning through restrictions/probation.
- **Statutory Rape:** reprimand/warning through suspension (termination for employees).
- **Stalking:** restrictions/probation through expulsion or termination.
- **Dating/Domestic Violence:** restrictions/probation through expulsion or termination.
- **Sexual Exploitation:** reprimand/warning through expulsion or termination.
- **Retaliation:** reprimand/warning through expulsion or termination.
- **Failure to Comply/Process Interference:** reprimand/warning through expulsion or termination.
- **False Reports or Complaints:** reprimand/warning through expulsion or termination.

## VIII. Consent, Force, and Incapacitation

- A. Consent:** Consent to sexual activity must be knowing, intelligent, unambiguous, and voluntary. Consent is active, not passive. This means there must be clear and willing participation, through words or actions, for each sexual act.

Consent to one type of sexual activity does not imply consent to other types of sexual activity. There must be consent at every stage of the sexual encounter.

Past consent to sexual activity does not imply consent to future sexual activity.

Consent can be withdrawn at any time, including in the middle of a sexual encounter, if the withdrawal of consent is clearly indicated by words or actions. Meaning any indication of unwillingness, including but not limited to the following, terminates consent.

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<sup>7</sup> Failure to prove a complaint of Prohibited Conduct is not equivalent to a false allegation and does not violate this Policy provision.

- Any verbalization of “No, stop,” “Don’t, I do not want that,” “I am not sure, that hurts,” etc.
- Ceasing participation in sexual activity (*e.g.*, freezing or not actively engaging), pulling away, pushing someone away, removing someone’s touch from a specific area, blocking someone from touching a specific area, etc.
- Individuals who are not of legal age, are incapacitated, or are forced cannot give consent to sex (no matter what they say or do); see definition of Incapacitation. If there is any question regarding whether a person may be incapacitated or able to give consent, do not engage in any type of sexual activity with that person.

**B. Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. 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,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

- 1. Coercion:** Using an unreasonable amount of pressure, including alcohol or drugs, to have sexual contact with someone. Coercion is more than an effort to persuade, entice, or attract another person to have sexual contact. When a person makes clear a decision not to participate in a particular sexual activity, a decision to stop, or a decision not to go beyond a certain sexual point of sexual activity, continued pressure can be coercive. In evaluating whether coercion was used, the College will consider:
  - the frequency of the application of the pressure;
  - the intensity of the pressure;
  - the degree of isolation of the person being pressured; and
  - the duration of the pressure.
- 2. Intimidation:** An implied threat that menaces or causes reasonable fear in another person. A person’s size alone does not constitute intimidation; however, it may be a contributing factor (*e.g.*, blocking access to an exit.)
- 3. Physical Violence:** Use of physical violence and/or imposing on someone physically to control and engage in sexual contact or intercourse. Physical violence includes but is not limited to hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.
- 4. Threats:** Words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person’s reputation, or to cause a person academic or economic harm.

**C. Incapacitation:** A state where a person cannot make knowing, intelligent, unambiguous, and voluntary decisions and therefore cannot give consent (*e.g.*, cannot understand the:

who, what, when, where why, or how of the sexual interaction). An individual can be incapacitated by voluntary or involuntary use of drugs (legal, illegal, or prescription) or alcohol, illness, mental impairment/disability, or by a state of being asleep or unconsciousness.

Incapacitation is a state beyond drunkenness or intoxication. The impact of drug and alcohol use varies from person to person. Whether an individual was incapacitated by substance use will be assessed by the totality of the evidence. Relevant factors include but are not limited to:

- stumbling or otherwise exhibited loss of equilibrium;
- slurred speech or word confusion;
- combativeness or emotional volatility;
- vomiting;
- incontinence;
- being disoriented, or confused as to time, place, etc.; and/or
- loss of consciousness.

The College will consider whether a Respondent knew or should have known that the Complainant was incapacitated. However, the use of drugs or alcohol by the person initiating the sexual activity is not an excuse for failing to obtain consent.

#### IX. Unethical Relationships Policy

(Intentionally Omitted)

#### X. Confidentiality, Privacy, and Reporting Obligations

A Complainant who has been affected by Prohibited Conduct may disclose to others or make a Report or Formal Complaint to applicable College Officials, if and when they are ready; however, the College encourages timely reporting to ensure the Complainant is made aware of support resources and resolution processes. A Complainant does not have to pursue a complaint/resolution process in order to receive support resources.

Specific College employees are designated as Confidential College Representatives and can discuss Prohibited Conduct concerns on a confidential basis. All other employees at the College are designated as Mandated Reporters and are required to make a Report to applicable College Officials regarding any disclosure of Prohibited Conduct.

**A. Confidential College Representatives:** These employees are available to provide assistance and resources, without any obligation to make a Report to College Officials or any law

enforcement agency.<sup>8</sup> Confidential College Representatives include the following individuals when providing medical care, guidance, support, and/or counseling when acting in their primary professional responsibility:

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- On-campus Victim Advocates
- Athletic trainers
- Employee Assistance Program

Employees who have confidentiality as described above, and who receive Reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

In addition, Complainants may speak with individuals unaffiliated with the College without concern that Policy will require them to disclose information to the institution without permission:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

**B. Situational (Event Based) Confidentiality:** The College recognizes that certain environments, such as “Take Back the Night” events, focus groups, and sexual violence prevention activities, may elicit an individual’s personal account of Sexual Misconduct, and that such an account may be shared during one of these events with a College employee who is not otherwise a Confidential College Representative (*i.e.*, sexual violence prevention and sexual health promotion educators, or a faculty or staff whom in their primary College role is a Mandated Reporter).

Such a testimonial, without more, will not be considered notice to the College for purposes of triggering a mandatory Report. College personnel at these events will have resources and information on how to make a Report and access both on-and off-campus resources for anyone who would like to make a report or seek services. Leaders of these events will use their best efforts to make students aware that disclosures of Prohibited Conduct made during the event or in connection with the event (including disclosures made to a Mandated Reporter during the planning of the event or during a follow-up conversation/debrief after the event has concluded) will not trigger a mandatory Report. Any disclosure to an event

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<sup>8</sup> Incidents involving imminent harm, abuse, or a minor that are reported to a Confidential College Representative may be subject to disclosure to the Florida Department of Children and Families (“DCF”), NCF Campus Police, or other campus safety personnel.

leader, that is outside of the circumstances described above, will trigger a mandatory Report.

The College also recognizes that disclosures may occur in an academic setting (*i.e.*, as part of coursework, research, or creative activity submitted to an instructor in connection with a course assignment), or a research setting (*i.e.*, during participation as a subject in an approved human subjects research protocol). Such disclosures will not be considered notice to the College for purposes of triggering a mandatory Report. Instructors, especially those whose assignments may elicit a disclosure, are encouraged to include a syllabus statement that clarifies when disclosures will or will not lead a mandatory Report by the instructor. The College's Institutional Review Board may, in appropriate cases, require researchers to provide similar information to research subjects.

All employees participating in or overseeing public awareness events, academic work, or research should err on the side of reporting if they are uncertain if the circumstances meet the situational confidentiality parameters. Additionally, regardless of whether a Report is required, all employees are encouraged to contact the Victims Advocate Program if the Complainant is in need of support services. If any employee becomes aware of information that suggests a safety risk to a member of the College community, they should contact the NCF Campus Police immediately.

- C. Mandated Reporters:** All College employees (including but not limited to: faculty, adjuncts, graduate assistants, staff, coaches, student employees, and all other paid College employees) have a mandatory duty to report known or suspected incidents of Prohibited Conduct regardless of when or where the incident occurred, or how the employee becomes aware. All disclosures should be accepted at face value and reported without further questioning of the individual making the disclosure or any other Parties involved.

The following outlines when a Mandated Reporter is required to file a Report:

- When the Complainant or Respondent is a **student**.
- When the Complainant or Respondent is an **employee**, and they fall under the Mandated Reporter's supervisory or institutional authority. This includes, but is not limited to:
  - College Officials, as defined in [Appendix B](#);
  - Deans, Directors, and Department Heads;
  - Supervisors. This includes typical supervisor/subordinate relationships and atypical relationships, such as: residence hall coordinators, lab technicians, principal investigators, team leads, athletic coaches, and others who provide daily operational oversight (including facilitating camps and other programmatic or visitor activities); and
  - NCF Campus Police.

If a Mandated Reporter witnesses, becomes aware of, or receives a disclosure of Prohibited Conduct, they must report all relevant details about the disclosure. Relevant details may

include but are not limited to, name of all Parties involved, any witnesses, dates, times, specific location(s), and any other relevant facts about the incident(s). This mandatory reporting should occur immediately but must be made **no later than two (2) days** (as defined in [B](#)) after becoming aware of the Prohibited Conduct, absent extraordinary circumstances.

If an incident reported is covered by the record keeping and reporting requirements of the Jeanne Clery Act, 20 U.S.C. § 1092(f), the applicable College Official will complete the Clery Act reporting of the incident on behalf of the College. This does not apply to those Mandated Reporters who are also directly designated as Campus Security Authorities.

Failure of a Mandated Reporter, as described above in this section, to report an incident of Prohibited Conduct of which they become aware is a violation of College Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under this Policy.

A Mandated Reporter who is themselves a target of Prohibited Conduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

- D. Other Reporting Obligations:** A person who observes the commission of the crime of sexual battery and has present ability to seek assistance for the victim is required by Florida law to seek assistance by immediately reporting to law enforcement, unless the observer is the victim, is a relative of the offender or victim, or would be exposed to threat of physical violence for seeking assistance.

When the incident involves a **minor**, (under 18 at the time of the abuse). Florida law requires reporting to the Florida Department of Children and Family Services (“DCF”).

For all known or suspected incidents of involving abuse (including sexual abuse) of an individual under 18 years of age, Florida law requires every individual to immediately make a report to the DCF’s Abuse Hotline. Reports may be made (24 hours a day, 365 days a year). For more information visit: <https://www.myflfamilies.com/services/abuse/abuse-hotline>.

If the incident of child abuse occurs within NCF Campus Police jurisdiction, the Mandated Reporter must report to NCF Campus Police (or applicable local law enforcement).

In addition to the above reporting obligation, all members of the campus community should offer assistance to Complainant in reporting incidents to NCF Campus Police or other services as appropriate.

Information disclosed to a Mandated Reporter will only be reported and shared with people



responsible for handling the College's response. Mandated Reporters should not report the incident to law enforcement (including NCF Campus Police) without the Complainant's consent, or unless required by law. If a crime is currently in progress, someone is injured, or anyone is in immediate danger or being threatened, call 911 immediately.

If a Complainant speaks only to a Confidential College Representative, the Complainant is advised that this is not considered to be a Report of Prohibited Conduct, and without more, the information remains confidential and the College will not be able to conduct an investigation into the specific incident or take action against the Respondent. This does not apply if the incident has also been reported to a non-confidential source (including, but not limited to, the NCF Campus Police, Sarasota Police Department, or Sarasota County Sheriff's Office). If the Complainant chooses to maintain confidentiality, Confidential College Representatives will still assist them in receiving supportive measures, as outlined in [Appendix C](#). A Complainant who initially requests confidentiality does not forfeit the right to file a Report or Formal Complaint at a later date.

#### **XI. Complainant Request for No Action**

Upon receipt of a Report, a prompt, thorough, and impartial review will be conducted. If named, the Complainant will be contacted for an information session; otherwise, a risk assessment will be conducted based on the nature of the reported Prohibited Conduct to determine if the College will take further action. The information session with the Complainant will include, as applicable, notification of rights, referral to support resources, review of relevant resolution options, and discussion of any necessary supportive measures.

- A. Requests for No Action:** If a Complainant wishes, they may request No Action be taken by the College regarding the incident(s) of Prohibited Conduct that they disclosed. Specifically, they may request that:
- the information (including, but not limited to, the Complainant's name) not be shared with the Responding Individual, or with others, even if this limits the College's ability to address the reported Prohibited Conduct;
  - the College not investigate the reported Prohibited Conduct;
  - the College not intervene to address the reported Prohibited Conduct (*e.g.*, alternative resolution, informal resolution, or formal investigation; and/or no disciplinary action be taken).

A Mandated Reporter does not have the authority to grant a request of No Action. If a Complainant discloses to a Mandated Reporter, who submits a mandatory Report, and subsequently the Complainant refuses/fails to engage with the applicable College Official, this will be treated as a request for No Action.

- B. Evaluation of the Request:** The applicable College Official will evaluate the request for No Action in the context of the College's commitment to providing a safe and non-discriminatory environment. In order to make such a determination, additional

information may be gathered regarding the Prohibited Conduct so they may be weighed against the following factors, including but not limited to:

- the seriousness of the Prohibited Conduct (including, but not limited to, whether the incident was perpetrated with a weapon or included severe physical injury to the Complainant);
- the risk that the Respondent will commit additional acts of Prohibited Conduct, such as:
  - whether the Respondent has a history of prior Reports, arrests, or records from a prior school/employer indicating a history of Prohibited Conduct or a history of violence;
  - whether the Respondent threatened further Prohibited Conduct or threatened violence against the Complainant or others; or
  - whether the prohibited conduct was committed by multiple individuals.
  - whether the information reveals a pattern of behavior (*e.g.*, via illicit use of drugs or alcohol) at a given location or by a particular group or person;
  - the potential for an employee to utilize their access to sensitive information in an inappropriate manner;
  - the Respondent's right to receive information about the allegations;
  - whether the Complainant is a minor;
  - the level of fear for their safety as expressed by the Complainant;
  - whether the College possesses other means to obtain relevant information of the Prohibited Conduct (*e.g.*, security cameras or security personnel, physical evidence); or
  - the level of threat to the Complainant or to the College community.

In the event that the Complainant is not named/identifiable in a Report, these same factors will be used by the applicable College Official to conduct a risk assessment to determine the appropriate course of action.

- C. Determination Regarding No Action:** If the College determines that it cannot grant No Action, it will inform the Complainant prior to starting an investigation or taking any intervening actions. To the extent possible, the Complainant's privacy will remain a high priority, only sharing information with individuals whose assistance is needed to address the allegations. The College will also take ongoing steps to protect the Complainant from retaliation or harm and assist the Complainant in accessing other services and supportive measures.

It should be noted that when the College honors the request for No Action, the College's ability to investigate and take reasonable action in response to reported Prohibited Conduct may be limited, because the Respondent has a right to know sufficient information regarding the nature of the allegations to respond fully in their own defense (and in most cases this will include the identity of the Complainant).

Nothing in this section, or in this Policy in general, is intended to interfere with, nor shall

be read to interfere with, any individual's or organization's responsibility to report misconduct pursuant to federal laws or rules (e.g., granting agencies), licensing rules, or other agencies or boards that impose standards of professional conduct. Outside reporting shall be coordinated with the Office of the Vice President for Legal Affairs to ensure compliance with relevant privacy laws.

**D. Formal Complaints:** A Report of Prohibited Conduct becomes a Formal Complaint in one of the following ways:

- The Complainant files a written Formal Complaint with the College, requesting an investigation of their allegation[s]. The Formal Complaint must contain the Complainant's physical or digital signature or otherwise indicate the Complainant is the individual filing the complaint. If the Formal Complaint is submitted in a format that does not meet this standard, the Title IX Coordinator will contact the Complainant to determine whether the Complainant is requesting that the College initiate an investigation or other appropriate resolution;<sup>9</sup> or
- The Title IX Coordinator, who has ultimate discretion as to whether a Formal Complaint is signed, determines that the allegations necessitate the signing of a Formal Complaint. To make this determination, the Title IX Coordinator will evaluate that request to determine if there is a serious and immediate threat to someone's safety or if the College cannot ensure equal access without signing a Formal Complaint. The Title IX Coordinator will consider the following non-exhaustive factors to determine whether to file a Formal Complaint:
  - The Complainant's request for No Action.
  - The Complainant's reasonable safety concerns regarding signing a Formal Complaint.
  - The risk that additional acts of Prohibited Conduct would occur if a Formal Complaint is not filed.
  - The severity of the alleged Prohibited Conduct, including whether the Prohibited Conduct, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the Prohibited Conduct and prevent its recurrence.
  - The age and relationship of the Parties, including whether the Respondent is a College employee.
  - The scope of the alleged discrimination, including information suggesting a pattern, ongoing Prohibited Conduct, or Prohibited Conduct alleged to have impacted multiple individuals.
  - The availability of evidence to assist a Decision-maker in determining whether Prohibited Conduct occurred.

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<sup>9</sup> As required by federal law, the College may not initiate a Resolution process for allegations of Title IX Sexual Harassment without a Formal Complaint. For all other allegations of Prohibited Conduct under this Policy, a Formal Complaint is not required, and the College may initiate its Resolution process upon a Report of the alleged Prohibited Conduct. Reports can be substituted in place of references to a Formal Complaint for allegations other than Title IX Sexual Harassment throughout this Policy.

- Whether the College could end the alleged Prohibited Conduct and prevent its recurrence without initiating its resolution process.

If deemed necessary, the Title IX Coordinator may consult with appropriate College employees, and/or conduct a violence risk assessment to aid their determination whether to sign a Formal Complaint.

When the Title IX Coordinator signs a Formal Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy.

## XII. General Provisions

- A. Timeliness of Reports and Complaints:** Prohibited Conduct may be reported, or a Formal Complaint filed, regardless of the length of time between an incident and the disclosure/reporting of the incident. However, the College strongly encourages individuals who have experienced Prohibited Conduct to promptly report in order to be informed of report resources and preserve evidence for a potential legal or disciplinary proceeding. Note: The length of time between an incident and the reporting of the Prohibited Conduct may significantly impact the College's ability to respond.
- B. Privacy/Anonymity in the Investigation and Resolution Processes:** The College will keep Reports and investigations private to the extent possible under the law but cannot guarantee complete anonymity in all cases. Information will be shared with those who are integral for the College to conduct a comprehensive investigation. The College is subject to Chapter 119, Florida Statutes, Public Records. Under Section 1012.91, Florida Statutes, some portions of records of Title IX Sexual Harassment Investigations are limited-access records with respect to public records requests.
- C. Supportive Measures:** Upon request from the Complainant or Respondent, supportive measures are provided under applicable circumstances. Supportive measures are individualized, non-punitive, non-disciplinary, and do not unreasonably burden the other Party, but are designed to restore or preserve a person's equal access to education or employment. Supportive measures are available at any stage, even when an investigation is not pending. See [Appendix C](#).
- D. Emergency Removal, Interim Actions, and Leaves:** The College can act to remove a student Respondent accused of Title IX Sexual Harassment from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual based on the allegation justifies removal. This risk analysis is performed by the Title IX Coordinator and may be done in conjunction with the SST Team using its standard objective violence risk assessment procedures. Students accused of other forms of Prohibited Conduct are subject to interim suspension, which can be imposed for safety reasons.

Employees are subject to existing procedures for interim actions and leaves.

When the applicable College Official has a reason to believe that a third party's presence on campus will adversely affect the operation of the College, they may immediately seek to bar that individual's access to campus via a No Trespass Order, or similar mechanism. The No Trespass Order will take effect immediately upon notice to the third party.

- E. Amnesty:** The College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report Prohibited Conduct to College Officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the College community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process.

To encourage reporting and participation in the process, the College offers Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by the College, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

The College also maintains an amnesty policy for students in addition to witnesses who offer help to others in need. Please refer to the [Student Code of Conduct](#) for more information about the College's Amnesty Policy for students.

- F. Investigation Process Delays and Interactions with Law Enforcement:** The College's administrative investigation may be delayed (several days to a few weeks) during an ongoing criminal investigation. In the event of such a delay, the College may implement supportive measures when necessary to protect the Complainant and/or the College community. However, the College reserves the right to continue its investigation separately and independently from the criminal investigation, if and as appropriate. The results of a criminal investigation may be used to determine whether Prohibited Conduct, for the purposes of this Policy, has occurred
- G. Conflicts of Interest and Bias:** The Title IX Coordinator manages the Title IX Team (including Investigators, Informal Resolution Facilitators, Decision-makers, and Appeal Decision-makers) 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 complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the New College of Florida President. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

- H. **Advisors:** Both the Complainant and the Respondent may have an advisor of their choosing (who may or may not be an attorney) present to support and provide guidance throughout the complaint, investigation, and resolution processes (including during related prehearing meetings, during investigative interviews, and during meetings related to informal resolutions). See [Appendix E](#) for more information about advisors in the College's resolution process.
- I. **Training:** The Title IX Team will receive annual training on issues relating to Prohibited Conduct, the scope of the College's education program or activity, how to conduct an investigation and resolution process (including hearings, appeals, and informal resolutions), and how to serve impartially, including by avoiding a prejudgment of the facts at issue, conflicts of interest, and bias. In addition to the aforementioned required training, Investigators will receive annual training on issues of relevance (as defined in [Appendix B](#)) to create an investigation report that fairly summarizes relevant evidence. Decision-makers, including Appeal Decision-makers, will receive annual training related to the relevance of questions and evidence and any technology to be used at a live hearing.

Any materials used to train the Title IX Coordinator, or any member of the Title IX Team, will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints. These training materials are posted on the College's website.

- J. **Individuals with Disabilities and Other Assistance:** The College will make arrangements to ensure that individuals with disabilities are provided with appropriate and reasonable accommodations, to the extent necessary and available, to participate in the steps and procedures outlined in this Policy. For additional information on how to request a reasonable accommodation go to: <https://www.ncf.edu/departments/advocacy-accessibility/> (for students) or <https://www.ncf.edu/departments/human-resources/> (for employees).

The College will also address reasonable requests for support for the Parties and witnesses, including language services/interpreters, access and training regarding use of technology throughout the Resolution Process, and any other support as deemed reasonable and necessary to facilitate participation in the Resolution Process.

- K. **Freedom of Expression and Academic Freedom:** This Policy is intended to protect against Prohibited Conduct. It does not regulate the content of expression that falls

within the parameters protected by the First Amendment of the United States Constitution. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom.

## RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE TITLE IX COMPLIANCE POLICY

### 1. Overview

The College is committed to providing a prompt, thorough, equitable, and impartial resolution of all reported violations of the Title IX Compliance Policy (“the Policy”). The College will use one of two available processes to resolve Formal Complaints of Prohibited Conduct under this Policy: the Formal Resolution Process, which involves an investigation, adjudication, and, if appropriate, the imposition of sanctions, and Informal Resolution, which includes informal or restorative options for resolving Formal Complaints or Reports of Prohibited Conduct or that do not involve the possibility of disciplinary action against a Respondent.<sup>10</sup> The Title IX Coordinator will determine the appropriate Resolution Process after making an initial assessment of the reported information, considering the stated preference of the Complainant regarding process, campus safety, and the College’s obligation to maintain an environment free from discrimination.

### 2. Collateral Misconduct

Collateral misconduct is defined to include potential violations of other College policies not incorporated into the Policy that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the Title IX Coordinator may consult with College Officials who typically oversee such conduct (*e.g.*, human resources, student conduct, academic affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of Title IX Coordinator. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in student, faculty, and staff handbooks.

### 3. Reports/Formal Complaints

Upon receipt of a Report or Formal Complaint of an alleged Policy violation, the Title IX Coordinator will initiate a prompt initial assessment (as described below) to determine the College’s next steps.

### 4. Initial Assessment

After receiving a Report of Prohibited Conduct, the Title IX Coordinator will contact the Complainant to gather information about the reported conduct and respond to any immediate

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<sup>10</sup> For Title IX Sexual Harassment matters, both the Informal and Formal Resolution Processes require the Complainant to file or the Title IX Coordinator to sign a Formal Complaint prior to initiating either resolution process.



health or safety concerns raised by the report. The Title IX Coordinator will assess the Complainant's safety and well-being, offer supportive measures, and assess the nature and circumstances of the Report to determine whether the reported conduct raises a potential Policy violation, whether the reported conduct is within the scope of this Policy, and the appropriate method of resolution under this Policy. The Title IX Coordinator may consult with the College's SST Team or other College Officials as part of the initial assessment, as needed.

As part of the initial assessment, the Title IX Coordinator may:

- Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that identifies the Complainant, the Respondent, any witness, and/or any other individual with knowledge of the reported incident;
- Address immediate physical safety and emotional well-being;
- Notify the Complainant of their right to contact (or decline to contact) law enforcement or seek a civil protection order;
- Notify the Complainant of the right to seek medical treatment;
- Notify the Complainant of the importance of preservation of evidence;
- With the NCF Campus Police, assess the reported conduct and discern the need for a timely warning under the Clery Act;
- Provide the Complainant with written information about on and off campus resources;
- Provide the Complainant with an explanation of the procedural options, including Formal Resolution and Informal Resolution, and for allegations of Title IX Sexual Harassment the option of filing a Formal Complaint;
- Notify the Complainant of the range of supportive measures available, including the right to reasonable supportive measures regardless of whether they choose to participate in a College or law enforcement investigation;
- Notify the Complainant of the range of supportive measures available if the College pursues an investigation;
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding (*e.g.*, confidentiality concerns);
- Notify the Complainant of the right to be accompanied at any meeting by an advisor of their choice;
- Assess for any pattern of conduct that may give rise to a public safety concern;
- Assess whether there is a need to implement an emergency removal or administrative leave;
- Determine whether the circumstances warrant the Title IX Coordinator filing a Formal Complaint for allegations of Title IX Sexual Harassment;
- Explain the College's policy prohibiting retaliation, how to report retaliation, and that the College will take prompt action when retaliation is reported; and
- Make the appropriate notifications under applicable law (*e.g.*, in cases where the Complainant is a minor).

#### **A. Steps Upon Receipt of a Formal Complaint of Title IX Sexual Harassment**

Upon receipt of a Formal Complaint alleging Title IX Sexual Harassment, and following the Initial Assessment, the College may proceed with one of the following options:

1. **Mandatory Dismissal:** A Formal Complaint or any allegations therein must be dismissed at any time during the resolution process if:
  - a. The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment, even if substantiated.
  - b. The alleged conduct did not occur in an education program or activity controlled by the College.
  - c. The alleged conduct did not occur against a person in the United States.
  - d. The Complainant was not participating or attempting to participate in the College's education program or activity at the time of filing the complaint, and based on the available information, the Title IX Coordinator has determined that they do not need to sign a Formal Complaint on behalf of the College.

If dismissed, the College will promptly send written notice of the dismissal and reason(s) for such dismissal to the Parties. This dismissal decision is appealable by any Party under the procedures for appeal outlined in Section 7(B)(3) below. The Title IX Coordinator will also assess the Formal Complaint to determine whether the conduct alleged would constitute any other Prohibited Conduct under this Policy.

2. **Permissive Dismissal:** A Formal Complaint of Title IX Sexual Harassment or any allegations therein *may* be dismissed at any time during the resolution process if:
  1. The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein.
  2. The Respondent is no longer enrolled or employed by the College.
  3. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

A Complainant who decides to withdraw a Formal Complaint may later request to reinstate it or refile it. If dismissed, the College will promptly send written notice of the dismissal and reason(s) for such dismissal to all Parties. This dismissal decision is appealable by any party under the procedures for appeal outlined in Section 7(B)(3) below.

3. **Proceed with Informal Resolution following a Formal Complaint:** This process requires voluntary written consent of the Parties. Informal Resolution is not available to resolve any allegations that an employee engaged in Title IX Sexual Harassment of a student.
4. **Proceed with an investigation under the Formal Resolution Process:** This occurs if the Formal Complaint has not been dismissed, and the Parties do not wish to engage

in Informal Resolution (or Informal Resolution is not available). The Title IX Coordinator will assess whether to put the investigation on the footing of incident and/or pattern and/or climate.

## **B. Steps Upon Receipt of a Report or Complaint of Other Forms of Prohibited Conduct**

Upon receipt of a Report or Complaint alleging all other forms of Prohibited Conduct, that are not covered by the Title IX Sexual Harassment definition, the College may proceed with one of the following options:

- a. Proceed with Informal Resolution: This process requires voluntary, written consent of the Parties.
- b. Proceed with an investigation under the Formal Resolution Process: This will occur when a Complainant requests an investigation, and the Title IX Coordinator determines that an investigation is warranted, or where the Title IX Coordinator determines that an investigation must be pursued even when a Complainant requests that no investigation be pursued. The Title IX Coordinator will assess whether to put the investigation on the footing of incident and/or pattern and/or climate.
- c. Refer to another appropriate office or department for resolution: This will occur when the alleged conduct is outside the scope of this Policy.

### **5. Informal Resolution Process**

Informal Resolution is available at any time prior to a Final Determination, in certain circumstances, and at the Title IX Coordinator's discretion. The College will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution. For more information about the College's Informal Resolution Process, see [Appendix F](#).

The College considers the ability for the Parties to candidly and fully discuss an allegation/incident/situation to be an essential part of the Informal Resolution Process. For that reason, the College considers all communication by the Parties and their advisors during the course of an Informal Resolution Process to be confidential except for a finalized agreement as provided herein. In the event an Informal Resolution Process is not successful, any admissions or statements made during the process are not admissible in the Formal Resolution Process. Previously undisclosed allegations of Prohibited Conduct, as defined by this Policy, involving the same individuals in the Informal Resolution Process, will not trigger a mandatory reporting obligation for a Mandated Reporter participating in or observing the Informal Resolution process. Notwithstanding the above, there is no confidentiality attached to any communication:

- for which all Parties have waived confidentiality in writing;
- that requires a mandatory report pursuant to chapter 39 or 415, Florida Statute, related

- to abuse of minors or vulnerable adults;
- that constitutes a threat of violence or indicates imminent physical harm to another individual; or
- that indicates Prohibited Conduct involving a different Complainant or Respondent.

## 6. General Information Regarding the Formal Resolution Process

- A. Resolution Timeline:** The College will make a good faith effort to complete the Resolution Process within a sixty to ninety (60-90) business-day time period, including appeal if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the Parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.
- B. Rights and Expectations of the Parties:** The College affords both Complainants and Respondents an equal opportunity to participate fully in the investigation and adjudication process, including the opportunity to receive a written notice of investigation; to participate in the investigation; to review and present information and evidence; to be accompanied by an advisor of their choice to any meeting; to timely and equal access to information that will be used in the resolution proceedings; to timely notice of meetings at which their presence will be requested or required; to simultaneous written notice of the outcome, sanction, and rationale; and to seek appeal of the finding as outlined in Section 7(B)(3) below. For a full list of Parties' Rights in the Resolution Process, see [Appendix E](#).

All College community members are expected to provide truthful information in any report or proceeding under this Policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated or no policy violation is found to have occurred.

The College encourages all members of the College community to cooperate fully with the procedures delineated in this Policy. It is understood that there may be circumstances in which a Party or witness may wish to limit their participation, and the College will respect their choice as to how they would like to engage in proceedings under this Policy. The College may, however, move forward with an investigation, any hearing, and possible disciplinary action without the participation of one or more Parties or witnesses. Should the Respondent opt not to participate, that refusal will not automatically preclude the continuation of the investigation process and a resolution of the investigation, including possible sanctions against the Respondent if a violation of this Policy is found by a preponderance of the evidence.

If a Party chooses not to answer any or all questions posed during an investigation or hearing for any reason, the College will continue its process; and the College may issue any

discipline or sanctions, as appropriate. The College will not draw any adverse inference from a Complainant's or Respondent's decision not to participate in the investigation or any form of resolution under this Policy. However, the Complainant and Respondent should be aware that declining to participate in the resolution process may impact the timing and outcome of the investigation and adjudication.

- C. Counter-Complaints:** The College is obligated to ensure that the Resolution process is not abused for retaliatory purposes. Although the College permits the filing of counter-complaints, the Title IX Coordinator will use an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a Policy violation. Counter-complaints determined to have been reported in good faith will be processed using the Formal Resolution Process below. At the Title IX Coordinator's discretion, investigation of such claims may take place after resolution of the underlying initial Formal Complaint.
- D. Safeguarding Privacy:** Individuals involved in investigations or disciplinary proceedings under this Policy are encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation. While discretion regarding the process is important, Complainants and Respondents are not restricted from discussing and sharing information with others who may support or assist them during the process. However, doing so with the intent to harass another individual, retaliate against another individual who is involved in the investigation, or to influence the outcome of the investigation, will subject an individual to sanctions under this Policy.

## 7. Formal Resolution Process

The Formal Resolution Process involves an objective evaluation of all relevant evidence obtained. Credibility determinations will not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

In determining whether alleged conduct constitutes Prohibited Conduct under this Policy, the College will look at the entire record as a whole and consider the totality of the circumstances. This inquiry will examine information such as the nature of the conduct and the context in which the alleged incidents occurred. This determination takes place through the Formal Resolution Process which includes an investigation, adjudication, and implementation of sanctions, if applicable.

All determinations regarding whether a Respondent has engaged in Prohibited Conduct will be based upon a thorough, objective, and comprehensive review of the facts, and made on a case-by-case basis using the preponderance of the evidence standard.

The Title IX Coordinator has the sole discretion to consolidate multiple reports or multiple Formal Complaints against more than one Respondent, or by more than one Complainant

against one or more Respondents, or by one party against the other party, where the allegations arise out of the same facts or circumstances, or it otherwise makes sense to consolidate.

#### **A. Investigation Process**

- 1. Investigator:** When the College receives a Report alleging a violation of this Policy, the Title IX Coordinator will appoint one or more Investigators to conduct a prompt, thorough, fair, and impartial investigation. The Investigator(s) may be a College employee and/or an experienced external investigator and the College has the authority and the sole discretion in determining when to assign an internal and/or external investigator. The Investigator(s) will be impartial and free from conflict of interest or bias.
- 2. Investigation Timeline:** Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take many weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement 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.
- 3. Notice of Investigation:** The Title IX Coordinator will provide the Complainant(s) and the Respondent(s) with a written Notice of Investigation, which may include the following information: (1) the names of the Complainant and the Respondent, if known; (2) the date and location of the alleged incident, if known, and the nature of the reported conduct; (3) the applicable Policy(ies) and reported Policy violation(s); (4) a description of the applicable procedures; (5) a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the resolution process; (6) information about the Parties' respective rights and responsibilities, including 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; (7) a statement informing the Parties that the College's Policy prohibits knowingly submitting false information during the resolution process; (8) the prohibition against retaliation; (9) the importance of preserving any potentially relevant evidence in any format; (10) a statement that if the College decides to investigate additional allegations not included in the original notice, notice of the additional allegations will be provided to the Parties whose identities are known; (11) the name and contact information of the assigned Investigator(s); and (12) how to challenge participation by the Investigator(s) on the basis of a conflict of interest or bias.
- 4. Investigation Overview:** During an investigation, the Investigator(s) will seek to meet separately with the Complainant(s), Respondent(s), and relevant witnesses. Witnesses are individuals who may have information relevant to the incident, including individuals

who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the alleged conduct or related matters. Witnesses may not participate solely to speak about an individual's character. The Investigator(s) will also gather other relevant information or evidence, including documents, photographs, communications between the Parties, and other records as appropriate.

The Investigator(s), not the Parties, is responsible for gathering relevant evidence to the extent reasonably possible. Both the Complainant and Respondent are encouraged, however, to submit any information they believe may be relevant, and both the Complainant and Respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, photographs, and other evidence. Parties are encouraged to provide all relevant information as promptly as possible to facilitate prompt resolution. All available information and supporting documents and evidence must be identified and/or submitted prior to issuance of the Final Investigation Report. In the event that a Party declines to provide material information, the College's ability to conduct a prompt, thorough, and equitable investigation may be impacted.

The Investigator(s) may also consider information publicly available from social media or other online sources that comes to the attention of the Investigator(s). The Investigator(s) does not actively monitor social media or online sources, however, and as with all potentially relevant information, the Complainant, Respondent, or witnesses should bring relevant online information to the attention of the Investigator(s).

Similarly, the Parties should bring any new or evolving evidence, such as harassing or retaliatory conduct, to the attention of the Investigator(s). The Investigator(s) may consider such information in the investigation and will also share any information about retaliation or other alleged misconduct with the Title IX Coordinator for appropriate action.

When appropriate, the Investigator(s) may visit relevant sites or locations and record observations through written, photographic, or other means. In some cases, the Investigator(s) may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation. In general, a person's medical and counseling records are confidential and not accessible to the Investigator(s) unless the person voluntarily chooses to share those records with the Investigator(s). Before disclosing such information, the party should keep in mind that the relevant information from the records must be shared with the other party for that information to be considered in the investigation.

The Investigator(s) will review all relevant information identified or provided by the Parties during the investigation. In general, the Investigator(s) will not consider

statements of personal opinion or statements as to any Party's general reputation for any character trait. All information considered by the Investigator(s) to be directly related to the allegations will be provided to the Parties for their review and comment, as described in this Policy.

- 5. Presumption of Non-Responsibility:** It shall be presumed that there has been no violation of any College policy by a Respondent unless and until a thorough and comprehensive investigation has been conducted and there is a final administrative finding, by a preponderance of the evidence, at the conclusion of the process (*i.e.*, Final Agency Action).
- 6. Prior or Subsequent Conduct of the Respondent:** Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. The Investigator(s) will determine the relevance of this information and both Parties will be informed if evidence of prior or subsequent conduct is deemed relevant. For investigation of Title IX Sexual Harassment allegations, the Investigator's determination of the relevance of information is an initial determination that is not binding on the Decision-maker(s).
- 7. Prior Sexual History:** For investigations of Title IX Sexual Harassment, evidence about the Complainant's sexual predisposition is never relevant. Evidence of the Complainant's prior sexual behavior is not relevant unless such evidence is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove consent.

For investigation of other Prohibited Conduct, the sexual history of the Complainant or Respondent will never be used to prove character or reputation. Evidence related to the prior sexual history of the Parties is generally not used in determining whether a violation of this Policy has occurred and will only be considered under limited circumstances when highly relevant. For example, if consent is at issue, the sexual history between the Parties may be relevant to determine the nature and manner of communications between the Parties, which may inform the determination whether consent was sought and reasonably appeared to have been given during the incident in question. As set forth in the consent definition, even in the context of a relationship, consent to one sexual act does not necessarily constitute consent to another sexual act, and consent on one occasion does not constitute consent on a subsequent occasion. In



addition, prior sexual history may be relevant to explain injury, to provide proof of a pattern, or to address another specific issue raised in the investigation. The Investigator(s) will determine the relevance of this information and both Parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

- 8. Cooperation with Law Enforcement:** If there is a criminal investigation or other legal proceeding, the College may be obligated to provide investigative records to law enforcement or a court in response to a subpoena, search warrant, or court order.
- 9. Review of Preliminary Investigation Report :** At the conclusion of the fact-gathering portion of the investigation, the Investigator(s) will prepare a Preliminary Investigation Report that provides the Complainant(s) and the Respondent(s) equal and timely access to the evidence that has been obtained as part of the investigation that is relevant to a decision or directly related to the allegations raised, as well as evidence that was collected that the Investigator(s) may deem not to be relevant. This includes making available any documents that were gathered by the College. The Preliminary Investigation Report will not state a preliminary finding as to whether or not a violation has occurred or any information with regard to potential sanctions.

The Preliminary Investigation Report and accompanying documents will be made available to each Party and the Party's advisor, if any, in an electronic format. Each Party will have ten (10) business days to review the materials provided and to submit a written response, which the Investigator(s) will consider prior to completion of the final investigative report. Any additional information that was not previously provided by the Parties during the investigation should be provided with the written response. A Party may also request the opportunity to meet with the Investigator(s) to provide additional verbal information; the Investigator(s) will determine whether such a meeting is necessary to ensure that all relevant evidence has been provided.

If either Party provides a written response or provides additional verbal information, the content will be shared with the other Party and incorporated as appropriate in the Final Investigation Report. Any relevant information gathered through additional investigative steps will be shared with both Parties, and, as the College deems appropriate, the Parties may have the opportunity for further response if sufficient new information has been gathered. If additional review is granted, each Party will have five (5) business days to review any additional information and any further comment by the Parties will be limited to responding to the new information only. As necessary, the Investigator(s) will designate reasonably prompt timeframes to ensure a timely completion of the process while also providing an adequate opportunity for all Parties to respond thoroughly to the information gathered during the investigation.

- 10. Final Investigation Report:** The Investigator(s) will prepare a Final Investigation Report for all completed investigations.
  - a. Final Investigation Report for Allegations of Title IX Sexual Harassment:** The Final

Investigation Report for allegations of Title IX Sexual Harassment will include a summary of the relevant evidence and will not include a recommended finding or sanctions. Adjudication will occur at a live hearing. The Final Investigation Report will be provided to each Party and the Party's advisor, if any, in an electronic format, at least ten (10) business days prior to the required live hearing, for their review and written response.

- b. Final Investigation Report for all other Prohibited Conduct:** The Final Investigation Report for allegations of all other Prohibited Conduct will include a summary of the relevant evidence; a determination as to whether there is sufficient information, by a preponderance of the evidence, to support a finding of responsibility for a violation of the Policy; the rationale for this finding; if there is a finding of responsibility for a violation of the Policy, the sanctions to be imposed; and notification of the available procedures to appeal the finding and/or sanction.

To determine the sanctions, the Investigator(s) may confer with the Director of the Office of Student Conduct and Community Standards regarding students; the Director of Employee Relations regarding staff and contractors; or the Dean of the School/College and/or the Department Chair regarding faculty. When preparing the Final Investigation Report, the Investigator(s) will confer with the Title IX Coordinator to ensure consistency in the application of this Policy, including the rendering of any sanctions.

## **B. Adjudication**

- 1. Standard of Proof: Preponderance of the Evidence:** Findings are made based on a preponderance of the evidence standard. A finding of responsibility based on a preponderance of evidence means that based on all relevant evidence and reasonable inferences from the evidence, the greater weight of information indicates that it is more likely than not the policy violation occurred. This standard of evidence is the same for complaints against students as for complaints against employees, including faculty, and for all College policy violations involving discrimination against another individual.

### **2. Adjudication of Formal Complaints of Title IX Sexual Harassment**

- a. Pre-Hearing Preparation:** The Title IX Coordinator will select an appropriate Decision-maker or Decision-makers for a panel; these individuals may be from within the campus community or may be from outside the campus community and are trained, neutral factfinders. The College has the sole discretion to determine whether a sole Decision-maker or panel of Decision-makers will be used, and whether the Decision-maker(s) will be individuals from the College community or external decision-makers. Decision-makers will have the requisite training. While the Title IX Coordinator has oversight and coordination responsibilities for the hearing and may serve as the hearing facilitator, the Title IX Coordinator will not serve as a Decision-maker. The

Investigator(s) also will not be a Decision-maker.

The Parties will be given a list of the name(s) of the Decision-maker(s) at least five (5) business days in advance of the hearing. A single Decision-maker will also Chair the Hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the complaint.

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all Parties, witnesses, and advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the Parties, witnesses, and advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10)-business-day period prior to the hearing, the Parties have the opportunity for continued review and comment on the Final Investigation Report and available evidence. That review and comment can be shared with the Decision-maker(s) at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Decision-maker(s).

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), proffered 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 relevant evidence that is first offered at the hearing. If the Parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.<sup>11</sup>

- b. Pre-Hearing Meetings:** The Chair may convene a pre-hearing meeting(s) with the Parties and/or their advisors and invite them to submit the questions or topics they (the Parties and/or their advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the advisors from

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<sup>11</sup> 34 C.F.R. § 668.46(k)(3)(B)(3) requires "timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings."

asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, **only** with full agreement of the Parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a Party and/or their advisor, the Chair will consider arguments that evidence identified in the Final Investigation Report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the Parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded. The pre-hearing meetings are typically conducted as separate meetings with each party/advisor. The Chair will work with the Parties to establish the format.

- c. Live Hearing with Cross-Examination:** At the live hearing, the Chair must permit each Party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the Party's advisor and never by a Party personally. If a Party does not have an advisor of their own choosing to conduct cross-examination, the College will provide an advisor to the Party of the College's choice. When the College provides an advisor, the College is not obligated to provide an attorney or an individual with legal training, even if the other Party has such an advisor.

Only relevant cross-examination and other questions may be asked of a party or witness. The Chair has the sole discretion to determine relevance during the live hearing. Before a Complainant, Respondent, or witness answers a cross-examination question, the Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions may be limited, reframed, or excluded on the basis that they are irrelevant, unduly repetitious (thus irrelevant), or abusive.

Any Party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only

rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

The Investigator(s) will typically be present at the live hearing and will provide a summary of the Final Investigation Report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the Parties (through their advisors). Neither the Parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or sanctions.

Any evidence that the Decision-maker(s) determines is relevant and credible may be considered. However, the following will not be considered: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the Parties unless relevant; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior. Questions about Complainant's prior sexual behavior are only permitted if such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Live hearings will be held virtually, with technology enabling participants to simultaneously see and hear each other. An audio or audiovisual recording, or transcript of the live hearing will be created and made available to the Parties for inspection and review. The Parties may not record the proceedings in any manner and no other unauthorized recordings are permitted. The Decision-maker(s), Parties, advisors, and other appropriate College Officials will be permitted to review the recording in a controlled environment, as determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording, except as permitted by FERPA.

- d. Written Determination Regarding Responsibility:** The Decision-maker(s) will deliberate in closed session in order to make a determination regarding responsibility. The Decision-maker(s) will use the preponderance of evidence standard. The hearing facilitator may be invited to attend the deliberations but is there only to facilitate procedurally and not to address the substance of the allegations or participate in the decision-making in any way.

The Decision-maker(s) will issue a written determination regarding responsibility which includes:

- The identification of the allegations potentially constituting Title IX Sexual Harassment;

- A description of the procedural steps taken from receipt of the notifications to the Parties, interviews with Parties and witnesses, site visits (if any), methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Evidence used in support of the determination;
- Evidence not relied upon in the determination;
- Any credibility determinations;
- Conclusions regarding the application of the College's policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any sanctions the institution imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the Complainant; and
- Procedures and permissible bases for Parties to appeal.
- A statement that unless an appeal is filed, this written determination shall constitute Final Agency Action.

The Chair will submit the written determination to the Title IX Coordinator within fifteen (15) business days of the end of deliberations unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the Parties.

The written determination will be shared with the Parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the Parties' College-issued email or otherwise approved account. Once emailed and/or received in-person, notice will be presumptively delivered.

- 3. Appeals:** Any party may request an appeal in writing from the determination regarding responsibility, including the sanctions imposed. The request for an appeal must be submitted to the Title IX Coordinator within five (5) business days of receiving the determination. This right to appeal also applies to an appeal of the College's dismissal of a Formal Complaint, or any allegations therein.

The Title IX Coordinator will appoint a trained Appeal Decision-maker to serve as the decision-maker regarding all appeals. Appeals are limited to the following grounds that must be clearly stated in the written appeal submission:

- 1) Procedural irregularity 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; and/or
- 3) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of

interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

If any of the grounds for appeal asserted do not meet the grounds stated in this Policy, those grounds will not be considered.

The College will notify the other Party in writing when an appeal is requested. The Party will have an opportunity to review and respond in writing to the Party's appeal request. Any response must be submitted to the Title IX Coordinator within five (5) business days after receiving a copy of the appeal request.

The Appeal Decision-maker will issue a written decision describing the result on each ground of the appeal, any specific instructions for remand or reconsideration, and the rationale for the result within ten (10) business days of receiving the appeal materials from the Title IX Coordinator. This written decision of the appeal outcome will be provided to the Title IX Coordinator and will be delivered to the Parties simultaneously in person or via email to the Parties. Once emailed and/or received in-person, notice of the decision will be presumptively delivered. The College's decision shall constitute Final Agency Action.

- a. Sanctions Status During the Appeal:** Any sanctions imposed as a result of the hearing are stayed (*i.e.*, not implemented) during the appeal process. Supportive measures may be reinstated.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then the emergency removal procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation.

If the original sanctions include separation in any form, the College may place a hold on official transcripts, diplomas, graduations, course registration, etc. pending the outcome of an appeal. The Respondent may request a stay of these holds from the Title IX Coordinator within two (2) business days of the notice of the sanctions. The request will be evaluated by the Title IX Coordinator or designee, whose determination is final.

- b. Appeal Considerations:** The following appeal considerations apply:

- Appeals are not intended to provide for a full re-hearing (*de novo*) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- Decisions on appeal are to be deferential to the original determination, making changes to the finding only when there is clear error and to the

sanction(s)/responsive action(s) only if there is a compelling justification to do so.

- An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where an error cannot be cured by the original Investigator(s) and/or Decision-maker(s) or the Title IX Coordinator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new hearing with new individuals serving in the Investigator and Decision-maker roles.
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

- 4. Final Determination:** 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. Adjudication of Complaints of All Other Prohibited Conduct.**

- 1. Recommended Findings Provided in the Final Investigation Report:** As discussed above, the Final Investigation Report prepared by the Investigator(s) will include recommended findings (determination of responsibility) and sanctions to be imposed, if any, based on the preponderance of the evidence standard.
- 2. Review of Finding by the Vice President of Legal Affairs:** Each Party may accept or contest the recommended findings or sanctions in the Final Investigation Report.

A Party may contest the investigative finding by asserting:

- 1) Procedural irregularity 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 or Investigator(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or
- 4) The sanction recommended against the Respondent is disproportionate based on the findings as stated in the Final Investigation Report.

To contest the findings or sanctions, the Complainant or Respondent must submit a written statement to the Title IX Coordinator within five (5) business days of receiving the Final Investigation Report. This statement must explain why the Party contests the findings and/or sanctions, including clearly identifying one or more of the four grounds enumerated in the previous paragraph. If any of the grounds for appeal asserted do not meet the grounds stated in this Policy, those grounds will not be considered.

Any Party will have the opportunity to review and respond in writing to the other Party's request for review; any response must be submitted to the Title IX Coordinator within five (5) business days after that party has received notice of the request to review.

- 3. Final Decision:** If no party contests the recommended findings or sanctions, those recommended findings and sanctions will become final and will be submitted to the Title IX Coordinator for signature and implementation. The Title IX Coordinator will inform the Parties that the findings and sanctions are final and constitute Final Agency Action.

If a Party contests the findings and/or sanctions, once all Parties have provided a response or the deadline to respond has lapsed, the Title IX Coordinator will submit the Final Investigation Report, and any statements received from the Parties to the Vice President for Legal Affairs or designee. The Vice President for Legal Affairs or designee will determine whether to uphold the recommended findings and/or sanctions; whether to modify the recommended findings and/or sanctions; or whether further action is needed by the Investigator(s).

If a Party contests the findings or sanctions, the Vice President for Legal Affairs or designee will reach a final determination as to the outcome and sanction within ten (10) business days of receipt of the Final Investigation Report and the Parties' statements. The Vice President for Legal Affairs or designee will provide the final decision to the Title IX Coordinator who will inform the Parties of the decision in person or via mail email. Once emailed and/or received in-person, notice of the decision will be presumed delivered.

The decision becomes final either on the date that the College provides the Parties with the written determination of the finding by the Vice President for Legal Affairs or designee, if a review has been requested, or if no review was requested, the date on

which the request for a review would no longer be considered timely. The College's decision shall constitute Final Agency Action.

- D. Sanctions:** Engaging in any Prohibited Conduct that is found to be a violation of this Policy or failing to carry out the responsibilities established by this Policy, will give rise to disciplinary action, up to and including separation from the College.

This Policy prohibits a broad range of conduct, all of which is serious in nature. The imposition of sanctions is designed to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects, while supporting the College's educational mission and legal obligations. Sanctions may include educational, restorative, rehabilitative, and/or punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved, or so deleterious to the educational process that it requires severe sanctions, including suspension or expulsion/termination.

- 1. Sanctions for Students:** Sanctions for students include, but are not limited to: reprimand, housing probation, disciplinary probation, suspension, expulsion, or degree withdrawal or revocation. For a full range of potential student sanctions, please review Section VI.G in the [New College of Florida Regulations Manual: 6-3005 New College of Florida Student Code of Conduct](#).
- 2. Sanctions for Student Organizations:** Potential sanctions for student organizations include, but are not limited to: warning, probation, suspension, expulsion, and/or loss or privileges.
- 3. Sanctions for Employees:** Potential sanctions for faculty or staff include, but are not limited to: a verbal or written reprimand or warning, performance improvement plan, probation, demotion, reassignment, administrative leave without pay, restitution, suspension, requirement to receive counseling through the Employee Assistance Program, required training or education, a campus-wide barring order, and/or termination of employment.
- 4. Additional Remedies:** Following the conclusion of the resolution process, regardless of the outcome, additional remedies may be provided to the Parties and/or College community that are intended to ensure no effective denial of access or the benefits of the education program or activity. Remedies may include, but are not limited to, the following:
  - Training and/or education to the individual or the community
  - Referral to counseling services
  - Permanent change in housing assignment
  - Permanent change in work arrangement for employees
  - Adjustments to course schedules
  - Adjustments to work schedules

- Implementation of long-term contact limitations between Parties
- Climate surveys
- Policy modification and/or training

The College will maintain the confidentiality of any long-term remedies, actions, and/or measures, provided confidentiality does not impair the College's ability to provide these services.

**E. Recordkeeping:** The College will maintain, for seven (7) years, records of:

- Each investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the education program or activity;
- Any appeal and the result thereof;
- Any informal resolution and the result therefrom; and
- All materials used to train the Title IX Coordinator, Investigators, Decision-makers, and any person who facilitates an Informal Resolution Process.

The College will create and maintain for seven (7) years records of any actions, including any supportive measures, taken in response to a Report or Formal Complaint of Title IX Sexual Harassment or other Prohibited Conduct. Those records will document the basis for the College's response that it was not deliberately indifferent, and document that the College took measures designed to restore or preserve equal access to its education program or activity. If the Complainant was not provided with supportive measures, then the College will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

**F. Periodic Review:** This Policy and its procedures supersede previous policies addressing sex-based discrimination, sexual misconduct, and retaliation and is maintained by the Title IX and Civil Rights Compliance Office. The College will review this Policy on at least an annual basis. The review will capture evolving legal requirements, evaluate the supports and resources available to the Parties, and assess the effectiveness of the resolution process (including as to the fairness of the process, the time needed to complete the process, and the sanctions and remedies imposed). **Revision of this Policy and these Procedures:** This Policy and procedures supersede any previous policies addressing Prohibited Conduct for incidents occurring on or after August 14, 2020, and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document 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 and procedures.

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 laws or regulations or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws which frame such policies and codes, generally.

**G. Authority and Cross References:** The President holds delegated authority from the Board of Trustees to establish College policies. Constitutional authority, federal statutes, state statutes, Florida Board of Governors, and College regulations authorize the Policy:

- The Federal Civil Rights Act of 1964
- The Federal Civil Rights Act of 1991
- The Education Amendments of 1972, Title IX
- The Campus Sexual Violence Elimination Act of 2013 The Jeanne Clery Act, 20 U.S.C., section 1092(f)
- Section 39.201, 119.071, 760.10, 794.027, 1000.05 and 1012.91, Florida Statutes

This Policy shall be reviewed by the Title IX Coordinator annually for its effectiveness. The Title IX Coordinator and other applicable College Official shall make recommendations, as needed, to the President for any modification or elimination.

This Policy and procedures are effective June 26, 2025.

## APPENDIX A: Intentionally Omitted

## APPENDIX B: DEFINITIONS

For purposes of this Policy, the following definitions apply:

**Actual Knowledge:** Notice of Title IX Sexual Harassment or allegations of Prohibited Conduct to the College's Title IX Coordinator or any official of the University who has actual authority to institute corrective measures on behalf of the University.

**Advisor:** A person chosen by a Party or appointed by the College to accompany the Party to meetings related to the Resolution Process, provide advice and consultation to a Party about that process, and conduct cross-examination for the Party at the hearing, if a hearing is held.

**Appeal Decision-maker:** The person who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly.

**College Official:** Any person assigned to engage in teaching, research, administrative, professional, or other responsibilities while acting within the scope of their employment, appointment, or volunteer role with the College.

**Complainant:** An individual who is alleged to have experienced Prohibited Conduct.

**Day:** Any weekday Monday through Friday in which the College is in operation. This includes days when the College is in operation, but classes are not in session.

**Decision-maker:** The person or panel who hears evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated, and/or assigns sanctions.

**Directly Related Evidence:** Evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-maker(s).

**Education Program or Activity:** Includes locations, events, or circumstances over which the College exercises substantial control over the context in which the Prohibited Conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College. With respect to allegations of Title IX Sexual Harassment, as defined in the Policy, the conduct must have occurred in the United States and the College must have substantial control over the Respondent.

**Employee:** A person employed by the College either full- or part-time, including student employees when acting within the scope of their employment.

**Final Agency Action:** Notice that the College has made a final determination and, as such, may be appealed to an external judicial forum.

**Formal Complaint:** A document or electronic submission submitted by a Complainant containing the Complainant's physical or digital signature, or a document signed by the Title IX Coordinator alleging Title IX Sexual Harassment, as defined below, against a Respondent and requesting that the College investigate the allegation. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the College's education program or activity. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party. The Complainant remains the individual who is alleged to have experienced Prohibited Conduct.

**Parties:** Refers to the Complainant(s) and Respondent(s), collectively.

**Relevant Evidence:** Evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.

**Report:** When an employee, student, or third party informs the Title IX Coordinator or other College Official of the alleged occurrence of Prohibited Conduct.

**Respondent:** An individual who has been reported to have engaged in Prohibited Conduct.

**Sexual Misconduct:** An umbrella term that encompasses Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Sexual Exploitation.

**Student:** Any individual meeting one or more of the criteria below. The term applies to all campuses, sites, locations, and delivery methods of credit-bearing course offerings.

1. Admitted. Any person, regardless of academic career, who is admitted to the College and accepts an offer of admission to participate in any College program, course, or activity leading to enrollment, including but not limited to online or in-person orientation, graduate student orientation, teaching assistant orientation, or workshops.
2. Enrolled. Enrolled in any credit-bearing course or program offered by New College of Florida at the time any alleged violation(s) occurred.
3. Active student. Any person who has been enrolled at the College and continues to be associated with the College in order to complete the course or program in which the student was enrolled. "Active" status is determined by academic policy and is enforced by the Registrar's Office. This can include periods of non-enrollment during which the student is still eligible to enroll in classes. This term also includes any student who has been issued an Interim Health and Safety Action (IHSA) pending the outcome of a student conduct proceeding.
4. Dual enrollment. Any student enrolled in a credit-bearing course on a dual-enrollment basis. Jurisdiction over a dual-enrollment student's conduct will be determined in consultation with appropriate officials at the student's home institution.

**Witness:** An individual who may have information relevant to a report of Prohibited Conduct. A witness may be a student, an employee, or a third party.

## APPENDIX C: SUPPORTIVE MEASURES

Supportive measures are provided under applicable circumstances upon request by a Complainant or Respondent. Supportive measures are individualized, non-punitive, non-disciplinary, and do not unreasonably burden the other Party, but are designed to restore or preserve a person's equal access to education or employment. Supportive measures are available at any stage, even when an investigation is not pending. Supportive measures can include, but are not limited to:

### **Students:**

- Issuing no-contact orders to prevent any contact between the individuals involved, witnesses, and/or third Parties;
- Changing on-campus housing, to a different on-campus location and providing assistance from College personnel in completing the relocation;
- Assisting a Complainant living off-campus in finding alternative housing;
- Changing academic schedules (such as moving the Complainant or Respondent from one class section to another);
- Arranging for a student to withdraw from or take an "Incomplete" in a class without penalty;
- Providing academic support services (e.g., tutoring);
- Making a referral to emotional and medical support services; or
- Other options will be assessed upon request.

### **Employees:**

- Issuing no-contact orders to prevent any contact between the individuals involved, witnesses, and/or third Parties;
- Changing work schedules;
- Changing work locations;
- Temporarily reassigning work related tasks or other related duties (e.g., grant management, etc.);
- Reassigning supervision;
- Arranging an alternate source for letters of recommendation or references;
- Explaining available leave options;
- Making a referral to emotional and medical support services; or
- Other options will be assessed upon request.



## APPENDIX D: PARTIES' RIGHTS

Under this Policy and procedures, the Parties have the right to:

- An equitable investigation and resolution of all credible allegations of Prohibited Conduct, when reported in good faith to College officials.
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated Policies and procedures, and possible sanctions.
- Timely written notice of any material adjustments to the allegations (*e.g.*, additional incidents or allegations, additional Formal Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.
- Be informed in advance of any College public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- Have all personally identifiable information protected from the College's release to the public without consent, except to the extent permitted by law.
- Be treated with respect by College officials.
- Have College Policy and these procedures followed without material deviation.
- Voluntarily agree to resolve allegations under this Policy through Informal Resolution without College pressure, if Informal Resolution is approved by the Title IX Coordinator.
- Not be discouraged by College officials from reporting Prohibited Conduct to both on-campus and off-campus authorities.
- Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by the College in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report.
- Have College law enforcement and/or other College officials respond promptly to alleged Policy violations.
- Be informed of available supportive measures, such as counseling, advocacy, health care, student financial aid, visa and immigration assistance, and/or other services, both on campus and in the community.
- A College-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- Be informed of available assistance in changing academic, living, and/or employment situations after an alleged incident of Prohibited Conduct if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur before this option is available. For more information about supportive measures, see [Appendix D](#).
- Have the College maintain supportive measures for as long as necessary, ensuring they remain confidential, provided confidentiality does not impair the College's ability to provide the supportive measures or comply with the law.
- Receive sufficiently advanced written notice of any College meetings or interviews

involving another party, when possible.

- Identify and have the Investigator(s), advisors, and/or Decision-maker question relevant available witnesses, including expert witnesses.
- Provide the Investigator(s)/Decision-maker with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker, may be asked of any party or witness.
- Have Complainant's inadmissible sexual predisposition/prior sexual history or any party's irrelevant character evidence excluded by the Decision-maker.
- Review the relevant and directly related evidence obtained and to respond to that evidence.
- A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- Receive a copy of all relevant and directly related evidence obtained during the investigation, subject to privacy limitations imposed by federal and state law, and a ten (10)-business-day period to review and comment on the evidence.
- Receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed, and to have at least ten (10) business days to review and comment on the report prior to the hearing.
- Be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- Regular status updates on the investigation and/or Resolution Process.
- Have reports of alleged Policy violations addressed by College representatives who have received relevant annual training as required by law.
- A Decision-making panel that is not single sex in its composition, if a panel is used.
- Preservation of confidentiality/privacy, to the extent possible and permitted by law.
- Meetings, interviews, and/or hearings that are closed to the public.
- Petition that any College representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- Be able to select an advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
- Apply the appropriate standard of evidence, preponderance of the evidence, to make a Finding and Final Determination after an objective evaluation of all relevant evidence.
- Be present, including presence via remote technology, during all testimony given and evidence presented during any hearing.
- Have an impact and/or mitigation statement considered by the Decision-maker following a determination of responsibility for any allegation, but prior to sanctioning.
- Be promptly informed of the Resolution Process finding(s) and sanction(s) (if any) and be given a detailed rationale for the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay).
- Be informed in writing of when a College decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery.
- Be informed of the opportunity to appeal the Resolution Process finding(s) and sanction(s) and the procedures for doing so in accordance with the College's appeal grounds.

- A fundamentally fair resolution as defined in these procedures.

## APPENDIX E: ADVISOR'S ROLE AND RESPONSIBILITIES

### **Advisors in the Resolution Process**

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.

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 hearing Decision-maker.

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

The Parties may each have an advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews, and hearings within the Resolution Process, including intake. The Parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available.<sup>12</sup> Parties have the right to choose not to have an advisor in the initial stages of the Resolution Process, prior to a hearing.

The Title IX Coordinator will offer to assign a trained advisor to any party if the party chooses. If the Parties choose an advisor provided by the College, the College will have trained the Advisor and familiarized them with the College's Resolution Process.

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 to advise that party.

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.

A party may elect to change advisors during the process and is not obligated to use the same advisor throughout. Parties are expected to provide the Title IX Coordinator with timely notification if they change advisor. If a party changes advisor, consent to share information with the previous advisor is assumed to be terminated, and a release for the new advisor must be submitted.

The College may permit Parties to have more than one advisor, or an advisor and a support person, upon special request to the Title IX Coordinator. The decision to grant this request is at the Title IX Coordinator's sole discretion and will be granted equitably to all Parties.

### **Advisor's Role in the Formal Resolution Process**

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<sup>12</sup> "Available" means the party cannot insist on an advisor who simply doesn't have inclination, time, or availability. Also, the advisor cannot have institutionally conflicting roles, such as being a Title IX Team member who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Advisors should help the Parties to prepare for each meeting or hearing and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to respond to questions on their own behalf throughout the Resolution Process. Although the advisor generally may not speak on behalf of their advisee, with the exception of conducting cross-examination during a hearing, 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 advisor should ask for breaks to allow for private consultation.

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

Under the 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 Parties and witnesses.

### **Advisor Policy Violations**

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the College's established rules of decorum will be warned. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including the College requiring the party to use a different advisor or providing a different College-appointed advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

### **Records Shared with Advisors**

Advisors are entitled to the same opportunity as their advisee to receive copies of the Preliminary and Final Investigation Reports, as well as the directly related evidence file.

Advisors are expected to maintain the confidentiality of the records the College shares with them. The College may 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 confidentiality expectations.

### **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. The College may 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.

### **Advisor Expectations**

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

The College may also make reasonable provisions to allow an advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

All advisors are subject to the same College policies and procedures, whether they are attorneys or not, and whether they are selected by a party or appointed by the College. Advisors are expected to advise without disrupting proceedings.

## APPENDIX F: INFORMAL RESOLUTION APPROACHES

The College will use one of three approaches to Informal Resolution. They are detailed in this section.

- 1) **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.
- 2) **Accepted Responsibility.** When the Respondent accepts responsibility for violating the Policy and accepts the recommended sanction(s), and the Complainant(s) and College are agreeable to the resolution terms.
- 3) **Alternative Resolution.** When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Resolution Process. Any Party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the Formal Resolution Process.

To informally resolve allegations of Title IX Sexual Harassment, a Formal Complaint must be filed prior to engaging in the Informal Resolution.

If an investigation is already underway, the Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, the College will provide the Parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College.

### Informal Resolution Approaches

**Supportive Resolution:** The Title IX Coordinator will meet with the Complainant to determine reasonable supports that are designed to restore or preserve the Complainant's access to the College's education program and activity. Such supports can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received a NOIA, the Title IX Coordinator may also provide reasonable supports for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Title IX does not believe there is a need to sign a Formal Complaint. At the discretion of the Title IX Coordinator, this resolution option can result in an agreement between the Complainant and the College that does not require assent from any other Party, as long as it does not unduly burden any other Party or function punitively with respect to them.

**Accepted Responsibility:** The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Formal Resolution Process. If the Respondent indicates an intent to accept responsibility for **all** alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Title IX Coordinator will determine whether all Parties and the College are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of College Policy, implements agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with other appropriate officials, as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Formal Resolution Process will either begin or resume.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

**Alternative Resolution:** The College offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Title IX Coordinator or other appropriate College officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Title IX Coordinator may consider the following factors to assess whether alternative resolution is appropriate, or which form of alternative resolution may be most successful for the Parties:

- The Parties' amenability to alternative resolution
- Likelihood of potential resolution, considering any power dynamics between the Parties
- The nature and severity of the alleged misconduct
- The Parties' motivation to participate
- Civility of the Parties
- Results of a violence risk assessment/ongoing risk analysis
- Respondent's disciplinary history
- Whether an emergency removal or other interim action is needed
- Skill of the alternative resolution facilitator with this type of Complaint



- Complaint complexity
- Emotional investment/capability of the Parties
- Rationality of the Parties
- Goals of the Parties
- Adequate resources to invest in alternative resolution (*e.g.*, time, staff)

The Title IX Coordinator has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The Title IX Coordinator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The Title IX Coordinator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (*e.g.*, dissolution of the agreement and resumption of the Formal Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). The results of complaints resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, the College will initiate or continue an investigation and subsequent Formal Resolution Process to determine whether the Policy has been violated.

*Authority: Article IX, Sec. 7, Fla. Constitution; 34 CFR Part 106; Fla. Board of Governors Regulations 1.001 and 6.0105*

*History: Adopted 04-27-02, as Policy 0-007; Revised and renumbered 11-04-11; Revised 05-31-14, 11-08-14, 03-05-16, 10-29-16, 10-27-20; Revised 06-26-25.*