

FLORIDA A&M UNIVERSITY BOARD OF TRUSTEES



NOTICE OF ADOPTION OF EMERGENCY REGULATION

DATE: August 13, 2020

REGULATION CHAPTER NO.: Chapter 1

REGULATION CHAPTER TITLE: Organization and Function

REGULATION TITLE AND NUMBER: Title IX Sex Discrimination and Sexual Misconduct Prohibition, and Hearing Process (1.022)

SUMMARY OF REGULATION: Regulation 1.022 is adopted on an emergency basis to comply with and in accordance with federal regulations implementing Title IX of the Education Amendments of 1972, as implemented in 34 CFR 106.45. Florida A&M University addresses the process for promptly responding to persons who are alleged to have experienced sex discrimination and/or Sexual Misconduct pursuant to Title IX. The deadline for implementation of the new federal regulations is August 14, 2020, which gives rise to the necessity to adopt these amendments on an emergency basis to protect the welfare of students who may be affected by the new regulations. Because emergency regulations are time-limited to a period of 90 days, Florida A&M University will initiate the regular regulation development process as soon as possible. The Board of Governors Regulation Development Procedure does not require a Notice period prior to approval.

AUTHORITY FOR REGULATION: Article IX, Florida Constitution; Board of Governors Regulation Development Procedure dated July 21, 2005, Article IX, section 7(c), Florida Constitution, Board of Governors Regulation 1.001; 6.0105.

UNIVERSITY OFFICIAL INITIATING THIS REGULATION Denise Wallace, General Counsel and Vice President for Legal Affairs.

PROCEDURE FOR COMMENTS: Written comments concerning this proposed regulation shall be submitted within 14 days of the date of this notice to the person identified below. The comments must specifically identify the regulation you are commenting on.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION IS: Denise Wallace, General Counsel and Vice President for Legal Affairs or Shira Thomas, Deputy General Counsel, 1700 Lee Hall Drive, Tallahassee, Florida 32307-3100, (850) 599-3591 (phone), (850) 561-2862 (fax), ogc@famu.edu.

FULL TEXT OF THE PROPOSED REGULATION: The full text of this new emergency regulation follows:

**Regulations of
Florida A&M University**



ER 1.022 Title IX Sex Discrimination and Sexual Misconduct Prohibition, and Formal Hearing Process.

- (1) Florida A&M University is committed to providing an educational and work environment free from discrimination and harassment on the basis of sex, sexual orientation, gender identity, and gender expression.
- (2) In accordance with federal regulations implementing Title IX of the Education Amendments of 1972, Florida A&M University will promptly respond to persons who are alleged to have experienced Sexual Misconduct by offering Supportive Measures; follow a fair resolution process to resolve Sexual Misconduct allegations; and provide remedies to victims of Sexual Misconduct.
- (3) Other Sexual Harassment, discrimination and misconduct that occurs between University students or employees during activities or at locations not listed in paragraph (6) below or which give rise to additional non-Sexual Misconduct violations of University Regulations, will be resolved in accordance with University Regulations 10.103 Non-discrimination Policy and Discrimination and Harassment Complaint Procedures, Regulation 1.019 University Code of Conduct and Regulation 2.012 Student Code of Conduct and/or other applicable regulations.
- (4) All questions regarding sex discrimination in Athletics and other Title IX issues not described under this Regulation will be resolved in accordance with University Regulations 10.103 Non-discrimination Policy and Discrimination and Harassment Complaint Procedures, Regulation 1.019 University Code of Conduct and Regulation 2.012 Student Code of Conduct, and/or other applicable regulations.
- (5) All questions or concerns about this Regulation, conduct that may violate this Regulation, or complaints based on sex discrimination in Athletics should be directed to the Director

of Equal Opportunity Programs/Title IX Coordinator:

Carrie Gavin

674 Gamble Street

Tallahassee, Florida 32307

(850) 599-3076

TitleIX@famu.edu

- (6) Any person may report Sexual Misconduct, discrimination or other misconduct whether or not the person reporting is the person alleged to be the victim of the conduct that could constitute Sexual Misconduct, discrimination, or other misconduct.
- (7) Jurisdiction. This Regulation applies to Sexual Misconduct that occurs at any of the following locations or activities:
- (a) University campus;
 - (b) University owned or controlled property;
 - (c) University premises including, but not limited to, any building owned or controlled by a recognized student organization or direct support organization;
 - (d) Activities sponsored by the University wherever they occur;
 - (e) Activities officially approved by the University that are conducted by University recognized organizations and direct-support organizations;
 - (f) Activities occurring on or off campus as a part of the University's operations including virtual or online platforms.
- (8) Definitions.
- (a) Actual Knowledge: notice of Sexual Misconduct or allegations of Sexual Misconduct to the Title IX Coordinator or any official who has authority to institute corrective measures on behalf of the University. This standard does not apply when the only University official with actual knowledge is the Respondent.
 - (b)
 - (c) Campus Security Authority: As referred to in the Jeanne Clery Act (Clery Act), an official of an institution who has significant responsibility for student and campus activities, including, but not limited to, campus security, student housing, student discipline, and campus judicial proceedings.
 - (d) Complainant: a person who is alleged to be the victim of conduct that could

constitute Sexual Misconduct.

- (e) Confidential Employee: an employee who is not required to report, with identifying information, any incident of Sexual Misconduct to the Title IX Coordinator. This includes employees at Student Health Services, the Office of Counseling Services, and the University Victim Advocate.
- (f) 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. Submission to sexual activity that is the result of force, coercion, or threats is not valid consent.
 - 1. Consent to one type of sexual activity does not imply consent to other types of sexual contact. There must be consent at every stage of the sexual encounter.
 - 2. Past consent to sexual activity does not imply consent to future sexual activity.
 - 3. 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.

Persons who are incapacitated by voluntary or involuntary alcohol or drug use (legal, illegal, or prescription), asleep, unconscious, mentally impaired by disease or illness, or under 18 years old cannot give consent to sexual conduct (no matter what they say or do). If there is any question regarding whether a person may be incapacitated, do not engage in any type of sexual activity with that person.

- (g) Dating Violence: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such 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. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- (h) Domestic Violence: violence committed by:
 - 1. a current or former spouse or intimate partner of the victim;

2. a person with whom the victim shares a child in common;
3. a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
4. a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Florida;
5. any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Florida.

To characterize an incident as domestic violence, the relationship between the perpetrator and the victim must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have or had an intimate relationship.

- (i) Formal Complaint: a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Misconduct against a Respondent and requesting that the University investigate the allegation of Sexual Misconduct.
- (j) Hearing Officer: the chairperson of the hearing panel or a university official(s) or designee who will act as the decision-maker.
- (k) Hearing Panel: in a disciplinary proceeding, the persons authorized by the University to determine whether a Respondent has violated this Regulation and to determine sanctions.
- (l) Notice: a report of Sexual Misconduct to the Title IX Coordinator.
- (m) Remedies: actions designed to restore or preserve equal access to the University's education program or activity. Such remedies may include Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. For issues involving allegations of sex discrimination, refer to University Regulation 10.103.
- (n) Respondent: a person who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct.
- (o) Responsible Employees: Employees who must report any incident, in detail, of Sexual Misconduct that they become aware of to the Title IX Coordinator.
- (p) Sexual Assault: any attempted or actual sexual act directed against another person,

without consent of the victim, including instances where the victim is incapable of giving consent.

1. Penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
 2. Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
 3. Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 4. Statutory rape is sexual intercourse with a person who is under the statutory age of consent.
- (q) Sexual Exploitation: Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding Sexual Misconduct offenses. Examples include, but are not limited to: Prostitution of another person, non-consensual visual or audio-recording of sexual activity, or non-consensual distribution of photos, other images, or information of a person's sexual activity.
- (r) Sexual Harassment: conduct on the basis of sex that satisfies one of more of the following:
1. An employee conditioning the provision of an aid, benefit, or service of the University on a person's participation in unwelcome sexual conduct.
 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program and activity.
 3. Any instance of Sexual Assault as defined in the Clery Act, including dating violence, domestic violence, or stalking, as defined in the Violence Against Women Act (VAWA).

- (s) Sexual Misconduct: any sexual contact toward another without the person's consent and includes, but is not limited to, Sexual Assault, inducing incapacitation for sexual purposes, Statutory Rape, Sexual Harassment, Stalking and other forms of Sexual Exploitation. Sexual Misconduct may constitute crimes (i.e. sexual battery, rape and related sex crimes) and/or civil complaints (i.e. sexual harassment) and can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship.
- (t) Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - 1. Fear for the person's safety or the safety of others; or
 - 2. Suffer substantial emotional distress. For the purposes of this definition:
 - a. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - b. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
 - c. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.
- (u) Statutory Rape: non-forcible sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.
- (v) Supportive Measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint, or where no Formal Complaint has been filed.
- (w) Voyeurism: to trespass, spy, eavesdrop, or otherwise invade the privacy of another for the purpose of personal sexual arousal.

(9) Reporting Sexual Misconduct.

- (a) If you believe that you have experienced Sexual Misconduct, notify the Title IX Coordinator as soon as possible after the incident. You do not have to tolerate unacceptable behavior, regardless of who is creating the situation. There is no specific time frame for persons who have experienced Sexual Misconduct to make a report pursuant to this Regulation. Persons are, however, encouraged to make a report soon after the incident in order to maximize the University's ability to investigate and resolve the matter.
- (b) Responsible Employees and those designated as Campus Security Authorities must report allegations of Sexual Misconduct to the Title IX Coordinator. Additionally, anyone who interacts in our University Community and has learned of or witnessed a violation of this Regulation, is *strongly encouraged* to report the matter to the Title IX Coordinator.
- (c) Any person may report Sexual Misconduct (whether or not the person reporting is the person alleged to be the victim of alleged Sexual Misconduct) in person, by mail, by telephone, by email using the contact information for the Title IX Coordinator as listed in this Regulation, or by using the Office of Compliance and Ethics Hotline portal at <https://www.compliance-helpline.com/famu.jsp?reloadPage=1>.
- (d) Persons may make an anonymous report concerning an instance of Sexual Misconduct as well. Reports about Sexual Misconduct do not have to be formal, signed complaints. However, an anonymous report may limit the University's ability to investigate, respond, and act. Responsible Employees and Campus Security Authorities who are relaying another person's incident of Sexual Misconduct must report all known details of the incident, including the identities of the persons involved.
- (e) If you are not sure whether an incident of Sexual Misconduct has occurred, you may contact the Title IX Coordinator for assistance in determining the nature of the incident and whether it should be reported pursuant to this Regulation. The University will promptly respond to every report of Sexual Misconduct through its Title IX Coordinator or designee.

(10) Supportive Measures. Upon receiving information alleging Sexual Misconduct, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, and explain to the Complainant the process for filing a Formal Complaint. It is not necessary to file a Formal Complaint to receive Supportive Measures.

(a) Supportive Measures are designed to ensure equal educational access, enforce safety, and deter Sexual Misconduct. For students, the University attempts to avoid depriving any student of their education. For employees, the University attempts to provide a safe working environment. The measures needed by the parties may change over time to ensure that they are necessary and effective based on each person's evolving needs. Ongoing coordination with the Title IX Coordinator is strongly encouraged.

(b) Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the Complainant and Respondent; changes in work or on-campus housing locations, leaves of absence, monitoring of certain areas of the campus, and other similar measures. Where appropriate, the Title IX Coordinator will also offer Supportive Measures to Respondents. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

(c) The University will keep any Supportive Measures provided to the Complainant or Respondent confidential to the extent that maintaining such confidentiality would not impair the ability of the University to provide Supportive Measures.

(11) Formal Complaint. At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the University's education program or activity. The Formal Complaint must contain the Complainant's physical or digital signature. The University emphasizes the importance of treating Complainants and Respondents equitably upon receipt of a Formal Complaint. There is a presumption the Respondent not responsible for the alleged conduct.

(a) In response to a Formal Complaint, the University will follow the Formal Hearing

process or Informal Resolution process noted below. Once a Formal Complaint is filed, the University may take formal action in regards to the allegations of Sexual Misconduct. The University may initiate its own review of an incident, even if a Formal Complaint has not been filed, and take appropriate action should such be deemed warranted under the circumstances presented.

(b) Upon receipt of a Formal Complaint, the University will provide written notice to the Complainant and Respondent of:

1. The Formal Hearing process as well as Informal Resolution;
2. The allegations of Sexual Misconduct, including sufficient details known at the time, and provide the Complainant and the Respondent sufficient time to prepare a response before any initial interview;
3. Notice of any additional allegations that arise during the course of an investigation.

(c) The University reserves the right to consolidate Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents where the allegations arise out of the same facts or circumstances.

(d) For cases in which there is an overlap of charges between Regulation 2.012, 1.019, 10.103 and this Regulation, a joint-investigation will commence for efficiency purposes and to preserve University resources. The details of the investigation involving the other University Regulation will be included in the Title IX investigative report.

(12) Privacy and Confidentiality. To the greatest extent possible, the University will keep confidential the identity of any person who has made a report or complaint of Sexual Misconduct, any Complainant, any Respondent, and any witness.

(a) Privacy. The University is committed to protecting the privacy of all persons involved in a report of Sexual Misconduct. However, as described in this section, the University cannot guarantee complete confidentiality and anonymity in all circumstances. If a person desires confidentiality, meaning that no information will be shared, then that person must either contact a Confidential Employee or their off-campus equivalent, who will maintain the confidentiality to the extent permitted

by law. Please remember that if a person informs a Responsible Employee or Campus Security Authority, that Responsible Employee or Campus Security Authority **must** report the allegation to the Title IX Coordinator and cannot promise confidentiality.

- (b) Confidentiality. The University will only disclose information to persons with a legitimate need to know in order to review, investigate, and resolve reports of Sexual Misconduct, or as permitted or required by law. The University may release information about Sexual Misconduct in certain circumstances without permission in order to warn and protect the University Community. For example, under the Clery Act, the University must issue timely warnings for reported incidents that pose a substantial threat of bodily harm or danger to other members of the campus community. The University will make every effort to ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.
- (c) The University reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, or a change in student status or of another matter as otherwise permitted under applicable FERPA regulations.
- (d) A person reporting Sexual Misconduct has the right not to proceed with filing a Formal Complaint; however, the Title IX Coordinator may have an obligation to file their own Formal Complaint, investigate, and take remedial action, even if the person no longer participates or is unwilling to participate in the investigation. This would be true, for example, if the reported Sexual Misconduct indicated that there was a reasonably anticipated risk that the reported person would commit additional acts of Sexual Misconduct or other violence; whether the Sexual Misconduct was reportedly engaged in by multiple persons; whether a weapon was involved; and whether there is an indication of a pattern of misconduct. A lack of participation may, however, limit the University's ability to investigate and resolve concerns.
- (e) As explained in this Regulation, if a Formal Complaint is filed, the University has an obligation to identify the parties and the substance of the Complaint to comply with due process and the federal Title IX regulations.

(13) Dismissal. The University will notify the Complainant and Respondent in writing of any dismissal and the reasons therefore.

(a) The University will dismiss the complaint if the conduct alleged in the Formal Complaint:

1. would not constitute Sexual Misconduct as defined above even if proven;
2. did not occur within the University's jurisdiction; or
3. did not occur against a person in the United States.

(b) The University may also dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:

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 University.
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or the allegations therein.

(c) The University reserves the right to dismiss a Formal Complaint and reinstate the complaint under any applicable regulation, policy or rule, including, but not limited to, University Regulation 1.019 University Code of Conduct, University Regulation 10.103 Non-Discrimination Policy and Discrimination and Harassment Complaint Procedures, Regulation 2.012 Student Code of Conduct. For example, in situations where both the Complainant and the Respondent are employees, and/or in situations where the Formal Complaint includes allegations of Sexual Misconduct and non-Sexual Misconduct.

(14) Investigation. The burden of proof and burden of gathering evidence rest on the University and not on the parties.

(a) The investigator will provide both parties an equal opportunity to inspect and

review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which University does not intend to rely in reaching a determination regarding responsibility. The investigator will also provide inculpatory or exculpatory information to the parties and their advisors, if any, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

- (b) The investigator will provide the information in electronic format or hard copy and the parties will be given at least ten (10) business days to submit a written response. The investigator will consider any written responses prior to completion of the investigative report.
- (c) The University will also make all directly related evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
- (d) The investigator will send the parties and their advisors an investigative report that fairly summarizes relevant evidence, with at least ten (10) business days for the parties to respond, prior to a hearing or determination of responsibility.

(15) Conflict or Bias. The University prohibits the Title IX Coordinator, investigators, decision-makers, and any person facilitating an informal resolution process from having a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. In the event of a conflict or bias, the University will appoint an alternate person so that the process is free of conflicts of interest and bias.

(16) Resolution. There are two avenues of resolution once a Formal Complaint has been filed:

- (a) Informal Resolution. If a Formal Complaint is filed, Informal Resolution may be offered or facilitated by the University at any time prior to reaching a determination of responsibility. Informal Resolution does not involve a full investigation and adjudication.

1. The Complainant and Respondent must provide voluntary, written consent

to the Informal Resolution process. Informal Resolution is not available when a Complainant is a student alleging that a University employee has engaged in Sexual Misconduct.

2. The University will provide the parties a written notice disclosing the allegations, and the requirements of the Informal Resolution process, including the circumstances under which, upon reaching an agreed resolution, it precludes the parties from resuming a Formal Complaint arising from the same allegations.
3. However, at any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and resume the Formal Hearing process with respect to the Formal Complaint. The University will also explain any action resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared.
4. The Informal Resolution process must be completed within fifteen (15) business days of the parties agreeing to pursue such a process. If not completed by that deadline, in the absence of any approved extensions, the Formal Complaint will continue to be investigated and processed for a Formal Hearing as described in this Regulation.

(b) Formal Hearing Process. The University Formal Hearing process described herein is designed to address behavior that may constitute a violation of Title IX; therefore, separate violations arising out of the same facts of the Student Code of Conduct or other University regulations and policies will be addressed independently of any penalty imposed under this Regulation.

1. Formal Complaints that have not been dismissed or informally resolved will result in a live (or virtual) hearing. The decision-maker will explain each participant's rights and options and assure that fairness and procedural due process are observed throughout the hearing. For example, witnesses may only be present during the time they are being questioned. Note that the hearing process is not the same as a criminal or civil proceeding. Procedures governing Florida's criminal or civil courts, including formal rules of

evidence, are not applicable.

2. University Regulations 2.012 and 2.013 require due process for all persons,¹ which ensures that all persons receive proper notice. The Respondent shall be provided with written notice of the charges against them in sufficient detail and in sufficient time to prepare for a hearing before a hearing panel or Hearing Officer. The Complainant shall be sent a copy of the notice of charges at the same time as the Respondent. This notice shall be presented no less than five (5) business days prior to the hearing, except in cases of emergency hearings, where the notice will be provided as soon as possible.
3. The notice will also allow the Complainant or Respondent to request an administrative information briefing to discuss the options for resolution, either Informal or Formal Resolution. In the event that neither party, requests an administrative information briefing and have not elected to participate in Informal Resolution, the University will schedule a Formal Hearing within five (5) business days from the date of the notice of charges on the merits of the case, i.e. whether the Respondent committed the alleged offense(s) under Title IX.
4. All hearings must be recorded and a copy of the recording or transcript must be provided to either party upon request.

(c) Emergency Processes.

The Respondent shall be entitled to a prompt hearing before a hearing panel, as established by the University.

1. Emergency Removal. The University may remove a Respondent from the University on an emergency basis after undertaking an individualized safety and risk analysis and determining that an immediate threat to the physical health or safety of any person arising from the allegations justifies removal. If a Respondent is removed pursuant to this section, the University will provide the Respondent with written notice and an opportunity to challenge the decision immediately following the removal. The Respondent shall have

¹ All definitions not included herein or in Regulation 2.012 are in accordance with definitions found in the Merriam-Webster's dictionary(edition?).

three (3) business days from receipt of the notice of emergency removal to submit, in writing to the Title IX Coordinator, the basis of their challenge to the removal and request an emergency hearing. The Title IX Coordinator will provide a copy of the Respondent's challenge to removal to the Complainant.

2. Emergency Hearings.

Upon receipt of the Respondent challenge to removal and request for an Emergency Hearing, the University will appoint a decision-maker to hold an emergency hearing without delay, as soon as possible given the circumstances, but no later than five business (5) days later. The decision-maker will provide written notice to the parties of the date and time of the hearing, provide both parties the opportunity to be heard at the hearing, and issue its written decision no later than five (5) business days after the hearing. The Respondent may show cause why their continued presence on the University campus is not a threat pursuant to the individualized safety and risk analysis. If a Respondent is removed, pursuant to this emergency removal procedure, the Respondent retains all rights to an investigation and hearing as set forth in this Regulation prior to any ultimate finding of responsibility and sanctions.

3. Administrative Leave. The University may place an employee Respondent on administrative leave during the pendency of the Formal Hearing process above.

(17) Administrative Information Briefing. After the investigative report is completed, the parties will be given a notice of any charges that includes an opportunity to request an administrative information briefing before the University Conduct Officer, Title IX Coordinator, or designee.

(a) Either the Complainant or Respondent must request the administrative information briefing within five (5) business days from the date of the notice of charges with the University Conduct Officer, Title IX Coordinator or designee. The parties' advisors may accompany them to the briefing.

- (b) The University Conduct Officer, Title IX Coordinator or designee will explain the elements of due process that will be afforded and the options for resolution, Formal Hearing or Informal Resolution.

(18) Disclosure of Information.

- (a) The parties shall have the opportunity to inspect all information related to Emergency Removal, whether or not it will be presented at the hearing, at least one (1) business day prior to an emergency hearing. The University shall also have the right to inspect all related information at least one (1) business day prior to the emergency hearing.
- (b) For Formal Hearings, the parties shall have the opportunity to inspect all related information including, but not limited to, information that will be presented during the hearing. Inspection of the information shall occur at least three (3) business days before the Formal Hearing. The University shall also have the right to inspect any information the student intends to use at least three (3) business days before the Formal Hearing or meeting.
- (c) If either party fails to notify the other that they have information to present, and/or fails to allow the other party to inspect the information that the party intends to use at the hearing within the allotted times stated above before the hearing, it may cause a delay in the hearing or require that the hearing be continued.

(19) Extensions of timeframe: Extensions of the timeframe stated herein may occur for good cause upon written notice to the Complainant and the Respondent. Notice must state the reasons for the extension.

- (a) Examples of good cause may include, but are not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; University closures and/or breaks between semesters; or the need for language assistance or accommodation of disabilities. The University is not required to postpone the proceedings pending the outcome of a criminal or other outside proceeding.
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(20) Hearing/Meeting Procedures. The parties may, at their own expense and initiative, have an advisor of the party's choice present during the Formal Hearing process who may be an attorney.

- (a) If the Complainant or Respondent is unable to or fails to obtain an advisor, the University will provide an advisor on their behalf for the purpose of cross examination of any witnesses. The advisor may accompany the party to any meeting or hearing during the Informal or Formal Hearing process. The parties shall coordinate the scheduling of the hearing and not the advisors.
- (b) The party may present relevant information on their own behalf during the hearing or Informal Resolution meeting. Only relevant information will be allowed during the hearing. The Hearing Officer will make a relevance determination prior to allowing the witness to answer any question. The advisor may cross examine witnesses who testify at the hearing. The Respondent shall not be forced to present testimony, which would be self-incriminating. The Respondent is presumed not responsible for the alleged conduct. A determination regarding responsibility is made at the conclusion of the Formal Hearing process.
- (c) The Complainant and Respondent will be provided an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, and have an advisor of their choice present during any Formal Hearing proceeding or related meeting.
- (d) The hearing panel shall question witnesses throughout the hearing, excluding during cross examination when advisors are required to ask questions of the witnesses. An advisor may also act as a witness. An advisor must comply with all rules of decorum as set forth by the University for the hearing. In the event that the advisor attempts to disrupt a proceeding by speaking or presenting information in an unprofessional or uncivilized manner, the advisor may be asked to leave. In such event, the proceeding will continue with another advisor, who may be provided by the University. Absent an alternate advisor, the hearing will be rescheduled.
- (e) The hearing panel shall be comprised of only university official(s) or designee(s).
- (f) All participants must comply with the rules of decorum during all proceedings. The rules of decorum will be provided by the Title IX Coordinator.

(21) Standard of Review

The Hearing Officer will apply the “preponderance of the evidence” standard to determine whether it is more likely than not that the alleged conduct occurred. The Respondent is presumed not responsible unless the preponderance of the evidence shows otherwise. Proceedings are conducted to consider the totality of all evidence available from all relevant sources.

(22) Written Determination

- (a) The Hearing Officer will issue a written determination that identifies the allegations potentially constituting Sexual Misconduct, describes the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held and findings of fact supporting the determination.
- (b) Conclusions regarding the application of the University’s rules and regulations to the facts, including conclusions as to whether the alleged conduct occurred should also be noted in the determination. A statement of, and rationale for, the result as to each allegation may also be included. The Hearing Officer must decide the issue of responsibility and state the procedures and available bases for appeal.
- (c) The determination will include any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided to the Complainant (without disclosing the nature of those remedies except to the extent a remedy also imposes requirements on the Respondent).
- (d) The University will provide the written determination to the parties simultaneously within fourteen (14) days from the conclusion of the hearing. The Hearing Officer will also provide a copy of the written determination to the Title IX Coordinator.
- (e) The determination of Responsible or Not Responsible shall be based solely on the information presented during the proceedings. The Hearing Officer is not permitted

to consider any statements provided by either party that has not been subject to cross examination.

(23) Appellate Rights. In the event that either party is dissatisfied with the outcome of the hearing (or dismissal of the Formal Complaint), the University will offer either party an appeal on the following bases:

- (a) Procedural irregularity that affected the outcome of the matter;
- (b) 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;
- (c) 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; or
- (d) The sanctions are extraordinarily disproportionate to the violation committed.

(e) The Appeal Process will be implemented for each party equally and is outlined below:

1. Appeal Process when student is the Respondent

- a. The Complainant or Respondent has ten (10) business days from the date of the written determination to make their appeal in writing and file the appeal with the Office of the Dean of Students and a copy of the appeal to the Hearing Officer. Once the Complainant or Respondent files an appeal, the Hearing Officer must notify the other party in writing that an appeal has been filed and send them a copy of the appeal. The party who did not file an appeal has ten (10) business from the date of receipt of the appeal to respond to the appeal.
- b. The written appeal must specify reason(s) why consideration should be granted and should refer to the appeal bases in section (22). Decisions of the hearing panel are appealed to the Dean of Students or other designated University official along with a

- copy sent to the Hearing Officer. At the conclusion of the appeals process, the decision of the Dean of Students, or other designated University official, shall be final, and the Vice President for Student Affairs shall sign a final order of decision.
- c. No student's final penalty shall begin to run until all University appeals are exhausted or denied.
 - d. If the student chooses to appeal, the recording of the Formal Hearing shall be made available to the Respondent, Complainant and the Dean of Students.
 - e. Final appellate decisions resulting in a suspension or expulsion of a student must include notice to the student of the student's right to appeal to an external judicial forum.

2. Appeal Process when Employee is the Respondent

- a. The Complainant or the Respondent has ten (10) business days from the date of the written notification to make their appeal in writing and file the appeal with the Office of Human Resources along with a copy to the Title IX Coordinator.
- b. The written appeal must specify reason(s) why consideration should be granted and should refer to the appeal bases in section (22). Decisions of the hearing panel are appealed to the Office of Human Resources for review by the designated University official. At the conclusion of the appeals process, the decision of the University official shall be final, and the appropriate Vice President shall notify the Respondent of their decision.
- c. Any disciplinary action imposed by the University will begin after all University appeals are exhausted under this Regulation.
- d. Final appellate decisions resulting in disciplinary action of an employee must include notice to the employee of their

right to appeal under applicable University regulations, policies and collective bargaining agreements.

(24) Retaliation. Members of the University community are prohibited from engaging in retaliation against one another for reporting or participating in a Title IX investigation.

(a) Findings of retaliation are independent of the underlying claim of Sexual Misconduct and will result in disciplinary action, up to and including termination and/or expulsion in accordance with applicable University regulations, policies and collective bargaining agreements.

(b) Complaints alleging Retaliation will follow the same Formal Hearing process outlined in this Regulation. The exercise of rights protected under the First Amendment does not constitute Retaliation. Charging a person with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX Formal Hearing proceeding does not constitute Retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.

(25) University Resources.

- **Department of Public Safety** 850-599-3256 <http://www.famu.edu/publicsafety>
The FAMU Police are available to respond to emergency calls, to report a crime and for crime investigations.
- **Office of Counseling Services** 850-599-3145 <http://www.famu.edu/counseling>
The Office of Counseling Services provides confidential counseling services and referrals. They also provide a victim advocate who is available to support students that have been victims of a crime, including Sexual Assault. Victim advocates can be reached after hours through the FAMU Department of Public Safety.
- **Office of Equal Opportunity Programs** 850-599-3076 <http://www.famu.edu/EOP> The Office of Equal Opportunity Programs investigates complaints of discrimination and harassment based on protected class issues.
- **Title IX Coordinator, Carrie Gavin** 850-599-3076

Carrie Gavin is the Title IX Coordinator at FAMU. This office is responsible for investigation of sex-based discrimination and misconduct including, but not limited to, issues in Athletics, sexual harassment, and violence.

- **Student Health Services** 850-599-3777 www.famu.edu/shs
Student Health Services (SHS) provide medical services to students. With a Sexual Assault nurse examiner (SANE) on staff, SHS will address health concerns related to an assault, including STI/STD testing, and emergency contraception. Evidentiary examinations (rape kits) are performed at Tallahassee Memorial Hospital.
- **Dean of Students** 850-599-3183
The Dean of Students has oversight for many areas including University Housing, student organizations and the Office of Student Conduct and Conflict Resolution.
- **Office of Student Conduct and Conflict Resolution** 850-599-3541
<http://www.famu.edu/index.cfm?officeofstudentconduct>
The Office of Student Conduct has the responsibility of enforcing the Student Code of Conduct to ensure that all students have an opportunity to live and learn in a safe and scholarly environment.
- **FAMU Compliance and Ethics Hotline** 866-445-4968
<https://www.compliancehelpline.com/famu.jsp?reloadPage=1>
The FAMU Compliance hotline allows a person to anonymously report by phone or online, suspected issues of misconduct or violations of University Regulations.
- **Victim Advocate Program** 850- 412- 5667
<http://www.famu.edu/index.cfm?vap>
The Victim Advocate Program serves as a confidential resource and support service for anyone in the University community who has been a victim of a crime.

(26) Community Resources.

- **Tallahassee Police Department** 911 (in case of emergency) or (850) 891-4200 (non-emergency)
- **Leon County Sheriff's Office** 911 (in case of emergency) or (850) 606-3300 (non-emergency)
- **Refuge House** (850) 681-2111 (24-hour hotline)

- **Tallahassee Memorial Hospital (850) 431-1155 (general)**
- **Capital Regional Medical Center (850) 325-5000 (general)**

Specific Authority: Article IX, section 7(c), Florida Constitution, Board of Governors Regulation 1.001; 6.0105; History: New August 13, 2020.