

7.10 Title IX Compliance

Former Policy Number: 1.15

I. APPLICABILITY:

This policy applies to all Florida Atlantic University ("University") students, faculty and staff, including applicants for admission and employment and third parties present on campus (contractors, vendors, alumni or visitors) participating in a University Education Program or Activity.

II. DEFINITIONS:

(a) *Advisor*: A person chosen by a Party, or appointed by the University, to accompany and advise the Party in meetings related to the grievance process. The Advisor may question witnesses and conduct cross-examination on behalf of an involved Party at the Hearing. An Advisor is not required to be an attorney and may be any individual of the Party's choice.

(b) *Appeal Officer*: An official designated by the University to hear and determine the outcome of an appeal.

(c) *Business day*: Monday-Friday, excluding official University holidays.

(d) *Complainant*: Any individual who has reported being or is alleged to be impacted by Prohibited Conduct as defined by this Policy.

(e) *Consent*: An agreement between two or more individuals for activity that is affirmative, informed, freely given and mutually understood. Consent shall be determined based on consideration of the following factors: (i) it is the responsibility of each person involved in any sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity; (ii) the existence of a dating or sexual relationship between the persons involved, or the fact of past sexual relations, should never by itself be assumed to be an indicator of consent for any current or future sexual encounter; (iii) consent cannot be obtained by force, threat, coercion, manipulation, reasonable fear of injury, intimidation, use of position of influence, or through the use of one's mental or physical helplessness or incapacity; (iv) consent must be ongoing throughout a sexual activity and can be revoked at any time; (v) within each sexual encounter, there may be separate individual sexual acts involved. Consent to one act by itself does not constitute consent to another act; (vi) consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another; (vii) lack of protest or resistance does not mean consent; and (viii) silence does not mean consent has been granted.

(f) *Dating Violence*: Violence committed by a person who is or has been in a social relationship of a romantic or intimate 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. 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.

(g) *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; 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.

(h) *Education Program or Activity*: Location, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Prohibited Conduct occurs. This may include, but is not limited to, conduct that occurs in one of the following:

1. any on-campus premises of the University;
2. any off-campus premises over which the University has substantial control, including buildings or property owned or controlled by a recognized student organization;
3. off-campus activities that are part of a University education program or activity, including field trips and sanctioned events such as performances, and athletic or academic competitions; and
4. activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the University's education programs and activities over which the University has substantial control.

(i) *Formal Complaint*: A complaint that has been signed by a Complainant or the OCR9 ED alleging Prohibited Conduct against a Respondent and requesting that OCR9 investigate the allegation.

(j) *Hearing*: A live meeting conducted either in-person or via video conference and pursuant to applicable Title IX Regulations, for the purpose of allowing a Hearing Officer

or Hearing Panel to determine whether a Respondent violated this Policy and, if so, to address appropriate sanctions consistent with this Policy.

(k) *Hearing Officer or Hearing Panel (commonly known as the Decision Maker)*: The official responsible for determining whether a Respondent has committed Prohibited Conduct under this Policy.

(l) *Hostile Environment Sexual Harassment*: Unwelcome conduct on the basis of sex 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 or activity.

(m) *Informal Resolution*: Informal resolution is a voluntary remedies-based process designed to provide parties in a complaint with an option to resolve the alleged dispute in a forum separate and distinct from the formal grievance process. Informal resolution may include, but is not limited to, mediation, and Restorative Resolution.

(n) *Investigator*: The person(s) charged by OCR9 with gathering facts about an alleged violation of this policy, assessing relevance and credibility, synthesizing the evidence, and compiling information into an investigative report.

(o) *Office of Civil Rights and Title IX (OCR9)*: The University office with primary responsibility for administering this Policy. OCR9 conducts investigations and assists in the University's response and resolution of all reports of Prohibited Conduct. OCR9 will maintain all reports of Prohibited Conduct in accordance with applicable laws and regulations.

(p) *Office of Civil Rights and Title IX Executive Director (OCR9 ED)*: The University's designated Title IX Coordinator. The OCR9 ED is: (i) knowledgeable and trained in University policies and procedures and relevant state and federal laws; (ii) available to advise any individual including a reporting party, a responding party, or a third party, about University and community resources and reporting options; (iii) available to provide assistance to any University employee regarding how to respond appropriately to a report of Prohibited Conduct; (iv) participates in ensuring the effective implementation of this Policy, including monitoring compliance with all procedural requirements, record keeping, and timeframes; and (v) responsible for overseeing training, prevention, and assessments. The OCR9 ED may delegate responsibilities under this policy to appropriately trained individuals.

(q) *Party or Parties*: Complainant and Respondent. Witnesses are not parties.

(r) *Preponderance of Evidence*: The evidence presented supports the finding that it is more likely than not that the Respondent violated this Policy.

(s) *Prohibited Conduct*: Sexual Harassment as defined by this Policy that occurs within a University Education Program or Activity and the United States of America.

(t) *Quid Pro Quo Sexual Harassment*: A University employee conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

(u) *Report*: Information brought to the attention of OCR9 alleging Prohibited Conduct under this Policy. A Report is not considered to be a Formal Complaint. A Party may bring a Report and then subsequently file a Formal Complaint.

(v) *Respondent*: An individual who allegedly has engaged in conduct that could constitute Prohibited Conduct under this Policy.

(w) *Restorative Resolution*: Philosophical approach utilized in resolving incidents in a manner that focuses on repair of any harm and conflict caused by the Respondent while simultaneously holding the Respondent accountable for their actions. The use of Restorative Resolution practices aims to decrease residual offenses, enhance care for the community, and offer opportunities for growth and self-reflection.

(x) *Retaliation*: Any words or behavior made to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this 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. Retaliation may be committed by the Respondent, the Complainant, the reporting party, or any other individual or group of individuals. Retaliation may be committed against the Complainant, Respondent, witnesses, or any individual who assisted with providing information.

(y) *Sexual Assault*: Any sexual act directed against another person, without the Consent of the Complainant including instances where the Complainant is incapable of giving Consent. This includes the following:

(i) *Rape*: 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, or by a sex-related object. This definition also includes instances in which the Complainant is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the Complainant to demonstrate lack of consent.

(ii) *Fondling*¹: The intentional touching of the clothed or unclothed body parts without consent of the Complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This definition also includes the forced touching by the Complainant of the Respondent's clothed or unclothed body parts without consent of

the Complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This includes instances where the Complainant is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication.

(iii) *Incest*: Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Florida law; or

(iv) *Statutory Rape*: Nonforcible sexual intercourse with a person who is under the statutory age of Consent.

(z) *Sexual Harassment*: Conduct on the basis of sex which constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined in this Policy.

(aa) *Stalking*: Engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress. For the purposes of this definition, 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. Reasonable person means a reasonable person under similar circumstances and with 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.

(bb) *Supportive Measures*: Reasonable and appropriate actions to protect the safety of the parties of alleged Prohibited Conduct and provide support for academic or professional success.

III. POLICY:

The University is committed to fostering an environment that is safe, secure, and free from Sexual Harassment as defined by Title IX of the Education Amendments of 1972 ("Title IX"). This Policy identifies and defines conduct prohibited by Title IX and details the process that the University will use to respond to allegations of Prohibited Conduct, including the resolution options for Formal Complaints. Prohibited Conduct must occur within the University's Education Program or Activity and within the United States of America to be covered by this Policy. Sex discrimination other than Prohibited Conduct defined in this Policy or other concerns and reports that fall outside the jurisdiction or scope of this Policy may be addressed by other applicable University regulations, policies, and procedures.

Inquiries or concerns about Title IX may be referred to the OCR9 ED, located in Administration Bldg. 10, Room 265, Boca Raton Campus, 561-297-3004; <https://www.fau.edu/ocr9> Contact information for the University's Deputy Title IX Coordinators can be found within OCR9's website at www.fau.edu/ocr9. Concerns about the University's application of Title IX under this Policy may be addressed to: United States Department of Education, Office for Civil Rights, 61 Forsyth Street S.W., Suite 19T10, Atlanta, GA 30303-8927, Telephone: (404) 974-9406, Facsimile: (404) 974-9471, Email: OCR.Atlanta@ed.gov.

IV. REPORTING:

Any supervisory Employees or other official who has the authority to institute corrective measures on behalf of the University who receives a report, observes or learns of an alleged incident of Prohibited Conduct has an absolute and unqualified duty to promptly report the conduct to OCR9. Failure to report an alleged violation as required by this Policy may result in disciplinary action up to and including separation or termination from employment. All employees in the University's K-12 programs are considered officials with authority to institute corrective measures on behalf of the University for K-12 students and must report any claims of Prohibited Conduct to OCR9.

When submitting a Report, Employees must include their own name and contact information, and all known details about an incident, which may include, if known, the dates, times, locations, names of involved individuals, and the nature of the incident. Aside from this reporting obligation, Employees will, to the fullest extent possible, maintain the privacy of an individual's information, consistent with the Family Educational Rights and Privacy Act (FERPA). The University encourages Employees who themselves experience Prohibited Conduct to report to the Title IX Office, though they are not required to do so.

Any person may report Prohibited Conduct, regardless of whether the person reporting is the person alleged to be the victim of Prohibited Conduct. Reports may be made in person, online, by mail or electronic mail, by telephone, through the [University's Ethics Hotline](#), or by any other means that results in OCR9 receiving the person's oral or written Report. The University strongly encourages individuals to report Prohibited Conduct via the online reporting form: www.fau.edu/report or via. More detailed contact information for OCR9 can be found here: <https://www.fau.edu/ocr9/>.

Reasonable efforts will be made to respect and safeguard the privacy and interests of all individuals involved in a manner consistent with the need for careful assessment of the allegation(s) and any necessary steps to eliminate the conduct, prevent its recurrence, and address its effects. Information related to a report under this Policy will be shared with those University employees who "need to know" to assist the active review, investigation, or resolution of the report.

V. RESPONDING TO A REPORT

Upon receipt of a report alleging Prohibited Conduct, OCR9 will conduct an initial assessment for the purpose of determining if the allegations fall within Title IX's jurisdiction. OCR9 will also determine if there are any immediate health, safety, or risk concerns raised that need attention and whether Supportive Measures are appropriate. OCR9 will attempt to complete the initial intake and safety/risk assessment within (5) business days of receipt of the report or complaint.

Upon determining the allegations fall within Title IX's jurisdiction, OCR9 will complete the following next steps:

1. Promptly send an outreach response to the Complainant
2. Discuss availability of Supportive Measures.
3. Consider the Complainant's requests with respect to supportive measures.
4. Explain the process for filing a Formal Complaint.
5. Provide information about an Advisor of choice, including the right to choose an attorney.
6. Provide information to the Complainant about University Victim Services.
7. Provide information about the right to utilize processes outside the University.
8. Provide information about the investigative process and their rights.
9. Notify Complainant that all parties are treated equitably;
10. Explain the University's prohibition against Retaliation and that the University will take prompt action in response to any act of Retaliation; and
11. Provide Complainant with notice of the standard of proof.

VI. SUPPORTIVE MEASURES

Supportive Measures are provided on a case-by-case basis and may be temporary or long-term action(s) taken by the OCR9 ED in consultation with other University administrators to ensure equal access to the University's educational and employment programs and activities to aid in fostering a safe climate during the investigation process and in the University community. The specific supportive measures implemented and the process for implementing those measures will vary depending on the facts of each case. The University will consider a number of factors in determining the supportive measures to implement, including but not limited to: the specific needs of the individuals involved; the severity or pervasiveness of the allegation; any continuing effect on the

individuals involved; and whether other measures have been taken to protect the individuals involved. Supportive measures are available to all parties in a case.

Supportive measures are designed to restore or preserve equal access to the University's educational and working programs or activities without unreasonably burdening the other parties. Supportive measures are not intended to be permanent, but may be utilized to assist with stopping, preventing, and remedying recurrence of the alleged Prohibited Conduct. Supportive measures may be modified or withdrawn as additional information is collected. They are non-disciplinary and non-punitive and shall be kept confidential except to the extent necessary to provide the supportive measures. Supportive measures may be implemented when the University has reasonable cause to believe that the interaction of two people may pose a risk to the safety or well-being of those involved or others in the University community. OCR9, in conjunction with other University administrators, will maintain contact with the parties involved. Failure to adhere to the parameters of any supportive measure may be considered a separate violation of this Policy or other University Regulations. If a person needs a supportive measure not listed below, the OCR9 ED will work with the individual to explore options.

Supportive measures for students may include, but are not limited to: access to counseling services and assistance setting up initial appointments; imposition of a campus no contact directives; rescheduling exams or assignments; providing alternative course completion options; change in class schedule, including the ability to drop a course without penalty or to transfer section; change in work schedule or job assignment; change in student campus housing assignment; assistance from University support staff in completing housing relocation; limiting access to certain University facilities or activities pending resolution of the matter; voluntary leave of absence; providing an escort between classes; arranging for medical services; providing academic support services, such as tutoring; University-imposed leave, suspension, or separation for the Respondent, including emergency removal. If emergency removal of a student Respondent is deemed necessary and appropriate, the University will follow [Regulation 4.007](#). Emergency removal includes an individualized safety and risk analysis and allows the student Respondent to immediately challenge the decision by submitting a written request to the Dean of Students.

Supportive measures for faculty and staff may include but are not limited to: the Employee Assistance Program; no contact directives, changing work schedules, job assignments, or job locations; providing an escort to assist with safe movement on campus; or University-imposed leave, or physical separation from particular individuals or locations.

No contact directives may be issued by the OCR9 ED in connection with a matter within the purview of this Policy. A no contact directive must be issued in writing to both

Parties and may be imposed when the University has reasonable cause to believe that the interaction of two people may pose a risk to the safety or well-being of those involved or others in the University community. A no contact directive may be valid pending the outcome of an investigation, the conclusion of determination finding or Hearing process, or for a period of time specified by the issuer of the no contact directive.

Individuals impacted by reported Prohibited Conduct under this Policy have the right to request Supportive Measures from the University regardless of whether they desire to make a Formal Complaint.

VII. FORMAL COMPLAINTS

Should the Complainant wish to file a Formal Complaint, OCR9 will send the Complainant a Formal Complaint form to complete; however, should the Complainant decline to file a Formal Complaint, the OCR9 ED may consider signing a Formal Complaint and authorizing an investigation where appropriate. A Formal Complaint signed by the Complainant or OCR9 ED is required for any investigation. The Complainant must also be participating in or attempting to participate in the education program or activity of the University at the time of the filing of a Formal Complaint.

The OCR9 ED 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. Dismissal of a Formal Complaint

The OCR9 ED may dismiss a Formal Complaint, or any specific allegations raised within a Formal Complaint, at any time before or during the investigation or Hearing, if:

- A Complainant notifies the OCR9 ED in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The Respondent is no longer enrolled or employed at the University; or
- Specific circumstances prevent the University from gathering sufficient evidence to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

The OCR9 ED must dismiss a Formal Complaint, or any specific allegations raised within a Formal Complaint, at any time before or during the investigation or Hearing when:

- The conduct alleged did not occur in University's education program or activity, or did not occur against a person in the United States; or
- The conduct alleged in the Formal Complaint, even if proven, would not constitute Prohibited Conduct.

Upon dismissal, the OCR9 ED will promptly notify the Complainant in writing of the dismissal, including the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the OCR9 ED will notify the Parties simultaneously in writing. Any Party notified of the dismissal will be notified of their right to appeal the dismissal using the appeal process in this Policy.

When a Formal Complaint is dismissed, University will, at a minimum:

- Offer Supportive Measures to the Complainant as appropriate;
- If the Respondent has been notified of the Formal Complaint, offer Supportive Measures to the Respondent as appropriate; and,
- Take other prompt and effective steps, as appropriate, to ensure that any remaining concerns are referred appropriately

A Complainant who decides to withdraw a Formal Complaint or any portion of it may later request to reinstate it or refile it. At the time of such a later request, the OCR9 ED will conduct a new Initial Assessment of the Formal Complaint based on the facts and circumstances existing at the time of the later request.

B. Referrals for Other Misconduct

The OCR9 ED may also refer Reports of conduct not covered by this Policy for consideration under any other applicable University policy or regulation. As part of any such referral, the University may use evidence gathered through any process covered by this Policy, with the exception of Informal Resolution.

This Policy and these procedures are separate from the University's Student conduct processes, by which the University may bring a student conduct charge against a Student for violating University policy according to the provisions found in University Regulation 4.007, Student Code of Conduct.

C. Student Withdrawal/Suspension/Expulsion or Employee Resignation

The University may place a notation on a University student Respondent's academic transcript if the student is found responsible for Prohibited Conduct resulting in University suspension or expulsion or place a service indicator on a student's University account if the student withdraws while a Formal Complaint is pending. If a University faculty or staff member Respondent resigns while matters are pending, this may impact

an employee's eligibility for rehire. The University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s) and any ongoing effects of the alleged Prohibited Conduct.

VIII. NOTICE OF INVESTIGATION

Upon receipt of the Formal Complaint, a written Notice of Investigation will be provided to all parties. That written Notice will contain the following:

- Notice of University process under this policy, including any available Informal Resolution procedures.
- Notice of the allegations of alleged policy violation with sufficient details known at the time and with information scheduling an interview with sufficient time to prepare a response. Such notice will contain the following information, if known: the identities of the parties involved; the conduct alleged; and the date and location of the incident.
- A statement that the Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Right to an Advisor of their choice, who may be an attorney.
- The right to inspect and review evidence.
- For students, knowingly making false statements or submitting false information during the grievance process is prohibited pursuant to the Student Code of Conduct, University Regulation 4.007.
- Should any allegations be added, changed, or deleted after this initial notice, such information will be sent to all parties.
- The availability of resolving the complaint allegations through Informal Resolution.
- A Formal Complaint alleging Prohibited Conduct may be resolved via two options: (1) the Informal Resolution process, or (2) the Investigation and Hearing Resolution procedures. During the resolution of a Formal Complaint, the OCR9 ED may continue to implement reasonable Supportive Measures designed to assist all Parties and community members in maintaining access to and participation in the University's education programs or activities.

IX. INFORMAL RESOLUTION

A Formal Complaint is required for Informal Resolution. Informal Resolution is not available in matters where there is a student Complainant and employee Respondent.

Informal Resolution is subject to the consent of the Parties and the OCR9 ED. OCR9 ED has the discretion to determine that Informal Resolution is not an appropriate way to address the Formal Complaint. OCR9 may attempt Informal Resolution before or during an investigation of a Formal Complaint. If the Parties and the OCR9 ED consent to Informal Resolution and the final written terms of the Informal Resolution agreement have been agreed upon by all Parties and approved by the OCR9 ED, the Parties and the OCR9 ED will sign the agreement. Once the Informal Resolution agreement is signed, the case will be considered closed and no further action will be taken. The Parties are bound by the terms of the Informal Resolution agreement and may not request an investigation of the same allegations. A Party's failure to comply with any agreement reached during Informal Resolution may result in a violation of other applicable University policies and regulations and will be referred to the appropriate office for consideration. If an Informal Resolution is not achieved, OCR9 shall continue to investigate the Formal Complaint and shall issue a final investigative report.

X. INVESTIGATION PROCEDURES

OCR9 shall investigate Formal Complaints that contain enough information to substantiate investigation and allege Prohibited Conduct. The investigation may include, but shall not be limited to, interviewing the Complainant and Respondent and any relevant witnesses, and gathering relevant evidence whether that evidence is inculpatory or exculpatory. Each Party shall have an equitable opportunity to present the names and contact details of witnesses and other relevant evidence.

A. Burden and Standard of Review

The University has the burden of conducting an investigation that gathers sufficient evidence and the burden of proof to determine whether Prohibited Conduct occurred. The standard of proof used in the Investigation and Hearing Procedures is the Preponderance of the Evidence standard.

B. Parties' Rights

Complainant and Respondent shall have equivalent rights, including but not limited to, the right:

- To be informed of their rights under this Policy.
- To a fair, prompt, and impartial investigation and Hearing.
- Not to be forced to present testimony or statements in the same room as the other Party at the Hearing.

- To be informed of the nature of any disciplinary action taken against the other Party, and to request reconsideration of University action as long as appropriate and in accordance with University procedures.

C. Written Notice of Meetings

The University will provide parties with written notice of the date, time, location, participants, and purpose of all Hearings, meetings, and interviews with sufficient time to prepare to participate.

D. Advisors

Both the Complainant and the Respondent will be permitted to ask an Advisor of their choosing to be present during all relevant meetings, Hearings, and interviews related to alleged violations of this policy. The Advisor may accompany the Complainant or Respondent and may confer privately with them, but the Advisor may not speak on behalf of the Complainant or Respondent or otherwise participate in any meeting during the investigation. An Advisor's failure to comply with these guidelines may result in the termination of the meeting and the meeting being rescheduled to allow time for the parties to understand the purpose of the Advisor's presence. Although the parties are allowed an Advisor of choice, University personnel employed in the offices responsible for the disciplinary proceedings described in this Policy, personnel employed by the Office of the General Counsel, and others whose participation could create a conflict of interest with their University duties are not eligible to serve as Advisors. If there is a question or concern about a possible Advisor, please consult with OCR9. It is not advisable to choose an Advisor who may also act as a witness in the investigation.

E. Evidence Gathering & Review

OCR9 will not rely on material protected under a legally recognized privilege without the written voluntary consent of the Party holding the privilege. The investigation will include an objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence, and credibility will not be based on a Party's status as a Complainant, Respondent, or witness. Parties are not restricted from discussing the allegations under investigation or from gathering or presenting any relevant evidence.

Parties will be given a chance to inspect and review all evidence obtained, so they can meaningfully respond to the evidence prior to the conclusion of the investigation and prior to completion of the investigative report. The University will provide each Party and their Advisor access to the evidence subject to inspection and review in electronic format, and the Parties shall have ten (10) days from the date of inspection to submit a written response, which the Investigator will consider prior to the completion of the investigative report.

F. Investigative Report

OCR9 shall attempt to conclude its final report within seventy-five (75) business days of the filing of the Formal Complaint in all investigations. Upon completion of the investigation, a final investigation report shall be prepared which includes a summary of the complaint, a description of the investigation, and analysis of the facts and evidence presented based on a preponderance of the evidence. No determination is generally made in the investigative report. The investigative report will be sent to the Parties concurrently.

Investigative reports involving K-12 students will be forwarded to the Assistant Dean of the Office of PK-12 Schools and Educational Programs for appropriate action and final determination.

Investigative reports involving a University student Respondent will be forwarded to the Office of the Dean of Students ("DOS") for appropriate action, including a Hearing.

Investigative reports involving faculty or staff will be forwarded to the Office of the Provost or Human Resources, respectively, and the appropriate supervisor for appropriate action and OCR9 will schedule a Hearing.

XI. HEARINGS

A. Notice of Hearing

Each Party will be provided with a written Notice of Hearing no less than ten (10) days prior to the date of the Hearing. The Notice of Hearing will include:

- The specific allegations as detailed in the Notice of Investigation and any amended Notice of Investigation;
- The burden of proof for the Hearing;
- The date, time, and location of the Hearing;
- The name of the Hearing Officer/Hearing Panel, and how to challenge the participation by the Hearing Officer/Hearing Panel for bias or conflict of interest which the OCR9 ED will resolve in their sole discretion;
- A statement that each Party is entitled to have an Advisor of their choice conduct cross-examination on their behalf during the Hearing and that, in the event that a Party does not have an Advisor for the Hearing, the University will provide an Advisor of the University's choice, without fee or charge to that Party;
- A statement that a Party must notify the OCR9 ED (if Respondent is a faculty or staff member) or DOS (if Respondent is a University student) at least five (5)

days prior to the Hearing if the Party does not intend to select their own Advisor and will require that University provide an Advisor for them; and

- A statement regarding safeguarding privacy.

The University may, at the discretion of the OCR9 ED (if Respondent is a faculty or staff member) or DOS (if Respondent is a University student), postpone the Hearing or determine that multiple Hearing sessions are necessary to allow for a continuance. Good cause for an extension may include the unavailability of the Parties, the timing of the semester breaks or holidays, or other extenuating circumstances requiring more time. Any extension, including the reason for the extension, will be shared with the Parties in writing. If a Party seeks to postpone the Hearing, the OCR9 ED or DOS, as applicable, has the discretion to grant the postponement provided that the request to do so is based on a compelling need and communicated within a reasonable timeframe prior to the Hearing.

B. Pre-Hearing Conference

A Pre-Hearing Conference will be scheduled no later than two (2) days before the scheduled Hearing. The OCR9 ED may attend and/or may be consulted with during the Pre-Hearing Conference. The purpose of a Pre-Hearing Conference is to discuss the Hearing procedures; to discuss any technology that will be used at the Hearing and how to operate such technology; to discuss the time allotted for the Hearing and any time limitations; to identify the names of the witnesses who will be asked to appear at the Hearing; to determine how to address new evidence that the Parties seek to offer at the Hearing that was not previously available during the investigation; and to resolve any other matters that the Hearing Officer/Hearing Panel determines, in their discretion, should be resolved before the Hearing. Inability to schedule or a Party's failure to attend a Pre-Hearing Conference is not grounds to postpone the Hearing.

C. Hearing Procedures

1. For cases in which all Parties are K-12 students, a live Hearing is not required. The final decision-maker must allow each Party to submit written relevant questions that a Party wants to ask of any Party or witness, provide each Party with the answers, and allow for additional, limited follow-up questions from each Party. The final decision-maker must issue a final written determination as required under law.
2. For University students, faculty or staff, hearings must be live, be conducted by a Hearing Panel or Hearing Officer ("Decision Maker"), and comply with the requirements of University Regulations and/or the applicable Collective Bargaining Agreement. The OCR9 ED will select an appropriate Decision Maker. The Decision Maker may be from within the University community or may be

from outside the University community. The OCR9 ED has the sole discretion to determine whether a Hearing Panel or Hearing Officer will be used and whether the Decision Maker will be an individual(s) from the University community or an external Decision Maker.

3. The parties will be given access to the investigative report and all materials to be used in the Hearing at least ten (10) days in advance of the Hearing. As a general rule, no new evidence or witnesses may be submitted during the Hearing. If a Party identifies new evidence or witnesses that were not reasonably available during the investigation and could affect the outcome of the matter, the Party may request that such evidence or witnesses be considered at the Hearing. The Party offering the newly-discovered evidence or witness at the Hearing has the burden of establishing that such evidence or witness testimony was (1) unavailable by reasonable effort prior to the hearing, and (2) could affect the outcome of the matter. The Decision Maker will consult with the OCR9 ED to determine whether to send the matter back to the Investigator for further investigation as may be required.
4. Parties may be accompanied in the Hearing by an Advisor of their choice and must provide the name of their Advisor to the OCR9 ED (if Respondent is faculty or staff member) or DOS (if Respondent is a University Student) at least five (5) Days prior to the Hearing. In the event that a Party does not have an Advisor for the Hearing, the University must provide an Advisor, without fee or charge to that Party, to conduct cross-examination on behalf of that Party. If a Party does not attend the Hearing, the Party's Advisor may still appear and conduct cross-examination on their behalf. If neither a Party nor their Advisor appear at the Hearing, the University will provide an Advisor of the University's choice to appear on behalf of the non-appearing Party. The Advisor may conduct cross-examination on behalf of the Party, but may not represent, advocate for, respond for, or otherwise speak on behalf of the Party during the Hearing.
5. At the request of either Party, separate rooms are allowed, all participants, including the Hearing panel or officer, will have the ability to view Complainant and Respondent via live video.
6. The Decision Maker may permit each Party to provide a brief introductory statement, not more than five (5) minutes in length. An Advisor is not permitted to provide an introductory statement on behalf of their Party.
7. Following introductory statements (if any), the Decision Maker will call Parties and witnesses for questioning. The order of questioning shall be determined by the Decision Maker.

8. Only relevant cross-examination and other questions may be asked of a Party or witness.
9. Before any answer is provided, the Decision Maker must first determine whether the question is relevant and provide a reason for exclusion of any question.
10. Any cross-examination at the live Hearing must be conducted directly, orally, and in real time by the Party's Advisor and not the Party personally.
11. Questions about Complainant's sexual predisposition or prior sexual behavior are not relevant unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or concerns specific incidents with respect to the Respondent and are offered to prove Consent.
12. The Decision Maker cannot draw an inference about a determination regarding responsibility solely based on a Party's or witness's absence from the live Hearing or their refusal to answer cross-examination or other questions at the live Hearing.
13. Following the questioning of Parties and witnesses, each Party may be permitted to provide a brief closing statement, no more than five (5) minutes. An Advisor is not permitted to provide a closing statement on behalf of their Party.
14. The University must create an audio recording, or transcript, of any live Hearing and make it available to the parties for inspection and review.

D. Written Determination

The Decision Maker, who may not be the OCR9 ED or the investigator, must issue a written determination regarding responsibility. The written determination will be completed and shared with the Complainant and Respondent simultaneously within fifteen (15) business days of the completion of the live Hearing, unless the OCR9 ED or DOS, as applicable, grants an extension of time. If an extension of time is granted, the OCR9 ED or DOS, as applicable, will notify the Complainant and Respondent. The written determination must include the following:

1. Identification of the allegations defined.
2. A brief description of the procedural steps taken, including notifications to the parties, interviews and methods used to gather other evidence, site visits, and Hearings held.
3. Findings of fact supporting the determination.

4. Conclusions regarding application of the definitions provided in regulation, code, or policy to the facts.
5. Statements of rationale for the results as to each allegation, including a determination regarding responsibility, and sanctions imposed on Respondent and remedies designed to restore or preserve equal access to the recipient's education programs or activities.
6. Procedures and permissible bases for parties to appeal.
7. The University shall provide the final date upon which the written determination of the result becomes final if no appeal filed, or the date by which an appeal must be filed and after such date, the appeal would no longer be timely.

XII. SANCTIONS:

Violations by University students may result in any sanction listed in University Regulation 4.007 Student Code of Conduct, Section 14. Violations by K-12 students may result in sanctions as described in the applicable code of conduct or disciplinary matrix. Violations by employees may result in counseling which shall be constructive with the primary purpose of identification and correction of a problem. Employee violations may also result in disciplinary action pursuant, but not limited, to University Regulation 5.012, other University regulations and policies, and any applicable Collective Bargaining Agreement. Violations by outside parties may result in violations appropriate to the University relationship, including without limitation exclusion from University property services. In all circumstances, Sanctions will be:

- Fair and appropriate given the facts of the particular case;
- Consistent with University's handling of similar cases;
- Adequate to protect the safety of the University community; and
- Reflective of the seriousness of the Prohibited Conduct.

XIII. APPEALS:

Parties are allowed to appeal a determination regarding responsibility or dismissal of a Formal Complaint or allegations of a complaint within five (5) business days of the dismissal or determination. Appeals are submitted through the reporting page under "OFFICE OF CIVIL RIGHTS AND TITLE IX - APPEAL FORM" at www.fau.edu/report, on the following bases:

- a. Procedural irregularity that affected the outcome of the matter;
- b. New evidence that was not available at the time of determination regarding responsibility or dismissal that could affect the outcome of the matter;

- c. The OCR9 ED, investigator(s), or decision-maker(s) had a conflict of interest or a bias for or against Complainant(s) or respondent(s) generally or the individual Complainant or respondent that affected the outcome of the matter.

Any appeal must clearly indicate one or more of the above permissible grounds.

Disagreement with the findings or sanctions is not, by itself, grounds for appeal. The fact that any criminal charges based on the same conduct were dismissed, reduced, or resolved in favor of the Respondent does not require, and will not necessarily result in, a change in the disciplinary decisions and/or sanctions in the written determination.

For all appeals, all parties will be notified in writing when the appeal is filed. Appeals will be decided by an Appeal Officer. The OCR9 ED will select an appropriate Appeal Officer. The Appeal Officer may be from within the University community or may be from outside the University community. The Appeal Officer is not the same Decision Maker regarding responsibility or dismissal, the investigator(s) or the OCR9 ED, and must have no conflict or bias against Respondents or Complainants. Parties will have five (5) days to respond, either in support or of challenging the appeal. The Appeal Officer shall then have up to twenty (20) days to issue a written decision regarding the appeal and the rationale. The decision shall be provided to all parties simultaneously. No further appeal is allowed.

XIV. INITIATING AUTHORITY:

Chief Compliance & Ethics Officer, Office of Compliance & Ethics