



Item: III. a.

Wednesday, August 12, 2020

**SUBJECT: REQUEST FOR APPROVAL OF AMENDMENTS TO REGULATION 4.007,
STUDENT CODE OF CONDUCT**

PROPOSED BOARD ACTION

Approve amendments to FAU Regulation 4.007, Student Code of Conduct.

BACKGROUND INFORMATION

The Student Code of Conduct is a critical component of the University's efforts to teach civic and social responsibility and outlines the student disciplinary process for addressing behavior that is inconsistent with the high standards we expect from students attending FAU. These revisions are intended to comply with the new Title IX Regulations issued by the Department of Education on May 6, 2020, which become effective on August 14, 2020. The proposed changes are summarized as follows:

1. The University's jurisdiction in Title IX matters was amended to include locations, events, or circumstances over which the University exercised substantial control, and to limit Title IX investigations to cases where the alleged sexual discrimination occurred against a person in the United States.
2. Defines Title IX matters to include cases in which the alleged violation includes sexual harassment, sexual assault, domestic violence, dating violence, or stalking, and where the University's response and procedures are governed by Title IX of the Education Amendments Act of 1972 and its implementing regulations, FAU Regulation 5.010 (7.008, as amended), and University Policy 1.15.
3. Requires the University to provide advisors to Complainants and Respondents in Title IX matters when they have not selected their own advisors, and allows the advisors to conduct cross-examination. Additionally, the amendments allow the University to conduct informal resolution of Title IX matters with the voluntary written consent of both parties.

4. Removes definitions of sexual harassment, sexual assault, domestic violence, dating violence and stalking, which will be included in University Policy 1.15. This will ensure that definitions of all forms of alleged discrimination or harassment are located in a single University policy document.
5. Provides the Respondent an opportunity to challenge an interim removal from the University's education program or activity by submitting a written request to the Dean of Students.
6. Includes the requirement that Respondent be presumed not responsible for the alleged conduct until a determination regarding responsibility is made by the Student Conduct Board or University Hearing Officer.
7. Amends the basis for appeal to include conflicts of interest or bias on the part of the Title IX Coordinator, investigator(s), or the Student Conduct Board of University Hearing Officer.
8. The Hazing Policy was also updated to reflect new requirements from the Board of Governors.

IMPLEMENTATION PLAN/DATE

If approved by the Board, the amended regulation will go into effect August 13, 2020.

FISCAL IMPLICATIONS

N/A

Supporting Documentation:	Text of proposed amended Regulation 4.007
Presented by:	David Kian, Vice President & General Counsel Daniel A. Jones, Associate General Counsel
Phone:	561-297-3007

Florida Atlantic University

Regulation 4.007 Student Code of Conduct

(1) Statement of Philosophy.

The University's Student Code of Conduct is an integral part of the educational mission of the University, emphasizing the development of each individual's acceptance of their own personal and social responsibilities. This regulation ensures fairness in the implementation of procedural requirements and establishes foundational values and expectations for all students.

The University's Student Code of Conduct is designed to provide and help maintain an atmosphere within the University Community that is conducive to academic pursuits and personal growth. Serious action against a student, such as separation, is considered and invoked only when other remedies fail to meet the needs of the University Community.

Utilizing best practices related to restorative and transformative justice and educational sanctioning, this regulation outlines expectations related to student accountability while focusing on the restoration of any harm done to individuals and/or the community, the development of essential conflict resolution skills, and the development of students as global citizens.

(2) Principles.

The University values its role in preparing students for productive lives in the workplace and in society. The Student Code of Conduct provides consistent expectations related to students' personal conduct, both on and off of the University campus. The University principles and this regulation address respect for laws, policies and regulations; for people and property; for fairness, and integrity.

(a) Respect for Regulations, Policies and the Law. All students in the University Community, regardless of institutional or program affiliation, are expected to know and adhere to the regulations, and policies of the University, as well as local, state, and federal laws. If regulations, policies or laws are considered to be unfair or improper, it is expected that students

comply with stated laws and will seek appropriate, established, and lawful procedures to effect change.

- (b) **Respect for People.** Students are encouraged to conduct themselves in a manner that exemplifies respect for all people and to adhere to their personal values without unduly imposing them on others. In interpersonal relationships, students are encouraged to respect the rights of others and to serve as leaders in promoting compassion and challenging prejudice. Student are encouraged to resolve conflicts and address differences with civility. All students in the University Community, regardless of institutional or program affiliation, are expected to know and adhere to the regulations, rules, and policies of the University, as well as local, state, and federal laws.
- (c) **Respect for Property.** Students are encouraged to conduct themselves in a manner that exemplifies respect for their own property and the property of the University Community.
- (d) **Respect for Fairness.** The procedures established by the Student Code of Conduct are intended to provide both fundamental fairness and the opportunity for students to engage in a supportive, educational process.
- (e) **Restorative Justice.** This Student Code of Conduct encourages the facilitation of restorative justice in instances where conflict, harm or damage may have negatively impacted specific individuals or the larger University Community.

(3) **Jurisdiction of the University.**

A student, student organization or a person who has submitted an application for admission, housing, or any other service provided by the University that requires a student or student organization status will be subject to the Student Code of Conduct for any conduct that occurs on University controlled property, at University-sponsored events, or off-campus under the conditions described in this Regulation. Any action of the University conduct shall be taken independently of any off-campus authority.

(4) **Definitions.**

- (a) **Advisor -** Any one person chosen by the student to support them in the student conduct process including, but not limited to, a family member, friend, mentor, or an attorney chosen by the student at their own expense. Both the Respondent and the Complainant have the right to be accompanied by an advisor. Advisors may not be individuals involved in the incident or

otherwise participating in the student conduct process. In Title IX Matters, the University will provide an advisor when the Complainant or Respondent have not selected their own advisors.

- (b) Business days – Defined as Monday through Friday excluding official Florida Atlantic University holidays.
- (c) Chair - A faculty or staff member selected from the Student Conduct Board panel to chair the Student Conduct Board Hearing.
- (d) Complainant - Any party or entity who has reported that they are a victim/survivor of an alleged violation of the Student Code of Conduct.
- (e) Conflict Resolution - Processes and techniques utilized to aid students in resolving conflict, participating in civil discourse, and enhancing skills to address conflicts productively.
- (f) Dean of Students - Any of the following persons or offices: Associate Vice President and Dean of Students, Associate Dean of Students, Assistant Dean of Students, or designee, including all student conduct administrators authorized by the Dean of Students to administer this Regulation.
- (g) Educational Meeting - A required meeting to address conduct without the need for an investigation or formal conduct process. The meeting is utilized to develop a partnering relationship with the student involved, clarify policies, establish boundaries, and offer any needed resources to enhance student success.
- (h) Hearing - A Hearing by either a Student Conduct Board or a University Hearing Officer.
- (i) Information Session - The meeting at which the Respondent and their advisor has the opportunity to review all materials that will be used in their Hearing, and the University has the opportunity to review any witnesses and materials that will be presented by the Respondent at the Hearing. In Title IX Matters, Respondents and Complainants, and their advisors, will have equal opportunity to review all inculpatory and exculpatory evidence in the case, including evidence not intended to be relied upon in reaching a determination regarding responsibility.
- (j) Informal Resolution - In Title IX Matters, informal resolution, such as mediation, may be utilized at any time prior to reaching a determination regarding responsibility. Participation in an informal resolution must be based on voluntary written consent of both parties. Either party may withdraw from informal resolution at any time and resume the formal Student Conduct Process at any time prior to agreeing to a resolution.
- (k) Investigation Conference - A meeting that includes the opportunity for the Dean of Students to interview and gather information from the accused

student, provide an explanation of the Student Conduct process, and advise them of their student rights.

~~(k)~~(l) Respondent - Any student who has been charged with an alleged violation of the Student Code of Conduct.

~~(j)~~(m) Sanction - An assignment, educational experience, restriction or other measures that may be assigned by the Dean of Students as the resolution to a student conduct incident in which a charged student has taken responsibility for their actions or have been found to be responsible for alleged violations of the Student Code of Conduct via a Hearing process. Sanctions may be either mandatory or voluntary in nature, based on the discretion of the Dean of Students.

~~(m)~~(n) Student – Any person taking courses at FAU on any of its campuses or sites. Persons who withdraw after allegedly violating the Student Code of Conduct, are not officially enrolled for a particular term but who have a continuing relationship or enrollment with FAU, or have been notified of their acceptance for admission are considered “students.” The term “student” will also refer to student organizations and persons living in University housing, although not enrolled at FAU.

~~(n)~~(o) Student Conduct Board – Any person or persons authorized by the University to make findings and recommendations to the Dean of Students after review of the evidence presented at a Student Conduct Hearing. A Student Conduct Board will recommend sanctions that may be imposed when a Respondent is found responsible for a violation. In Title IX Matters, the Student Conduct Board will make findings and determinations as to whether the Respondent is “Responsible” or “Not Responsible,” and will determine the sanctions that will be imposed.

~~(o)~~(p) Student Conduct Conference – The meeting with the Respondent and the Dean of Students after a Notice of Charges has been sent. This meeting consists primarily of a discussion between the student and the Dean of Students and affords the student the opportunity to take responsibility for the alleged infractions by choosing “Responsible” or, to deny responsibility, by stating that they are not “Not Responsible” for the charges listed on the Notice of Charges, and aides the student in determining the next course of action in the student conduct process.

(q) Student Conduct Process - The procedures outlined in this Regulation related to the investigation and resolution of alleged violations of the Student Code of Conduct. The student conduct process includes all formal and informal procedures utilized to assist students in resolving incidents. FAU’s primary source of communication with students involved in the

Student Conduct Process is through the student's FAU email address, and students are responsible for checking their FAU email on a regular basis.

- (r) Supportive Measures – In Title IX Matters, supportive measures are 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. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Universities educational environment or deter sexual harassment. Supportive measures shall be coordinated and implemented by the Title IX Coordinator, consistent with University Policy 1.15.
- (p)(s) Title IX Matters - Cases in which the alleged violation includes sexual harassment, sexual assault, domestic violence, dating violence, or stalking, and where the University's response and procedures are governed by Title IX of the Education Amendments Act of 1972 and its implementing regulations, FAU Regulation 7.008, and University Policy 1.15.
- (q)(t) University or FAU – Refers to Florida Atlantic University, including all of its campuses and sites.
- (r)(u) University Community – Refers to Trustees, students, faculty, staff and all visitors, contractors and guests to the University or any of its campuses, facilities or events.
- (s)(v) University Hearing Officer – An individual ~~faculty or staff member~~ who is authorized and trained by the University to make findings and recommendations to the Dean of Students after review of the evidence presented at a Student Conduct Hearing. The University Hearing Officer will recommend sanctions that may be imposed when a Respondent is found responsible for a violation. In Title IX Matters, the University Hearing Officer will make findings and determinations as to whether the Respondent is "Responsible" or "Not Responsible," and will determine the sanctions that will be imposed.
- (t)(w) University Official – Any person employed by the University to perform assigned teaching, research, administrative, professional or other responsibilities.
- (u)(x) Vice President – Refers to the Vice President for Student Affairs and Enrollment Management or designee.
- (v)(y) Witnesses – The individuals who were present at the time of the incident in question, have information about the incident in question, or who are called

upon to present testimony at a Hearing. No character witnesses are permitted.

(5) **Violations of the Student Code of Conduct.**

Any of the following actions constitute conduct for which a student, a group of students, or a student organization may be held accountable through the student conduct process:

- (a) **Alcoholic Beverages** - Misuse of alcoholic beverages or products containing alcohol, including:
1. **Underage Drinking** - Drinking of alcoholic beverages while under the legal drinking age of twenty-one (21) years of age.
 2. **Driving Under the Influence** – Operating a vehicle under the influence of alcohol.
 3. **Public Places** - The consumption of any alcoholic beverage in public places on the campus is prohibited except where specifically authorized by the University. All buildings, lobbies, walkways, and grounds of the campus are, for the purpose of this rule considered to be public places. Residential rooms and suites are considered to be private living quarters and are exempt from the public places restriction.
 4. **Alcoholic Beverages Policy** - Violation of the Alcoholic Beverages Policy 1.2.
 5. **Hosting** – Allowing underage drinking; allowing excessive drinking or allowing an intoxicated person to leave and/or operate a motor vehicle.
- (b) **Bullying** - Systematically and chronically inflicting physical hurt or psychological distress by teasing; social exclusion; threats; intimidation; stalking; physical violence; theft; sexual, religious or racial harassment; public humiliation or destruction of property.
- (c) **Complicity** - Aiding another individual in any action that violates University regulations, policies or state or federal law, or assisting in the concealment of such action.
- (d) **Controlled or Illicit Substances** - Use or misuse of illicit or controlled substances, including:
1. **Driving Under the Influence** – Operating a vehicle under the influence of a controlled or illicit substance.
 2. **Drug Free Environment Policy** - Violation of University Policy 1.6, Drug Free Environment.

3. **Drug Paraphernalia** - Unlawful possession, use, delivery to, sale of, distribution of, controlled substances, or drug paraphernalia, as defined in Florida Statutes.
 4. **Medical Marijuana** - Use or possession of medical marijuana on University campuses or at University sponsored events.
 5. **Prescription Drugs** - Unlawful possession, use, delivery, distribution or misuse of prescription drugs.
- (e) **Discrimination and Harassment** - Conduct which constitutes ~~unlawful prohibited~~ discrimination or harassment ~~as defined in—and/or a violation~~ University Regulation ~~5.010 7.008~~, *Anti-Discrimination and Anti-Harassment* ~~and/or University Policy 1.15, *Prohibited Discrimination and Harassment*~~, ~~including, but not limited to, domestic violence, dating violence, sexual violence, sexual battery, sexual harassment and sexual exploitation. The following definitions will be used to determine a violation of this provision:~~
1. ~~**Coercion**— Any attempt to cause or compel another person to act or think in a certain way by use of force, pressure, threats, or intimidation including, but not limited to:~~
 - a. ~~Causing the deliberate incapacitation of another person;~~
 - b. ~~Conditioning an academic benefit or employment advantage on submission to sexual advances;~~
 - c. ~~Threatening to harm oneself if the other party does not engage in a sexual act; or~~
 - d. ~~Threatening to disclose an individual’s sexual orientation, gender identity or other personal sensitive information if the other party does not engage in sexual contact.~~
 2. ~~**Consent**— Failure to obtain consent that is affirmative, informed, freely given and mutually understood. Consent shall be determined based on the consideration the following factors:~~
 - a. ~~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.~~
 - b. ~~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.~~
 - c. ~~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.~~

- d. ~~Consent must be ongoing throughout a sexual activity and can be revoked at any time.~~
 - e. ~~Within each sexual encounter, there may be separate individual sexual acts involved.~~
 - f. ~~Consent to one act by itself does not constitute consent to another act.~~
 - g. ~~Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.~~
 - h. ~~Lack of protest or resistance does not mean consent.~~
 - i. ~~Silence does not mean consent has been granted.~~
3. ~~**Dating Violence**—Engaging in violence toward another with whom the aggressor has had, or currently has, a continuing and significant relationship of a romantic or intimate nature. The violence may include any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment or any criminal offense resulting in physical injury or death. The existence of such a relationship shall be determined based on the consideration the following factors:~~
- a. ~~A dating relationship must have existed within the last six (6) months;~~
 - b. ~~The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and~~
 - c. ~~The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.~~
4. ~~**Domestic Violence**—Any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.~~
5. ~~**Incapacitation**—Engaging in sexual activity with another individual who is in a temporary or permanent state in which they cannot make informed or rational judgments because:~~
- a. ~~That individual lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or~~
 - b. ~~That person is unable to physically or verbally communicate consent due to factors including but is not limited to conditions due to age, alcohol or drug consumption, being unconscious or asleep, or because of an intellectual or other disability that prevents the individual from having the~~

~~capacity to give consent. Evidence of incapacitation due to intoxication may include slurred speech, bloodshot eyes, smell of alcohol on breath, shaky equilibrium, vomiting or unconsciousness.~~

- ~~6. **Indecent Exposure**—Exposing genitals in front of another person or engaging in masturbation or other vulgar or indecent sexual conduct in a place likely to be seen by other people.~~
- ~~7. **Sexual Battery**—Engaging in unwanted oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any object (excluding acts done for a bona fide medical purpose). Sexual Battery also includes unwanted touching or kissing of an intimate body part (whether direct or through clothing).~~
8. **Sexual Exploitation**—Any act whereby one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another who has not provided consent, and that does not constitute sexual assault or sexual battery. Examples may include:
 - ~~a. Recording, photographing, transmitting, viewing or distributing intimate or sexual images or sexual information without the knowledge and consent of all parties involved;~~
 - b.a. ~~Voyeurism—spying on others who are in intimate or sexual situations.~~
9. **Sexual Harassment**—Engaging in unwelcome conduct of a sexual nature. This includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature when:
 - ~~a. Submission to such conduct or request is made either explicitly or implicitly a term or condition of an individual's employment;~~
 - ~~b. Submission to such conduct or request is made either explicitly or implicitly a term or condition of academic achievement;~~
 - ~~c. Submission to or rejection of such conduct or request by an individual is used as the basis for an employment or academic decision affecting such individual; or~~
 - ~~d. Such conduct or request unreasonably interferes with an individual's work or academic performance or creates an~~

~~objectively intimidating, hostile, or offensive environment for working or learning.~~

~~10. **Sexual Violence**—Engaging in physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent (e.g., because of the student’s age, use of drugs or alcohol, or disability). Sexual violence includes, but is not limited to, rape, sexual assault, sexual battery, sexual abuse and sexual coercion.~~

~~101. **Stalking**—Willfully, maliciously and repeatedly following, harassing or cyberstalking another person or engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.~~

~~112. **Unlawful Discrimination and Harassment**—Any act prohibited by Regulation 5.010 based upon an individual’s race, color, religion, sex, national origin, age, disability, veteran status, marital status, sexual orientation, gender identity or expression, or other protected status. This violation will not be used to charge a student for speech protected by the First Amendment of the United States Constitution.~~

- (f) **Disruptive Conduct** – Any action that impairs, interferes with or obstructs the mission, purposes, order, academic atmosphere, operations, processes and/or functions of the University.
- (g) **Endangering Health, Safety or Welfare** - Endangering the health, safety or welfare of members or guests of the University.
- (h) **Failing to Comply with Sanctions** - Violating and/or failing to comply with or fulfill student conduct sanctions.
- (i) **False Information, Impersonation or Withholding of Information** - Providing false information to University officials, forgery, the withholding of required information; impersonation of a 3rd party vendor, University Community member or law enforcement officer; or the misuse or alteration of University documents or the University’s name or logos. Students are expected to provide identification if requested by University officials.
- (j) **Fire Safety or Failure to Evacuate** - Actions which cause or attempt to cause a fire or explosion; falsely reporting a fire, explosion or explosive device; tampering with fire safety equipment or failure to evacuate University buildings during a fire alarm.
- (k) **Fraternity and Sorority Life Risk Management Violation** - Violation of any Fraternity and Sorority Life Risk Management policy or procedure.
- (l) **Hazing** - Any action or situation, which occurs on or off university property, that recklessly or intentionally endangers the mental or physical health or safety of a student for purposes including, but not limited to,

initiation or admission into, ~~or~~ affiliation with, or the perpetuation or furtherance of a tradition or ritual of any University student organization or group whether or not officially recognized by the university. Hazing does not include customary athletic events or other similar contests or competitions or any activity or conduct that furthers a legal and legitimate objective. Hazing includes, but is not limited to:

1. Pressuring or coercing a student into violating state or federal law;
2. any brutality of a physical nature, such as whipping, beating, branding, exposure to the elements, forced consumption of any food, liquor, drug, or other substance; or other forced physical activity that could adversely affect the physical health or safety of the student; or
3. Any activity that would subject the student to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, forced conduct that could result in extreme embarrassment, or other forced activity that could adversely affect the mental health or dignity of the student.

The following circumstances do not constitute a defense to allegations of hazing:

1. The consent of the victim had been obtained;
2. The conduct or activity that resulted in the death or injury of a person was not part of any official organizational event or otherwise sanctioned or approved by the student organization or group; or
3. The conduct or activity that resulted in the death or injury of a person was not done as a condition of membership into a student organization.

If a student is found responsible for an infraction of Hazing, consequences may include the imposition of educational sanctions, fines, the withholding of diplomas or transcripts pending compliance with the policy or payment of fines, and the imposition of probation, suspension, dismissal, or expulsion, depending upon the severity of the violation. In the case of an organization or group that authorizes, allows, permits or encourages hazing in blatant disregard of such regulations, penalties may also include rescission of permission for that organization or group to operate on university property or to otherwise operate under the sanction of the university. All penalties imposed by the university shall be in addition to any penalty imposed for a violation of section 1006.63, Florida Statutes, and any of the criminal laws of the state, or for a violation of any other regulation of the university to which the student or student organization or group may be found responsible. All students will be provided with a copy of this anti-hazing policy and each University student organization or group

must include this policy as part of the organization's or group's bylaws. FAU will make training opportunities available for students and student organizations and groups that are designed to reinforce this policy and increase awareness of the dangers of hazing. The University shall provide an annual report to the Chancellor of the number of hazing incidents that resulted in a student or student organization or group being held responsible for a violation of this anti-hazing policy.

- (m) **Housing and Residential Education Policy Violation** - Violation of any Housing and Residential Education policy or procedure, as outlined in either the Housing Contract or The Community Guide.
- (n) **Interference with Free Speech** - Interference with academic freedom or freedom of speech of any member or guest of the University.
- (o) **Interference with the Freedom of Movement** - Interference with the freedom of movement of any member or guest of the University.
- (p) **Interference with the Rights of Others** - Interference with the rights of others to carry out their activities or duties at or on behalf of the University.
- (q) **Indecent or Voyeuristic Behaviors** - Lewd, obscene, indecent behavior or Voyeurism.
- (r) **Misuse or Duplication of University Keys and Access Cards** - Misuse or duplication of any University key or access card to any University premises or services.
- (s) **Noncompliance with Written or Oral Requests** - Noncompliance with written or oral requests or orders of authorized University officials or law enforcement officers in the performance of their duties.
- (t) **Obstruction of Student Code of Conduct Process** - Acts that disrupt or interfere with the University student conduct process, including but not limited to:
 - 1. **Failure to Appear** - Failure to appear at an official University Hearing when proper notification has been provided (nothing in this subsection shall be construed to compel self-incrimination);
 - 2. **Misrepresentation of Information** - Knowingly falsifying, distorting or misrepresenting information before a student conduct proceeding;
 - 3. **Disruption or Interference** - Deliberate disruption or interference with a student conduct proceeding or harassment, intimidation or retaliation against any participant in the student conduct process;
 - 4. **False Allegation** - Knowingly initiating a complaint/referral without cause;

5. **Coercion and Intimidation** - Use of threats, coercion, or intimidation to discourage an individual's participation in or other proper participation or use of the student conduct process;
 6. **Tampering with Information** - Tampering with information to be used in a Hearing;
 7. **Attempting to Influence** - Attempting to influence the impartiality of a member of the student conduct process prior to or during the course of the student conduct proceeding.
- (u) **Sexual Exploitation** - Any act whereby one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another who has not provided consent, and that does not constitute sexual assault or sexual battery. Examples may include:
1. Recording, photographing, transmitting, viewing or distributing intimate or sexual images or sexual information without the knowledge and consent of all parties involved;
 2. Voyeurism - spying on others who are in intimate or sexual situations.
- (~~u~~)(v) **Soliciting, Aiding, Abetting or Inciting Others** - Soliciting, aiding, abetting or inciting others to participate in conduct which violates this regulation.
- (~~v~~)(w) **Theft, Conversion, Misuse or Damage of Property** - Theft, conversion, misuse, damage, defacing or destruction of University property or of the property of members of the University Community.
- (~~w~~)(x) **Trespass and Loitering** – Unauthorized entry on University property or any portion thereof, violation of Regulation 7.006, *Trespass and Loitering*, and/or violation of a Trespass Warning issued by the University President or their designated personnel.
- (~~x~~)(y) **Unauthorized Commercial Activity** - Posting of commercial advertising or engaging in commercial activity without appropriate authorization.
- (~~y~~)(z) **Unauthorized Photos, Audio or Video Recording** - Any unauthorized use of electronic or other devices to take pictures or make an audio or video recording of any person without their prior knowledge or without their consent when such recording is likely to cause injury or distress.
- (~~z~~)(aa) **Unauthorized Solicitation of Funds** - University buildings and campus areas may not be entered for the purpose of raising funds for any person or organization other than officially registered student organizations, recognized University-related organizations, or officially recognized non-profit charitable organizations. Requests for solicitations must be submitted to the Vice President for Student Affairs and Enrollment Management, or

their designee, in advance and must conform to University regulations, policies and procedures and to applicable law.

~~(aa)~~(bb) **Verbal, Written or Physical Abuse** - Acts of verbal, written (including electronic communications or internet activity) or physical abuse, threats, intimidation, harassment, coercion, or other conduct, the foregoing of which threaten the health, safety or welfare of any person.

~~(bb)~~(cc) **Violation of Policy or Regulation** - Violation of any University Policy or Regulation.

~~(ee)~~(dd) **Violation of Probation** – Failure to abide by conditions of student conduct probation.

~~(dd)~~(ee) **Violation of State and/or Federal Law** - Any act which could constitute a violation of any local law or ordinance, State of Florida or Federal law.

~~(ee)~~(ff) **Violation of Student Government and Registered Student Organizations Regulations** - Violation of University Regulation 4.006, *Student Government and Registered Student Organizations*.

~~(ff)~~(gg) **Violation of Technology Policies** - Violation of any University technology policies.

~~(gg)~~(hh) **Violence or Threat of Violence** - Violence or threat of violence to others or actions which endanger any member or guest of the University Community.

~~(hh)~~(ii) **Weapons or Hazardous Materials** - Possession or use of firearms, explosives, ammunition, fireworks, weapons or unauthorized possession or use of hazardous materials or dangerous chemicals on University premises (other than as permitted by Florida Statute Section 790.25(5), University Policy 1.7, or other applicable legal authority).

(6) **Off-Campus Conduct.**

For alleged violations other than Title IX Matters, ~~t~~The University may take student conduct action in incidents where the alleged violation(s), as stated in paragraph (5), above, was committed off-campus if any one of the following applies:

- (a) The behavior occurred at a University sponsored event that was held at an off-campus location.
- (b) The off-campus conduct demonstrates that the continued presence of the student on campus presents a danger to the health, safety, or welfare of the University Community, or is disruptive to the orderly processes and functions of the University.
- (c) The off-campus conduct is specifically prohibited by law or violates this Code of Conduct.

In Title IX Matters, the University may take student conduct action where the alleged violations occurred in locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the allegations occurred, including but not limited to any building owned or controlled by a student organization that is officially recognized by the University. Investigation pursuant to Title IX and its implementing regulations will only be conducted when the alleged sexual discrimination occurred against a person in the United States.

(7) **Court Proceedings Outside of the University.**

- (a) Any admission of guilt, responsibility or statement against the student's interest made by a student at off-campus proceedings shall be conclusive for University purposes.
- (b) A verdict of guilty, a plea of guilty, a plea of no contest (*nolo contendere*) or similar plea in a court of law by a charged student will operate as a conclusive finding that the student is "responsible" for the purpose of FAU student conduct proceedings.
- (c) The University may amend its charge(s) based on information obtained through an outside proceeding when that information is relevant to activity adversely affecting the University Community.
- (d) University student conduct proceedings may be instituted against a student charged with conduct that potentially violates both the criminal law and this Student Code of Conduct, without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this Student Code of Conduct may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the Dean of Students. Determinations made or sanctions imposed under this Student Code of Conduct shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of University rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

(8) **Respondent Rights.**

Respondents have the following rights:

- (a) The right to request reasonable accommodations in compliance with the Americans with Disabilities Act (ADA). Students who require

accommodations in order to participate in any aspect of the student conduct process due to a disability should contact the Office of Student Accessibility Services to arrange for appropriate accommodations and advise the Dean of Students Office of their need for additional support.

- ~~(b)~~ The right to have their status remain unchanged pending final student conduct action except in cases involving the health, safety or welfare of the University Community.
- ~~(b)~~~~(c)~~ In Title IX Matters, the right to request supportive measures consistent with University Policy 1.15.
- ~~(e)~~~~(d)~~ The right to be notified in writing of all alleged charges in sufficient detail to prepare for their participation in the student conduct process.
- ~~(d)~~~~(e)~~ The right to be assisted by an advisor. Any ~~paid~~ advisor will be chosen and paid for at the expense of the student or assigned by the University in Title IX Matters. The advisor is not permitted to speak during or participate in any part of the student conduct process, other than to consult directly with the accused student, except as specifically permitted in this Regulation. The advisor may not be involved in other aspects of the investigation or the student conduct process.
- ~~(e)~~~~(f)~~ The right not to be forced to present testimony. The University is not required to postpone student conduct proceedings pending the outcome of any outside criminal or civil case.
- ~~(f)~~~~(g)~~ The right to a fair and impartial Hearing on the charges by a Student Conduct Board or University Hearing Officer. In Title IX Matters, the Respondent will be presumed not responsible for the alleged conduct until a determination regarding responsibility is made by the Student Conduct Board or University Hearing Officer.
- ~~(g)~~~~(h)~~ The right to a Hearing no less than five (5) business days after the University provides the student with a Notice of Charges, unless this right is waived by the Respondent. In Title IX Matters, the University will not hold a hearing any sooner than ten (10) business days after the final investigative report is issued by OEI.
- ~~(h)~~~~(i)~~ The right to review no less than three (3) business days prior to the Hearing the information that will be presented to the Hearing body for consideration, unless this right is waived by the accused student.
- ~~(i)~~~~(j)~~ The right to present information and to arrange for witnesses to voluntarily present information relevant to their defense at the Hearing.
- ~~(j)~~~~(k)~~ The right to hear and question adverse witnesses who participate in the Hearing. In Title IX Matters, the advisors for the Respondent and Complainant may conduct cross-examination.

~~(k)(l)~~ At the request of the Respondent in ~~eases involving sexual Title IX Matters violence, sexual battery, sexual harassment, domestic violence, dating violence, stalking, and~~ or cases where the alleged violation includes bullying, the Respondent may testify in a separate room from the Complainant. When testifying in separate rooms, all participants, including the Student Conduct Board or University Hearing Officer, will have the ability to view the Complainant and the Respondent via live video. At no time during the Hearing will the Respondent and Complainant be permitted to directly question one another, but rather, all questions between the Respondent and Complainant will be submitted to and asked by the Hearing Officer or Student Conduct Hearing Board.

~~(h)(m)~~ The right to request an appeal of the student conduct decision(s) and sanction(s) imposed, as long as appropriate appeal procedures are followed.

~~(m)(n)~~ The right to be informed of the rights provided in this Regulation 4.007.

(9) **Emergency Measures.**

The Dean of Students has the authority to take immediate action when a student poses a danger of imminent or serious physical harm to others at the University, or where the Dean of Students determines that an emergency exists that affects the health, safety or welfare of a student or the University Community. Emergency Measures include but are not limited to, one or more of the following:

- (a) **Interim Suspension.** A student under interim suspension may not attend classes (including online classes), may not be on or come onto University property, may not participate in any University activities or organizations, and may not use University facilities, equipment or resources.
- (b) **Interim Removal from University Housing.** A student under interim removal from University Housing may not reside in University Housing and may not enter University Housing facilities and/or adjacent areas of University Housing.
- (c) **Other Interim Measures.** Other interim measures include, but are not limited to:
 - 1. Restriction from any or all classes;
 - 2. Restriction from access or contact with individuals in the University Community;
 - 3. Restriction from access to University property, places, facilities, services, or equipment; and/or
 - 4. Restriction from participation in University activities or organizations.

- (d) If a student's privileges are temporarily revoked as described in this Regulation 4.007, but the student is subsequently found not responsible for the conduct that formed the basis for the interim measures, the University will:
1. Correct any record of the change in enrollment status in the student's permanent records and reports in a manner compliant with state and federal laws; and
 2. Refund to the student a pro rata portion of any charges for tuition and out-of-state fees, as appropriate, if the temporary revocation or suspension of the student's ability to attend classes lasts for more than ten (10) business days.
- (e) A Dean of Students hold on registration may immediately be placed on all students who have Emergency Measures taken against them, which prevents the student from accessing, changing or altering their course registration and/or admission status. A student subject to Emergency Measures shall be furnished:
1. Written notice of the Emergency Measure and the reason(s) for the action.
 2. The opportunity to participate in student conduct proceedings or to present relevant information for consideration of their case.
- (f) Emergency Interim Measures may be taken at any time prior to the conclusion of the University student conduct process including during the appeal process.
- (f)(g) In Title IX Matters, a Respondent who is removed from the University's education program or activity pursuant to this section will receive written notice and an opportunity to challenge the decision immediately following the removal by submitting a written request to the Dean of Students.

(10) **Procedures for Student Conduct Proceedings.**

- (a) Complaints. Any person or entity may request that student conduct charges be filed against a student for alleged violation of law or University regulations or policies. An investigation into the circumstances surrounding the complaint may be conducted to determine whether there is sufficient information to move forward with student conduct action. The complaint regarding a student's conduct must be submitted as follows:
1. Filing a police report with the University Police Department or requesting that a report from another law enforcement agency be sent to the University Police Department and referral to the Dean of Students; or providing a written or oral statement to the Dean of

Students. All oral reports made to the Dean of Students will be documented by the student affairs staff member receiving the statement. Written statements made by the Complainant (and written summaries of oral statements made by the Complainant) should include all information and evidence the Complainant can produce.

2. Reports must be made to either law enforcement or the appropriate administrator within six (6) months of the incident, or knowledge of the incident. No student may be charged with a violation of the Student Code of Conduct if the report is made past the six (6) month period. The foregoing time limit shall not apply, however, when the Dean of Students determines that the circumstances warrant a waiver of the six (6) month time limit.
3. In compliance with Title IX, Florida Atlantic University prohibits discrimination and harassment on the basis of sex. In addition to the procedures for investigation of Title IX complaints outlined in this regulation, individuals with questions or concerns about Title IX may contact the University's Title IX Coordinator and may file a formal complaint directly with the Office of Equity and Inclusion and Compliance office.

Contact information for FAU's Office of Equity and Inclusion and Compliance is as follows:

Donald Kamm, Executive Director
Office of Equity and Inclusion and Compliance
dkamm@fau.edu
<http://www.fau.edu/EIC/>
(561) 297-3004
To make a report, visit: fau.edu/report

4. In Title IX Matters, when a formal complaint is filed with the Office of Equity and Inclusion, investigation shall proceed in accordance with FAU Regulation 7.008 and University Policy 1.15, unless the formal complaint is dismissed. The University shall dismiss a formal complaint when:
 - a. The alleged conduct in the formal complaint would not constitute sexual harassment, even if proved;
 - b. The alleged conduct did not occur in the University's education program or activity; or

c. The alleged conduct did not occur against a person in the United States.

The University may dismiss a formal complaint when:

a. At any time during the investigation, the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;

b. The Respondent is no longer enrolled or employed by the University; or

c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

- (b) Medical Amnesty. In the interest of promoting a safe and healthy environment, the Dean of Students maintains a Medical Amnesty Policy, consistent with state and federal law, designed to encourage students and Registered Student Organizations to make responsible decisions and seek prompt, professional, medical assistance and treatment in serious or life-threatening situations that result from alcohol and/or other drug misuse. The Medical Amnesty Policy is available on the Dean of Students' website.
- (c) Administrative Holds. Once the Student Code of Conduct process has been initiated by the Dean of Students (through a request for an Investigation Conference or Notice of Charges), a hold on registration may be placed on a student's account and all other administrative processes and petitions at the University are suspended and may not be processed further until final disposition of the complaint or upon special permission by the Dean of Students.
- (d) Investigation. The Dean of Students will determine if there are reasonable grounds to believe that the allegations of the complaint are true, and if true, would constitute a violation of the University's Code of Conduct.
1. The Dean of Students may conduct an Investigation Conference with the student. This conference shall include the opportunity for the Dean of Students to explain the conduct process and the student's rights, discuss the nature of the complaint, and gather information from the student. The Investigation Conference is not audio taped or recorded.
 2. The Dean of Students may conduct an investigation with others as related to the incident or complaint.
 3. Nothing in this regulation shall prevent the Dean of Students from resolving a complaint by an educational meeting, mediation process or administratively by written agreement; such disposition,

if utilized, must be consistent with all laws and regulations. Such disposition shall be final and there shall be no subsequent proceedings.

4. If an alleged violation of the Student Code of Conduct is not handled through other appropriate channels, is not dismissed, or is not settled informally, then the Dean of Students may issue formal charges to the student in writing.
 5. The University will complete investigations ~~in involving sexual violence, sexual battery, sexual harassment, dating violence, domestic violence and stalking promptly. In situations where the investigation cannot be completed within ninety (90) days after notification of the alleged incident, the Respondent and Complainant will be notified that additional time is needed.~~ Title IX Matters pursuant to FAU Regulation 7.008 and University Policy 1.15. Investigations and Hearings in Title IX Matters shall include an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, and credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
- (e) Notice of Charges. The notification of charges shall be in writing and include: the specific Student Code of Conduct violations, a brief description of alleged offenses, the student's rights, and an invitation to attend a Student Conduct Conference on a specified date and time.
- (f) Student Conduct Conference. The Student Conduct Conference shall take place no sooner than five (5) business days from the date of Notice of Charges, except in cases of emergency as described in this Regulation, or unless waived by the student.
1. There are no witnesses called and it consists primarily of a discussion between the Respondent and the Dean of Students in an effort to resolve the matter. The Student Conduct Conference is not audio taped or recorded.
 2. At the conclusion of the Student Conduct conference, the Respondent may accept or deny responsibility for the alleged Student Code of Conduct violations listed on the Notice of Charges.
 3. If the Respondent chooses to accept responsibility on forms provided by the University (these forms will describe the effect of waiving a Hearing), or fails to attend the Student Conduct Conference, thereby accepting responsibility for the charges, the Dean of Students may assess such sanctions as are deemed appropriate. This acceptance of responsibility or failure to appear

shall constitute the charged student's waiver of a formal Hearing and right of appeal. The student retains the right only to appeal the severity of the sanction imposed.

4. Any sanctions imposed in cases where the Respondent accepts responsibility or fails to attend the Student Conduct Conference will be communicated in correspondence to the charged student within seven (7) business days of the Student Conduct Conference.
- (g) Formal Disposition by Hearing. When a Respondent denies responsibility, a live Hearing will be scheduled no less than five (5) business days after the date of the Student Conduct Conference, except in cases of emergency as specified below, or unless waived by the student.
1. A formal disposition by Hearing is defined as any Hearing before the Student Conduct Board or a University Hearing Officer.
 2. The student may choose to have their Hearing before the Student Conduct Board or a University Hearing Officer. This choice will be made at the Student Conduct Conference.
 3. If the student does not choose an option, the Hearing shall be heard by a University Hearing Officer.
- (h) Notice of Hearing. The notification of Hearing shall be in writing and include:
1. The date, time, and location of the Hearing.
 2. Reference to this Regulation 4.007, their student rights and the Hearing procedures.
 3. The date, time, and location for an Information Session, ~~during which the student and their advisor, if any, may review a potential witness list and all materials to be used by the University in their case,~~ which shall be no less than three (3) business days prior to the Hearing. ~~During the Information Session the University will have the right to review all of the student's materials and list of witnesses to be used in the Hearing.~~ In cases where the Hearing is heard by a University Hearing Officer, the charged student shall have the opportunity to challenge the impartiality of the University Hearing Officer within three (3) business days of notification. The student must state in writing the basis for such challenge. A University Hearing Officer so challenged may be replaced with another faculty or staff member by the Dean of Students for good cause shown. In the event that a student has opted not to challenge the impartiality of the University Hearing Officer prior to the allotted three (3) business days, the assigned Hearing Officer shall remain as scheduled.

- (i) Postponement of Hearing. The student may request postponement of a Hearing by the Student Conduct Board Hearing or University Hearing Officer in writing to the Dean of Students. The Dean of Students may grant a postponement when the circumstances presented demonstrate that a postponement is necessary to ensure fairness to the process or on any other reasonable grounds. The Dean of Students may postpone the Hearing on the University's behalf for administrative reasons.

(11) Structure of the Student Conduct Board.

The Student Conduct Board shall consist of the following persons: two students, one faculty member/administrator or other individual appointed by the University, and an optional fourth member who may be a student or a faculty member/administrator. The chairperson of a Student Conduct Board Hearing shall be one of the faculty members/administrators or other individuals appointed by the University that serve on the panel. ~~Faculty members, administrators, and students~~ Board members shall be selected by the Dean of Students Office for the Hearing. The student board members are selected through an annual application process, with the exception of the student justices from the Student Government Judicial Branch. All Student Conduct Board members, including Student Government Justices, will receive training ~~from the Dean of Students Office~~ consistent with applicable laws and regulations.

(12) Hearing Procedures.

- (a) The Hearing is not a legal proceeding. Formal rules of process, procedure, and evidence do not apply.
- (b) Objectives of the Hearing. The Hearing will be held with the following objectives:
 - 1. Inform the Respondent of the charges.
 - 2. Give the Respondent an opportunity to respond to the charges.
 - 3. Review the evidence presented.
 - 4. Determine if any violation(s) of the Student Code of Conduct was committed and communicate these findings to the Dean of Students.
 - 5. If the Respondent is found responsible for one or more violations, the Student Conduct Board or University Hearing Officer will recommend, or determine in Title IX Matters, any sanction(s) to be imposed based upon the facts, as determined at the Hearing. In making a recommendation or determination for sanctions, the

Student Conduct Board or University Hearing Officer will consider any previous sanctions in the Respondent's student conduct record.

- (c) Witnesses. All parties to the Hearing may arrange for witnesses to voluntarily present relevant information during the Hearing. The questioning of witnesses shall be facilitated by the University Hearing Officer or Student Conduct Board chair, as applicable. Such witnesses at Hearings will not be sworn in. Each witness will be informed of the requirement to tell the truth. A student giving untrue testimony at a Hearing is subject to student conduct charges. In Title IX Matters, if a party or witness does not submit to cross-examination at the live hearing, the Student Conduct Board or Hearing Officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Student Conduct Board or Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witnesses absence from the live hearing or refusal to answer cross-examination or other questions.
- (d) Information. The Respondent may present information on their own behalf. ~~Relevant~~Pertinent records, exhibits, and written statements may be accepted as information for consideration by the University Hearing Officer or the Student Conduct Board at their discretion. In Title IX Matters, questions or evidence that constitute, or seek disclosure of, information protected under a legally recognizable privilege shall not be required, allowed, relied upon or otherwise used unless the person holding such privilege has waived the privilege.
- (e) Burdens of Proof. The Student Conduct Board or University Hearing Officer will determine whether, by a preponderance of the evidence, it is more likely than not that the Respondent violated the Student Code of Conduct. This means that the information presented supports the finding that it is more likely than not that the violation occurred. The University bears the burden of gathering evidence and the burden of proof.
- (f) Advisor. The Respondent and the Complainant may each choose one advisor to be present during the process at the Respondent's or Complainant's expense and initiative. It is the Respondent's or Complainant's responsibility to make appropriate arrangements for the advisor they select to attend the Hearing, which will not be delayed due to scheduling conflicts of the chosen advisor. In Title IX Matters, the University will provide an advisor when the Complainant or Respondent have not selected their own advisors. The advisor may be present to advise the Respondent or Complainant but may not speak for or present the case

for the Respondent or Complainant, present statements or arguments, question witnesses or otherwise participate in the process, except as otherwise provided in this Regulation.

1. Members of the Student Conduct Board, or other persons involved in the student conduct process, may not serve as a student's advisor at the Hearing.
 2. If the Respondent or Complainant chooses an attorney as their advisor, they must inform the Dean of Students at least three (3) business days before the Hearing. In such cases the University will be advised by a University attorney as well.
- (g) Hearings. All Hearings before the Student Conduct Board or University Hearing Officer will be digitally recorded by the University. That recording will serve as the only official record of these proceedings and will be the property of the University. No other recordings are permitted. Deliberations will not be recorded.
1. The following is a guide to the format of events for Hearings. The Student Conduct Board or University Hearing Officer may change the order if necessary. The Student Conduct Board or University Hearing Officer may question any party or witness directly.
 - a. Review of Hearing procedures.
 - b. Reading of Charges.
 - c. Opening statement and presentation of information by the Respondent.
 - d. Questioning of Complainant or University's witnesses, followed by the questioning of Respondent's voluntary witnesses.
 - e. ~~Questionings of directed to the Respondent by the Student Conduct Board or University Hearing Officer.~~
 - f. Closing statement by the Respondent.
 - g. Deliberation by the Student Conduct Board or University Hearing Officer (not recorded taped).
 - h. The Student Conduct Board or University Hearing Officer will recommend a decision(s) and a sanction(s) to the Dean of Students. Such recommendation of decision(s) and sanction(s) will be presented to the student by the Student Conduct Board or University Hearing Officer following deliberations. In Title IX Matters, the Student Conduct Board will make findings and determinations as to whether the Respondent is "Responsible" or "Not Responsible," and

in cases where responsibility is found, will determine the sanctions to be imposed.

2. Findings and Recommendations. The Student Conduct Board or University Hearing Officer recommendation(s) or decision(s) will include a finding of “Responsible” or “Not Responsible” for each of the alleged violations listed on the Notice of Charges, based solely on the information presented at the Hearing. The Student Conduct Board or University Hearing Officer will inform the Dean of Students of its findings and any recommendation(s) or decision(s) for sanctions based on its findings. In Title IX Matters, the written decision must comply with the requirements of University Policy 1.15. If the Student Conduct Board cannot reach a finding of “Responsible” or “Not Responsible” to a charge within a reasonable time period based on the complexity of the case, the chairperson shall call the Board as deadlocked and the Dean of Students may call a new Hearing date with new Board members to hear that charge. No person serving on the first Board shall serve on the second Board. If the second Board also deadlocks, then the charges against the Respondent shall be dismissed.
3. Failure to Appear. In cases other than Title IX Matters, if the Respondent fails to appear at the scheduled Hearing (after proper notice), they will be found Responsible for each of the alleged violations listed on the Notice of Charges and the Respondent retains the right only to appeal the severity of the sanction. In Title IX Matters, no inference may be drawn about the determination regarding responsibility based solely on a party’s or witnesses’ absence or refusal to answer questions.
4. Decision and Outcome in cases other than Title IX Matters. The Dean of Students will review the findings and recommendations of the Student Conduct Board or University Hearing Officer, as applicable. The Dean of Students will then make a decision as to the violation(s) in question and sanctions imposed, which decision(s) may consist of adopting, modifying, or rejecting the recommended decision(s) and sanction(s) of the Student Conduct Board or University Hearing Officer, or remanding the matter for rehearing. The Dean of Students will send a notice of outcome in writing to the Respondent informing the student of the findings, any related sanctions, and any differences between the recommendation of the Student Conduct Hearing Board or

University Hearing Officer and the Dean of Students' decision, if any changes to recommended decision(s) or sanction(s) are made by the Dean of Students. Such notice will be sent to the student within a reasonable period of time after the conclusion of the Hearing.

(13) Student Conduct Sanctioning.

- (a) Purpose. Student Conduct sanctioning is intended to:
1. Promote the student's education regarding the experience.
 2. Educate the student so they do not commit the violation again.
 3. Offer the student the opportunity to restore any harm resulting from the incident.
 4. Ensure that University expectations regarding appropriate behavior are clear.
 5. Educate the student concerning how their behavior impacts others in the University Community.
- (b) Student Conduct Sanctions. The following sanctions or combination of sanctions may be imposed by the Dean of Students upon any individual student or student organization found "Responsible" for violations of this Code. In light of the facts and circumstances of each case, a Student Affairs hold may be placed by the Dean of Students Office on Registration (if not already in place) upon receiving sanctions or failure to comply with the imposed sanctions. A student found responsible for a violation of the Student Code of Conduct will be subject to sanctions proportionate to the offense with consideration given to any aggravating and mitigating circumstances, including but not limited to the student's conduct record. The assignment of any sanction may be delayed at the discretion of the Dean of Students. Potential sanctions to be imposed by the Dean of Students include:
1. Community/University Service – required completion of a specified number of hours of service to the campus or general community.
 2. Counseling Assessment – referral to the University Counseling and Psychological Services Office, or another agency at the student's expense, for assessment, and/or voluntary treatment.
 3. Connection to University Programs, Students Organizations or Mentoring Options - required investigation of resources available to student that may enhance their positive University involvement or provide mentoring options to assist with continued growth.

4. Deactivation of the Student Organization's status at the University.
5. Deferred Suspension – The student will be officially suspended from the University, but the suspension will be deferred. If a student commits a subsequent violation of the Student Code of Conduct while on deferred suspension and is found responsible, then the student will be immediately suspended in addition to any other sanctions imposed for the subsequent violation, unless the Dean of Students determines that exceptional circumstances warrant otherwise. Suspensions can be deferred for a semester or indefinitely.
6. Educational Activities – required attendance at educational programs, meeting with appropriate officials, workbook completion, reflection papers, development of a plan for success, written research assignments, planning and implementing educational programs, or other educational activities at the student's or student organization's own expense.
7. Expulsion – Permanent dismissal from the University with no right for future readmission under any circumstances. A student who has been expelled is barred from all FAU campuses.
8. Formal Mediation Processes - in cases where students are found to be responsible for one or more violations, and all parties are voluntarily willing to participate, Respondent may be sanctioned to voluntary participation in a formal mediation process. The completion of any conditions mutually agreed upon in the mediation will become required sanctions.
9. Involuntary Withdrawal from individual courses or all courses registered for at the University – Students remain financially responsible for tuition and fees.
10. Psycho-social Educational Classes, Workshops or Seminars - psycho-social learning experiences focused on specific areas of growth such as anger management, biofeedback, coping skill development, and stress management.
11. Restitution – Payment for damage or loss.
12. Restriction or Revocation of Privileges – Temporary or permanent loss of privileges, including, but not limited to the use of a particular University facility, resources, equipment or other privileges.
13. Revocation of Admission and/or Degree – Admission to or a degree awarded from FAU may be revoked for fraud, misrepresentation or

- other violation of FAU standards in obtaining the degree or for other serious violations committed by a student prior to graduation.
14. Student Conduct Probation – A student conduct sanction notifying a student that their behavior is in serious violation of University standards and that restrictions are being placed on their activities. Some restrictions that may be placed on a student during a probationary period include, but are not limited to, restriction of the privilege to: participate in student activities or in student organizations; represent the University on athletic teams, student organizations or in other leadership positions; gain access to University Housing buildings or other areas of campus; use University resources and/or equipment; or contact specified person(s). If the student is found “responsible” for another violation of the code of conduct during the period of Student Conduct Probation, the University may consider increasing the level of the subsequent sanction.
 15. Student Conduct Warning – A student conduct sanction notifying a student that the student’s behavior did not meet University standards. All student conduct warnings will be taken into consideration as an aggravating factor if further violations occur.
 16. Suspension – Mandatory separation from the University. During the period of suspension the student is barred from all FAU campuses unless specific permission is granted by the Dean of Students. Once the entire period of suspension has been served, the student may seek re-enrollment or re-admission to the University. For suspensions less than three consecutive semesters, the student may seek re-enrollment by submitting a request to the Dean of Students Office. For suspensions greater than three consecutive semesters, the student may seek readmission by reapplying to the University through the Office of Admissions.
 17. Termination or Deferred Termination of University Housing Contract/Assignment – Students remain financially responsible for obligations under their Housing contract.
 18. Withholding Degree – FAU may withhold awarding a degree otherwise earned until completion of the process set forth in this Student Conduct Code, including completion of all sanctions imposed, if any.
 19. Other Appropriate Action – A student conduct action not specifically set out above, but deemed proper by the Dean of Students.

20. Alcohol Violations – A student found responsible for offenses regarding the use, possession, sale or distribution of alcohol may be sanctioned as follows, at the discretion of University officials, in accordance with this Regulation. The sanctions listed below serve only as guidelines.
- a. First Violation or incident of a Low Level of Severity
 - i. Completion of an educational program and payment of administrative costs for participation in this program.
 - ii. Parent/Legal Guardian Notification (for dependent students only, in accordance with the Internal Revenue Code).
 - iii. Completion of between five (5) and fifteen (15) hours of Community/University Service.
 - b. Second Violation or Incident of a Moderate Level of Severity - May include any or all of the sanctions listed above, in addition to:
 - i. Completion of a substance use assessment and voluntary completion of recommended treatment from FAU Counseling and Psychological Services or another clinical treatment agency at the student's expense.
 - ii. Completion of between fifteen (15) and thirty (30) hours of Community/University Service.
 - iii. Student Conduct Probation for a minimum of three (3) months.
 - iv. Deferred Termination of University Housing Contract (for residential students only).
 - c. Third Violation or Incident of an Elevated Level of Severity - May include any or all of the sanctions listed above, in addition to:
 - i. Completion of up to fifty (50) hours of Community/University Service.
 - ii. Student Conduct Probation for a minimum of twelve (12) months.
 - iii. Termination of Housing Contract for a minimum of one (1) year, during which time the student will be suspended from campus Housing and trespassed from all residential areas. Students will be

- financially responsible for obligations under their Housing Contract (for residential students only).
 - iv. Suspension for a minimum of three (3) months.
 - v. Expulsion from the University.
- 21. Controlled and Illicit Substance(s) Sanctioning Guidelines - Depending on the amount and type of illicit or illegal substance involved, a student may be suspended or expelled from the University. At the minimum, a student may be sanctioned as follows. The sanctions listed below serve only as guidelines.
 - a. First Violation or incident of a Low Level of Severity
 - i. Completion of an educational program and payment of administrative costs for participation in this program.
 - ii. Parent/Legal Guardian Notification (for dependent students only, in accordance with the Internal Revenue Code).
 - iii. Completion of twenty-five (25) hours of Community/University Service.
 - iv. Student Conduct Probation for a minimum of six (6) months.
 - b. Second Violation or Incident of a Moderate Level of Severity - May include any or all of the sanctions listed above, in addition to:
 - i. Completion of a substance use assessment and voluntary completion of recommended treatment from FAU Counseling and Psychological Services or another clinical treatment agency at the student's expense.
 - ii. Completion of fifty (50) hours of Community/University service.
 - iii. Probation for a minimum of one (1) year.
 - iv. Deferred Termination of University Housing Contract (for residential students only).
 - c. Third Violation or Incident of an Elevated Level of Severity - May include any or all of the sanctions listed above, in addition to:
 - i. Termination of Housing Contract for a minimum of one (1) year, during which time the student will be suspended from Campus Housing and trespassed from all residential areas. Students will be

- financially responsible for obligations under their Housing Contract (for residential students only).
- ii. Probation for the duration of the student's current academic program.
- iii. Suspension for a minimum of six (6) months.
- iv. Expulsion from the University.

(14) **Parent/Legal Guardian Notification.**

Florida Atlantic University is committed to the success of its students both inside and outside of the classroom. Therefore, it is our goal to maximize students' learning and development, and promote their health, safety and welfare. In this regard, FAU has implemented a Parental/Legal Guardian Notification policy. The University may inform parents or legal guardians when their dependent student (in accordance with the Internal Revenue Code), under the age of twenty-one (21), has been found in violation of the University Alcoholic Beverages and Drug-Free Environment policy.

- (a) In non-emergency situations, parents or legal guardians of dependent students, under the age of twenty-one (21), will be notified in writing. However, in emergency situations, parents may be notified by an immediate phone call from the Dean for Students.
- (b) These guidelines do not preclude Parental/Legal Guardian Notification for other policy violations that may endanger the health, safety and well-being of a student or other individuals in the University Community. Parental/Legal Guardian Notification may occur in health and safety emergencies regardless of the student's age or dependent status.
- (c) Students, whose parents or legal guardians are to be notified under these guidelines, will be informed, when possible, before such notification occurs and given an opportunity to initiate contact with their parents.

(15) **Appeals.**

A student may appeal the decision of the Dean of Students or the Student Conduct Board or University Hearing Officer (as to whether the student has been found responsible or not responsible) and/or the sanctions imposed ~~by the Dean of Students~~.

- (a) Standards for Appeal.
 - 1. Failure to receive the minimum requirements of process, as described under this Regulation, or a procedural irregularity that affected the outcome of the matter.

2. Severity of the sanction.
 3. 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—material or information that could not be discovered at the time of the Hearing.
 - 3.4. The Title IX Coordinator, investigator(s), or the Student Conduct Board of University Hearing Officer 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.
- (b) All appeals must be received in writing within five (5) business days of the date of the “Notice of Decision and Sanction” to the Vice President for Student Affairs and Enrollment Management for consideration. All appeals must specify the basis for the appeal. No person may decide an appeal if they conducted or participated in the Hearing.
- ~~(e)~~ ~~The burden of proof at the appellate level rests with the Respondent.~~
- ~~(d)~~(c) The student’s pre-decision status will remain unchanged pending the appeal determination by the Vice President for Student Affairs and Enrollment Management (that is, a student will remain eligible to attend classes and University activities pending the University’s final decision in the student conduct proceeding), except where the Dean of Students determines that the safety, health or general welfare of the student or the University Community is involved, in which case a student’s privileges at the University, including the ability to attend classes or engage in University activities, may be suspended on an interim basis as described under the Emergency Measures provisions of this Regulation. In that case, the provisions under Section 9, Emergency Measures, will also apply.
- ~~(e)~~(d) After considering the appeal, the Vice President for Student Affairs and Enrollment Management may reopen the Hearing, order a new Hearing with the same or new Conduct Board or University Hearing Officer, uphold, or reverse the prior decision of the Dean of Students or revise the sanction(s). The Vice President for Student Affairs and Enrollment Management will provide the student written notice of their decision within a reasonable period of time after receipt of the appeal request.
- ~~(f)~~(e) The appeal determination of the Vice President for Student Affairs and Enrollment Management is final and binding on all parties. There are no further appeals within the University. The student has a right to appeal the University’s final decision to an external judicial forum.

(16) **Complainant Rights and Proceedings.**

- (a) The University will provide notice to the Complainant of their rights as soon as possible after notification of an alleged violation.
- (b) Some of the cases to which Complainants' rights may apply include, but are not limited to, the following types of cases:
- ~~1. Sexual Violence~~
 - ~~2. Sexual Battery~~
 - ~~3. Sexual Harassment~~
 - ~~4. Sexual Exploitation~~
 - ~~5. Domestic Violence~~
 - ~~6. Dating Violence~~
 - ~~7.1. Stalking Title IX Matters~~
 - ~~8.2. Bullying~~
 - ~~9.3. Harassment~~
 - ~~10.4. Hazing~~
 - ~~11.5. Property (damage)~~
 - ~~12.6. Property (theft)~~
- (c) To the extent appropriate, Complainants shall have rights equivalent to those of a Respondent, including the following:
1. The right to request reasonable accommodations in compliance with the Americans with Disabilities Act (ADA). Students who require accommodations in order to participate in any aspect of the student conduct process(es), due to a documented disability, should contact the Office of Student Accessibility Services to arrange for appropriate accommodations and advise the Dean of Students Office of their need for additional supports.
 2. The right to have equivalent access to pre-hearing meetings with the Dean of Students, as permitted by law, as that granted to the Respondent.
 3. In Title IX Matters, the right to request supportive measures consistent with University Policy 1.15.
 - 3.4. The right to be assisted by an advisor. Any ~~paid~~ advisor will be chosen and paid for at the expense of the student, or assigned by the University in Title IX Matters. The advisor is not permitted to speak during or to participate in any part of the student conduct process, other than to consult directly with the Complainant, except as specifically permitted in this Regulation. The advisor may not be involved in other aspects of the investigation or the student conduct process.

- ~~4.5.~~ The right not to be forced to present testimony that would be self-incriminating. However, the University is not required to postpone student conduct proceedings pending the outcome of any outside criminal or civil case.
- ~~5.6.~~ The right to participate in a fair and impartial Hearing on the charges by a Student Conduct Board or University Hearing Officer, unless the Hearing is waived by the Respondent.
- ~~6.7.~~ The right to review, not less than three (3) business days prior to the Hearing, the information that will be presented to the Hearing body for consideration, unless the right is waived by the Complainant.
- ~~7.8.~~ The right to hear and question adverse witnesses who voluntarily testify at the Hearing, unless the Respondent has waived a Hearing. In Title IX Matters, the advisors for the Respondent and Complainant may conduct cross-examination.
- ~~8.9.~~ The right to be informed of their rights provided in this Regulation 4.007.
- ~~9.10.~~ The right to submit a written impact statement. This information would be used only in sanctioning if the Respondent is found responsible for one or more violations.
- ~~10.11.~~ The right to have unrelated past behavior excluded from the Hearing. The chair of the Student Conduct Board or the University Hearing Officer will decide if such information is unrelated. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. The past sexual history of the Complainant is not usually considered relevant.
- ~~11.12.~~ At the request of the Complainant in ~~cases involving sexual violence, sexual battery, sexual harassment, domestic violence, dating violence, stalking, and Title IX Matters~~ or cases where the alleged violation includes bullying, the Complainant may testify in a separate room from the Respondent. When testifying in separate rooms, all participants, including the Student Conduct Board or University Hearing Officer, will have the ability to view the Complainant and the Respondent via live video. At no time during the Hearing will the Respondent and Complainant be permitted to

~~directly question one another, but rather, all questions between the Respondent and Complainant will be submitted to and asked by the Hearing Officer or Student Conduct Hearing Board.~~

~~12. In cases involving sexual violence, sexual harassment, domestic violence, dating violence, stalking, and bullying the Complainant may request confidentiality in the investigation. The Dean of Students will respect the request for confidentiality to the greatest extent possible. However, the Dean of Students will evaluate the request for confidentiality in the context of the responsibility to provide a safe and nondiscriminatory environment for students.~~

~~a. When the Complaint requests confidentiality in cases involving sexual violence, sexual harassment, domestic violence, dating violence, stalking, and bullying, the Complainant will be notified that the ability of the Dean of Students to conduct a thorough investigation may be limited.~~

~~b. In cases where the Complainant requests confidentiality, but the Dean of Students finds a threat to the health, safety, and welfare of a student or the University Community, allegations of sexual violence, sexual harassment, domestic violence, dating violence, stalking and/or bullying will be reported to University law enforcement.~~

13. The right to be notified of the Student Code of Conduct outcome in writing.

14. The right to request an appeal of University action and the sanction imposed as long as appropriate appeal procedures are followed.

(17) Resources, Services, and Training.

(a) Bystander Intervention: FAU provides training for students related to safe and positive options for students to intervene in situations where they perceive the potential for sexual violence or sexual harassment. For more information on the training available, please visit www.fau.edu/wellness ~~www.fau.edu/owlscare~~.

(b) Risk Reduction: It is FAU policy to take affirmative steps to reduce the risk of sexual violence and sexual harassment on its campus and within the campus community. All members of the FAU community, including students, faculty and staff are required to undergo training related to issues of sexual violence and sexual harassment including training on resources available to Complainants and Respondents.

- (c) Resources: In cases involving allegations of prohibited sexual conduct, Complainants will be provided information from the Dean of Students Office regarding immediate steps and all available resources, including:
1. Counseling – FAU’s Office of Counseling and Psychological Services (CAPS) provides a complete range of mental health treatment and referrals to community providers. Records and information at CAPS are highly confidential and separate from all other University records.
 2. Health – FAU’s Student Health Services Center provides a full range of medical health services as well as referral services to local hospitals and medical providers.
 3. Victim Services – Offers support and resources to Complainants.
 4. Respondent Services – Offers support and resources to Respondents.
 5. University Police – FAU’s University Police Department is tasked with providing public safety services for the University Community, and is fully prepared to deal with all forms of prohibited sexual conduct from a law enforcement perspective including reporting, investigation and crime prevention.

(18) **Regulation Review.**

Florida Atlantic University will establish a committee at least once every five years beginning five years after the adoption of this regulation to review, evaluate and recommend changes to this Regulation 4.007 to the Vice President for Student Affairs and Enrollment Management. This committee will be appointed by the Vice President for Student Affairs and Enrollment Management and will include student representation. This committee will have as its charge to review and evaluate this Regulation 4.007 to determine that it ensures fairness and the satisfaction of certain minimum requirements in the student conduct proceedings at the University.

(19) **Student Conduct Records.**

- (a) The record of student conduct proceedings are part of a student’s educational record and are subject to educational records confidentiality laws. Conduct records are kept in the Dean of Students Office. These files are separate from academic transcripts.
- (b) Issuance of Transcripts, Hold of Records, and Retention of Records in Cases of Student Conduct Action. The transcripts and future registration

records of students subject to student conduct action are flagged in accordance with the following guidelines:

1. The Dean of Students Office will place a hold on the records where:
 - a. A student has committed student conduct acts culminating in interim suspension, suspension and/or expulsion;
 - b. A student has failed to appear before the Dean of Students, Student Conduct Board or Hearing Officer, when reasonably notified as to his/her involvement in student conduct matters;
or
 - c. A student with severe behavior problems is no longer attending the University, and it is the determination of the Dean of Students that a complete review of the student's record is to be made prior to readmission.
 - d. A student conduct sanction is not completed by the deadline.
2. When a student requests issuance of their transcript to another educational institution, outside agency or individual, the transcript will be issued subject to the following guidelines:
 - a. If the student has had a student conduct action taken against them, which falls under paragraph one (1) above, the transcript can only be sent with an overlay.
 - b. The overlay states: "This transcript reflects only the academic record of the student; this student currently is not in good standing and further information should be requested from the Dean of Students."
3. The Dean of Students Office has adopted the following Retention of Records Policy for accurate and complete preservation of records for each student conduct proceeding:
 - a. Student conduct records will be maintained in the Dean of Students Office for a period of six (6) years from the end of the student's matriculation at the University. Student conduct records shall be retained for longer periods of time as required by law or permanently if the student was expelled, dismissed, suspended or blocked from enrollment and in situations that may result in future litigation.
 - b. Notwithstanding the foregoing, if during the semester of the student's graduation, the student requests in writing that their student conduct record be expunged, that request will be evaluated by the Dean of Students.
 - c. No record may be considered for expungement when the student conduct violation resulted in:

- i. Personal injury;
 - ii. Significant Property damage;
 - iii. A felony violation of a state controlled substance law;
 - iv. Disruption of the orderly operation of the University;
 - v. Violation of the firearm, explosives, dangerous chemicals, and ammunition or weaponry regulations or policies of the University;
 - vi. Suspension or expulsion from the University;
 - vii. Endangering the health, safety, or welfare of members or guests of the University; or
 - viii. Comes within the jurisdiction of the off-campus conduct section of the Student Code of Conduct.
- d. The decision to expunge a Student conduct record is at the sole discretion of the Dean of Students. The decision to expunge or not expunge a student conduct record is final and is not appealable.

Specific Authority: Article IX of the Florida Constitution, 1001.706, and Board of Governors Regulations 1.001, 6.010, and 6.0105. History–New 10-1-75; Amended 12-17-78, 6-9-83; Formerly 6C5-4.08; Amended 11-11-87, 6-7-88, 9-16-03; Formerly 6C5-4.008; Amended 5-10-06, 5-28-08, 6-23-10, 11-16-11, 6-17-14, 7-01-15, 6-4-19, 8-XX-20.