



<b>SUBJECT:</b> Prohibited Sexual Conduct	<b>Effective Date:</b>	<b>Policy Number:</b>	
	8-10-15	1.15	
	<b>Amended:</b> 4-30-18		
	<b>Supersedes:</b> New	<b>Page</b> 1	<b>Of</b> 12
<b>Responsible Authority:</b> Chief Compliance Officer			

**APPLICABILITY/ACCOUNTABILITY:**

It is the policy of Florida Atlantic University (“FAU” or “University”) to comply fully with the requirements of Title IX of the Education Amendments Act of 1972 (Title IX), and other federal and state laws and regulations prohibiting discrimination on the basis of sex. This policy in conjunction with the Student Code of Conduct (University Regulation 4.007) governs the conduct of all University students, faculty and staff, including applicants for employment (hereinafter collectively referred to as “University Community Members”), and third parties present on campus (contractors, vendors, alumni or visitors). Third parties are both protected by and subject to this policy.

This policy applies to Prohibited Sexual Conduct that occurs on campus. It also applies to Prohibited Sexual Conduct that occurs off campus, including on-line or electronic conduct if the conduct occurred in the context of employment, educational program or activity of the University, and/or affects the opportunity for another member of the University Community to obtain services provided by the University. This policy also applies to conduct that occurs off campus when the conduct is associated with a University-sponsored program or activity such as travel, research or internship programs.

In determining whether the University has jurisdiction over an off-campus conduct that is not part of an educational program or activity of the University, the Title IX Coordinator or designee will consider the seriousness of the alleged conduct, the risk of harm involved, whether both parties are University Community Members, and whether the off campus conduct is part of a series of actions that occurred both on and off campus

## **POLICY STATEMENT:**

Florida Atlantic University does not tolerate acts of sexual misconduct, sexual assault, stalking and relationship (dating or domestic) violence (Collectively “Prohibited Sexual Conduct”).<sup>1</sup> All forms of Prohibited Sexual Conduct are viewed as serious University offenses, and violations of this policy will be subject to discipline, up to and including separation from the University. The University will respond to complaints or reports of Prohibited Sexual Conduct with measures designed to stop the behavior, eliminate any discrimination, prevent the reoccurrence of the prohibited conduct, and remediate any adverse effects.

### **A. Notice of Non-Discrimination**

The University will comply with applicable federal, state and local discrimination/harassment laws to provide an educational, employment, and business environment free of all forms of discrimination or harassment. Unlawful discrimination or harassment 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 is prohibited. Sexual harassment, including acts of sexual assault, sexual violence, domestic violence, dating violence, stalking and bullying, are all forms of sex discrimination and are prohibited.

### **B. Prohibited Sexual Conduct**

Prohibited Sexual Conduct is a term the University uses to collectively define different types of misconduct relating to sexual assault, sexual violence, stalking and relationship (dating or domestic) violence. The University’s response to Prohibited Sexual Conduct is governed by the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 20 U.S.C § 1092(f) (Clery Act) and Section 304 of the 2013 Amendments to the Violence Against Women Act (VAWA).

The University is committed to promoting a campus that is free from Prohibited Sexual Conduct and will take necessary steps to eliminate, prevent and address the effects of such acts. In determining whether alleged conduct violates this policy, the University will consider a host of factors, including the facts and circumstances involved in the incident, the nature of the alleged conduct and the context in which the conduct occurred. Prohibited Sexual Conduct can be committed by individuals of any gender, and it can occur between individuals of the same gender or different genders. Prohibited Sexual Conduct can occur between strangers or acquaintances, as well as people involved in intimate or sexual relationships.

### **C. Resources for Information and Assistance**

#### **1. The Office of Equity, Inclusion and Compliance**

The Office of Equity, Inclusion and Compliance (EIC) has primary responsibility for administering this Policy and oversees the investigations, response to, and resolution of

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<sup>1</sup>The University recognizes that not all forms of relationship violence involve sexual acts. However, such conduct, if substantiated, always constitutes a violation of Title IX and this policy, and therefore, will fall under the general term “Prohibited Sexual Conduct,” and will be addressed consistent with the procedures applicable to all Title IX violations.

all reports of prohibited discrimination or harassment. The EIC will maintain all discrimination reports in accordance with applicable laws and regulations.

## **2. Title IX Compliance Coordinator**

The University has a designated Title IX Compliance Coordinator within the EIC. The Title IX Compliance Coordinator oversees the University's investigations, response to and resolution of all reports of Prohibited Sexual Conduct involving students, faculty, and staff. The Title IX Compliance Coordinator is:

- Knowledgeable and trained in University policies and procedures and relevant state and federal laws;
- Available to advise any individual including a reporting party, a responding party, or a third party, about University and community resources and reporting options;
- Available to provide assistance to any University employee, regarding how to respond appropriately to a report of Prohibited Sexual Conduct;
- Participates in ensuring the effective implementation of this Policy, including monitoring compliance with all procedural requirements, record keeping, and timeframes; and
- Responsible for overseeing training, prevention, and assessments.

The Title IX Compliance Coordinator may delegate responsibilities under this policy to designated administrators, who will be appropriately trained. Inquiries or concerns about Title IX may be referred to the University's Title IX Compliance Coordinator. Concerns about the University's application of Title IX under this policy may be addressed to the United States Department of Education, Office for Civil Rights.

- **Title IX Compliance Coordinator**  
561-297-3004  
<https://www.fau.edu/eic>
- **Deputy Title IX Compliance Coordinator (Students)**  
561-297-3542  
<http://www.fau.edu/dean/contact.php>
- **Deputy Title IX Compliance Coordinator (Athletics)**  
561-297-3199  
<http://www.fausports.com/compliance/fau-compliance.html>

## **DEFINITIONS:**

### **Prohibited Sexual Conduct:**

#### **A. Sexual Harassment**

Sex discrimination is conduct of a physical, verbal, or electronic nature based on an individual's sex which interferes with that individual's education environment (admission, academic standing, grades, assignments), work environment (hiring, advancement, assignment), participation in University programs or activities or legitimately requested services (disability or religious accommodations) thereby creating hostile environment harassment or quid pro quo harassment as defined below:

##### **1. Hostile Environment**

A hostile environment is established when conduct based on a protected class is so severe, persistent or pervasive that it alters the conditions of education, employment or participation in a University program or activity, thus creating an environment that a reasonable person in similar circumstances would find hostile, intimidating or abusive.

##### **2. Quid Pro Quo Harassment**

Quid pro quo harassment occurs when submission to or rejection of conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's education, employment, or participation in a University program or activity.

#### **B. Sexual Misconduct**

All forms of sexual misconduct are serious offenses and will result in University disciplinary consequences. Sexual misconduct involving force, duress, or inducement of incapacitation, or where the perpetrator has deliberately taken advantage of another person's state of incapacitation, will be deemed especially egregious and may result in separation from University. The consumption of alcohol or the use of illegal substances does not constitute a mitigating circumstance when it contributes to a violation regarding sexual misconduct. Because sexual misconduct may constitute both a violation of University policy and criminal activity, the University encourages persons to report alleged sexual misconduct promptly to campus or local law enforcement agencies.

The following behaviors constitute sexual misconduct and are prohibited under this policy:

##### **1. Sexual Violence**

Sexual Assault is a physical sexual act perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the person's age or use of drugs or alcohol or because an intellectual or other disability prevents the person from having the capacity to give consent). Acts falling into the category of sexual violence include, but are not limited to, rape, sexual assault, sexual battery, sexual abuse and sexual coercion.

## **2. Sexual Battery**

Sexual Battery is 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 other object; however sexual battery does not include an act 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).

## **3. Sexual Exploitation**

Sexual Exploitation is 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:

- Recording, photographing, transmitting, viewing or distributing intimate or sexual images or sexual information without the knowledge and consent of all parties involved;
- Voyeurism (spying on others who are in intimate or sexual situations).

## **C. Interpersonal Violence and Stalking**

### **1. Domestic Violence**

Domestic Violence is 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 household member by another family or household member.

### **2. Dating Violence**

Dating Violence is violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:

- A dating relationship must have existed within the last 6 months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
- 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.

### **3. Stalking**

Stalking is willfully, maliciously and repeatedly following, harassing or cyberstalking another person. Acts that together constitute stalking may be direct action or may be communication by a third party, and can include, but are not limited to:

- Threats of harm to self or others
- Pursuing or following
- Non-consensual (unwanted) communication by any means
- Unwanted gifts
- Trespassing

## **PROCEDURES:**

### **I. Reporting Options**

The University takes reports of Prohibited Sexual Misconduct very seriously. How the University responds depends upon a variety of factors, including the wishes of the complainant, the facts and circumstances of the specific incident, to whom it was reported, and the University's obligations under applicable federal and state laws.

This section explains the various reporting and confidential disclosure options available to members of the University community to enable them to make informed choices about where to turn should they experience Prohibited Sexual Misconduct. Making a report to the University means telling a designated Reporting Option what happened, in person, in writing, by e-mail or electronically. The University encourages a reporting party to make a report directly to one of these designated reporting options:

- Florida Atlantic University Police Department
- Office of Equity, Inclusion and Compliance
- Title IX Compliance Coordinator
- Deputy Title IX Compliance Coordinator
- Office of the Dean of Students

#### **A. Reporting by University Employees**

##### **1. Responsible Employees**

Responsible employees are not confidential resources. A responsible employee is a University employee who has the authority to address Prohibited Sexual Conduct, who has the duty to report incidents of Prohibited Sexual Conduct, or who a member of the University community could reasonably believe has such authority or duty. Examples of responsible employees are:

- Senior Leadership (President, Provost, Vice Presidents (including Associate and Assistant), and Deans (including Associate and Assistant))
- Professional Staff and Graduate Assistants in the Dean of Students Office

- Professional Staff, Graduate Staff and Resident Assistants in the Office of University Housing
- FAUPD Staff
- Supervisory Employee (any individual employed as administration, faculty, or staff that supervises one or more employees as part of their official duties)
- Professional Staff and Coaches in the Athletic Department
- Full-time Faculty members

Responsible employees will safeguard an individual's privacy, but are required by the University to immediately share all details about a report of Prohibited Sexual Conduct (including the known details of the incident, the names of parties involved, a brief description of the incident and if the incident has been previously reported). Such reporting ensures timely support for all parties and enables an effective and consistent institutional response.

Before a responsible employee receives any information from a victim, the employee will seek to confirm that the Complainant understands the employee's reporting obligations.

## **2. All Other Employees**

All other employees (who are not designated confidential resources) will safeguard an individual's privacy, but are strongly encourage to share any information about such conduct with the EIC or the Title IX Compliance Coordinator in acknowledgement of the need to report incidents of Prohibited Sexual Conduct to prevent recurrence.

## **B. Confidential Resources**

Confidential resources include licensed professional counselors/mental health providers, such as those at the Counseling and Psychological Services Office (CAPS); pastoral counselors acting in that capacity; and medical professionals, such as those at the Student Health Center.

Confidential resources will not share information about an individual without the individual's express written permission, unless there is a continuing threat of serious violence to the individual or to others, or there is a legal obligation to reveal such information

## **II. Privacy and Confidentiality**

For any report under this policy, every effort will be made to respect and safeguard the privacy and interests of all individuals involved in a manner consistent with the need for careful assessment of the allegation and any necessary steps to eliminate the conduct, prevent its recurrence, and address its effects.

### **A. Privacy**

Information related to a report under this Policy will only be shared with those University employees who "need to know" in order to assist the active review, investigation, or

resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process. If the decision is made to pursue disciplinary action against a respondent, information related to the complaint will be shared with the respondent.

## **B. Confidentiality**

All requests for confidentiality will be evaluated by the Title IX Compliance Coordinator or the Dean of Students as applicable. In doing so, the Title IX Compliance Coordinator will consider the interests of the complainant and the University's commitment to a safe environment for all members of the University community, as well as legal requirements.

## **III. Interim Measures**

Once a report has been received by the EIC or the Title IX Compliance Coordinator if necessary, the University will implement reasonable and appropriate protective interim measures to protect the safety of the parties or witnesses of the alleged Prohibited Sexual Conduct. Interim measures are temporary action taken by the Title IX Compliance Coordinator in consultation with other administrators to ensure equal access to its education programs and activities and foster a safe climate during the investigation process.

The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. The University will consider a number of factors in determining what interim measures to implement, including the specific needs of the individuals involved; the severity or pervasiveness of the allegation; any continuing effect on the individuals involved; and whether other measures have been taken to protect the individuals involved.

Interim measures are not intended to be permanent, and may be modified or withdrawn as additional information is collected. The Title IX Compliance Coordinator in conjunction with other administrators will maintain consistent contact with the parties involved to ensure that their physical, mental and emotional well-being is full addressed.

### **A. Interim Measures for Students**

Interim measures for students may include, but are not limited to:

- Access to counseling services and assistance setting up initial appointments
- Imposition of a campus no-contact order
- Rescheduling exams or assignments
- Providing alternative course completion options
- Change in class schedule, including the ability to drop a course without penalty or to transfer section
- Change in work schedule or job assignment
- Change in student campus housing
- Assistance from University support staff in completing housing relocation
- Limiting access to certain University facilities or activities pending resolution of the matter
- Voluntary leave of absence



- Providing an escort to assure safe movement between classes
- Arranging for medical services
- Providing academic support services, such as tutoring
- University-imposed leave, suspension or separation for the respondent

## **B. Interim Measures for Faculty and Staff**

Interim measures for faculty and staff may include, but are not limited to:

- Access to CAPS and assistance in setting up an initial appointment
- Changing work schedules, job assignments, or job locations
- Providing an escort to ensure safe movement on campus
- University-imposed leave, or physical separation from particular individuals or locations

## **IV. Investigations**

The University recommends that complaints of Prohibited Sexual Conduct be made to EIC or the Title IX Compliance Coordinator. In the event that a complainant reports information of an alleged act of Prohibited Sexual Misconduct to a responsible employee, that person will refer the matter to EIC. EIC in conjunction with other University administrators has the responsibility of investigating reports pertaining to alleged Prohibited Sexual Conduct. The EIC staff is trained annually and on an ongoing basis on issues related to Prohibited Sexual Misconduct, and in conducting investigations in a manner that protects the well-being and safety of the complainant and the University community.

To file a complaint pertaining to this policy, please contact:

561-297-3004

[http://www.fau.edu/eic/ada\\_coordination/pdfs/Discrimination\\_Harassment%20Form\\_2016\\_EIC.pdf](http://www.fau.edu/eic/ada_coordination/pdfs/Discrimination_Harassment%20Form_2016_EIC.pdf)

Campus Address:  
777 Glades Road, ADM 265  
Boca Raton, FL 33431

### **A. Intake**

An EIC staff member will assess the nature of the complaint through an intake process. The EIC staff person will submit the complaint to the Title IX Compliance Coordinator or refer the complainant to the appropriate department if the allegations do not involve a violation of this policy or other anti-discrimination-anti harassment policies.

EIC will first ask the complainant for information about the incident. Supporting documents, such as emails, photos, or text messages, and any other evidence should be preserved. If witnesses were present or have relevant knowledge, it is important to identify them, state what they may know, and inform EIC how they can be contacted. If the complainant chooses not to participate, the Title IX Compliance Coordinator will

determine whether to conduct an investigation. If the Title IX Compliance Coordinator chooses to move forward with an investigation, a final determination will be made based on the information available. Under no circumstances will mediation be used to resolve cases of Prohibited Sexual Conduct.

After a complaint has been filed, EIC will inform the respondent of the allegations, the initiation of an investigation, and will provide the respondent with an opportunity to ask questions, provide information, and offer names of witnesses or other individuals with relevant information. EIC will interview the respondent and other individuals who may have pertinent knowledge. Supporting documentation and information may be collected from the complainant, respondent, and witnesses. EIC may request access to premises, records, and documents it deems relevant to the complaint. As the investigation progresses, the investigator may seek clarification from any person participating in the investigation regarding the incident or their statement. If the complainant learns or remembers any additional information, the complainant should notify EIC immediately.

#### **B. Advisors**

Both the complainant and the respondent will be permitted to ask an advisor of their choosing to be present during all relevant meetings related to alleged violations of this policy. The adviser may accompany the complainant or respondent and may confer privately with them, but the adviser may not speak on behalf of the complainant or respondent or otherwise participate in any meeting. An adviser's failure to comply with these guidelines may result in the termination of the meeting or the adviser no longer being permitted to be present. University personnel employed in the offices responsible for the disciplinary proceedings described in this policy, personnel employed by the Office of the General Counsel, and others whose participation could create a conflict of interest with their University duties are not eligible to serve as advisers. If there is a question or concern about a possible adviser, please consult with EIC.

#### **C. Standards of Proof**

The University uses the preponderance of the evidence standard of proof. This standard looks at whether it is "more likely than not" that the policy was violated.

#### **D. Timeline**

The investigative process will typically be completed within 60 calendar days from the time the Title IX Compliance Coordinator determines that an investigation will go forward. Any deviation from the 60-day time frame will be communicated in writing or by email to both the complainant and the respondent simultaneously, along with a new timeline and explanation of the reason for the extension of time.

#### **E. Determinations**

At the conclusion of the investigation, EIC will determine, based on the preponderance of the evidence standard, whether the alleged acts occurred and violated the Prohibited Sexual Conduct Policy. EIC will provide its determination, including the basis for the determination, in writing to the complainant and the respondent simultaneously.

## **F. Rights**

To the extent appropriate, and in all cases involving Prohibited Sexual Conduct, both Complainants and Respondents shall have equivalent rights, including but not limited to, the right:

- To be informed of their rights under this Policy and University Regulation 5.010.
- To a fair, prompt, and impartial investigation.
- Not to be forced to present testimony or statements in the same room as the Respondent/or other party.
- To be informed of the nature of any disciplinary action taken against the Respondent/other party, and to request reconsideration of University action as long as appropriate and in accordance with University procedures.
- To submit a victim impact statement for consideration by the investigating official and the supervisory officials responsible for disciplinary action.

## **G. Student Immunity**

Individuals with information about Prohibited Sexual Conduct may hesitate to come forward out of fear that their own violations of University policy would be revealed. Students are advised that the University does not condone infractions of policy, but considers reporting incidents of Prohibited Sexual Conduct to be of utmost importance. Therefore, the University will generally extend immunity from student or employee disciplinary sanctions for alcohol or substance abuse violations to victims and potential witnesses in order to facilitate reporting and resolution of Prohibited Sexual Conduct complaints.

## **H. Appeals**

The complainant and respondent have the right to appeal the determination by EIC or its designee and the sanction (if any) rendered. The complainant and respondent will be notified of this right and the procedures for appeal simultaneously in writing.

## **V. Awareness and Prevention**

The Title IX Compliance Coordinator coordinates education, training and awareness programs on discrimination, Prohibited Sexual Conduct for students, staff and faculty. The University is committed to offering educational programs to promote awareness and prevention of Prohibited Sexual Conduct. Educational programs include a description of University policies and procedures as well as definitions of prohibited conduct.

As part of the University's commitment to provide an environment free from Prohibited Sexual Conduct for students, faculty and staff, this policy will be disseminated to the University community through email communication, publications, websites and new employee training programs.

**VI. Academic Freedom**

The University is committed to the principle of academic freedom. This policy is not intended to limit teaching methods. Offensiveness of conduct by itself is generally not sufficient to constitute prohibited harassment. The conduct must be sufficiently severe to interfere with an individual's ability to participate in employment or educational programs or activities.

**INITIATING AUTHORITY:** Chief Compliance Officer

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POLICY APPROVAL  
(For use by the Office of the President)

Policy Number: 1.15

*Initiating Authority*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Morgan Kim

*Policies and Procedures  
Review Committee Chair*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Elizabeth F. Rubin

*President*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Dr. John Kelly

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Executed signature pages are available in the Office of the General Counsel