

**FLORIDA MEMORIAL  
UNIVERSITY**



**TITLE IX POLICY  
2018-2019**

**Dr. Jeffrey Dean Swain  
Title IX Coordinator**

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Interim President**

## Table of Contents

Title IX Policy	3
Title IX Coordinator	3
Training and Publication	4
Deputy Coordinators	5
Responsible Employees	5
Title IX Infrastructure	5
Safe Space	7
Investigative Process	7
Support Resources	9
CLERY	9
Title VI	10
Title VII	10
ADA	10
Additional Resources (VAWA)	11
Student Awareness	12
Employee Awareness	13
Investigations (Reporting)	16
Notice of Title IX Investigation Appendix A	23
Notice of Progress (Investigation) Appendix B	25
Notice of Findings Appendix C	27

## Title IX Policy

**“No person in the United States, shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.” [Title IX of the Education Amendments of 1972, and its implementing regulation at 34 C.F.R Part 106 (Title IX)].**

Florida Memorial University (FMU) complies with the requirements of the United States Department of Education’s (USDOE) Office of Civil Rights (OCR) regarding Title IX. Title IX is a federal law which protects the rights of all persons on a college or university campus against sexual discrimination and harassment, including gender-based physical violence, verbal threats and intimidation, sexual harassment and assault, unwanted speech or touching, dating and intimate partner abuse or violence, hazing, stalking, bullying, cyberbullying and milder forms of harassment such as unwanted pressure, spoken words, or repeated but unwanted advances. Sexually aggressive behaviors that are severe, pervasive or persistent are prohibited. Title IX applies to all employees, students, guests and third party contractors and their employees.

### **Title IX Coordinator**

The Title IX Coordinator for Florida Memorial University is **Dr. Jeffrey Dean Swain**, Susie C. Holley Religious Center, 15845 N. W. 42<sup>nd</sup> Avenue, Miami Gardens, Florida 33054, 305-626-3674 or [jeffrey.swain@fmuniv.edu](mailto:jeffrey.swain@fmuniv.edu). All formal or informal reports of Title IX violations should be immediately directed to the Coordinator. To preserve independence, the Title IX Coordinator reports to the Office of the President and provides ongoing consultation to the entire University community.

After the reporting of a potential violation of Title IX, the Coordinator will conduct a Preliminary Investigation and determine if sufficient evidence exists to conduct a Full Investigation. Once a Full Investigation is initiated, the Title IX Coordinator will exhaust all sources of potential evidence to assess whether a violation has occurred. Title IX does not require a hearing process but one may be implemented by the University – especially where extraordinary circumstances exist and such a hearing will protect the interests of all parties. Additionally, support will be made available to both victims and to those accused.

Title IX investigates potential violations and implements processes which lead to holding violators accountable. Title IX also requires that both victims and alleged perpetrator(s) be given fairness and due process. It is also the responsibility of the Title IX Coordinator to ensure that matters of confidentiality are observed for all parties, including reporters, responders and witnesses whenever possible. Title IX is an administrative, investigative process which is not criminal in nature; but the Coordinator has authority to report criminal acts to the local law enforcement.

The Title IX Coordinator is authorized to take any temporary action needed (e.g., suspension, exclusion from campus, no-contact orders) to ensure the protection of parties and/or interests of the University. Using a standard of a Preponderance of the Evidence to

assess findings, the Title IX may proceed with an investigation to a point of resolution. A finding of Responsibility against any party can result in sanctions which may include but are not limited to warnings, suspensions, expulsions or terminations (separation from the University). The responsibility of the Title IX Coordinator is four-fold:

1. **Investigate** formal or informal reports.
2. **Stop** violations of Title IX.
3. **Prevent** discrimination or harassment.
4. **Remedy** harm by providing support.

Parties in a Title IX investigation will be referred to as **Reporter** (victim); **Responder** (accused); **3<sup>rd</sup> Party Reporter** (non-victim), or **Witness** (providing evidence). These designations are chosen to eliminate any hint of prosecutorial or criminal suggestion. Title IX investigations are internal to the university. However, any employee, student, faculty or staff member contacted to participate in a Title IX investigation is obligated to comply. Failure to comply may result in disciplinary action.

### **Training and Publication**

The Title IX Coordinator oversees implementation, training, publication and investigations. Title IX Coordinator is responsible for training university community, including administrators, faculty, staff and students. It is important that the tenets of Title IX permeate the campus through all available means of publication. Title IX policies should be highly visible. Students, especially incoming students should receive a formal introduction to the concepts of sexually motivated discrimination and harassment. This can be conducted through Orientation and the University 101 course which all incoming freshmen take during their first semester. Administrators, faculty and staff should receive training as well. However, the campus can be further educated about Title IX through flyers, brochures, presentations, trainings website-based information, small groups and focus-group settings. Training will be made available to all administrators, faculty, staff and students regarding their awareness of Title IX requirements concerning their behavior on campus.

The Title IX Coordinator should engage the support of all University resources – especially Human Resources and Student Affairs – to ensure that Title IX policies and resources are readily available in all Safe Spaces, common student venues and other areas frequented by students and employees. Publication is an essential component in the implementation of compliance standards across the campus. While no number of sessions is mandated, the Title IX Coordinator should use every opportunity to publicize the need to report and investigate sexually inappropriate behavior which creates discrimination or harassment. The Title IX Coordinator should work cooperatively with all administrators to effect this task. The Coordinator has a responsibility to develop materials that inform the campus of its Title IX rights and responsibilities.

### **Deputy Coordinators**

FMU is committed to a positive educational and work environment, free of discrimination or harassment. To facilitate reporting of infractions, the University will identify a **Deputy Coordinator** in each major division as follows:

- a. Academic Affairs (All Deans)
- b. Business & Fiscal Affairs (Director of Human Resources)
- c. Student Affairs (VP or Designee)
- d. Advancement (VP or Designee)
- e. Athletics (Compliance Officer)

The purpose of the Deputy will be to act as a point of contact for Title IX reporting only – formal or informal – which may arise in that division. The Deputy will be responsible for notifying (within 24 hours) the Title IX Coordinator of any report or incident. The Deputy will assist the Coordinator in the Preliminary Investigation by providing names and contact information received. FMU, like all universities, is held to standards of **actual** (i.e., formal complaint) and **constructive notice** (i.e., rumor or gossip, etc.) of any information that comes to its attention. A Deputies will receive training on how to receive and document an initial report and where and how to immediately alert the Title IX Coordinator.

Deputies will be trained in how to receive a report, meaning document the basic facts, secure the name and contact information of the Reporter (victim), the name and contact information for the Responder (accused). A Deputy should support the Coordinator in the investigation and assist in gaining access to reporters, responders and witnesses. Sometimes witnesses will be more forthcoming with people they already know. Hence, the Deputy does not take on the responsibility of the investigation but sets it in motion through conveying information to the Title IX Coordinator.

### **Responsible Employees**

Title IX uses the **Responsible Employee** standard for all University employees, meaning any employee to whom a Title IX incident is reported has an affirmative duty to immediately direct that information to a Deputy or the Title IX Coordinator. The Title IX Coordinator, then, has a responsibility to assist both the Reporter and Responder with support services to prevent further harm. Again, all University employees have a responsibility to report rumors, observed behaviors, overheard statements, suspected misbehavior or actual incidents because the University is held to a standard of actual and constructive notice by the Office of Civil Rights in the United States Department of Education.

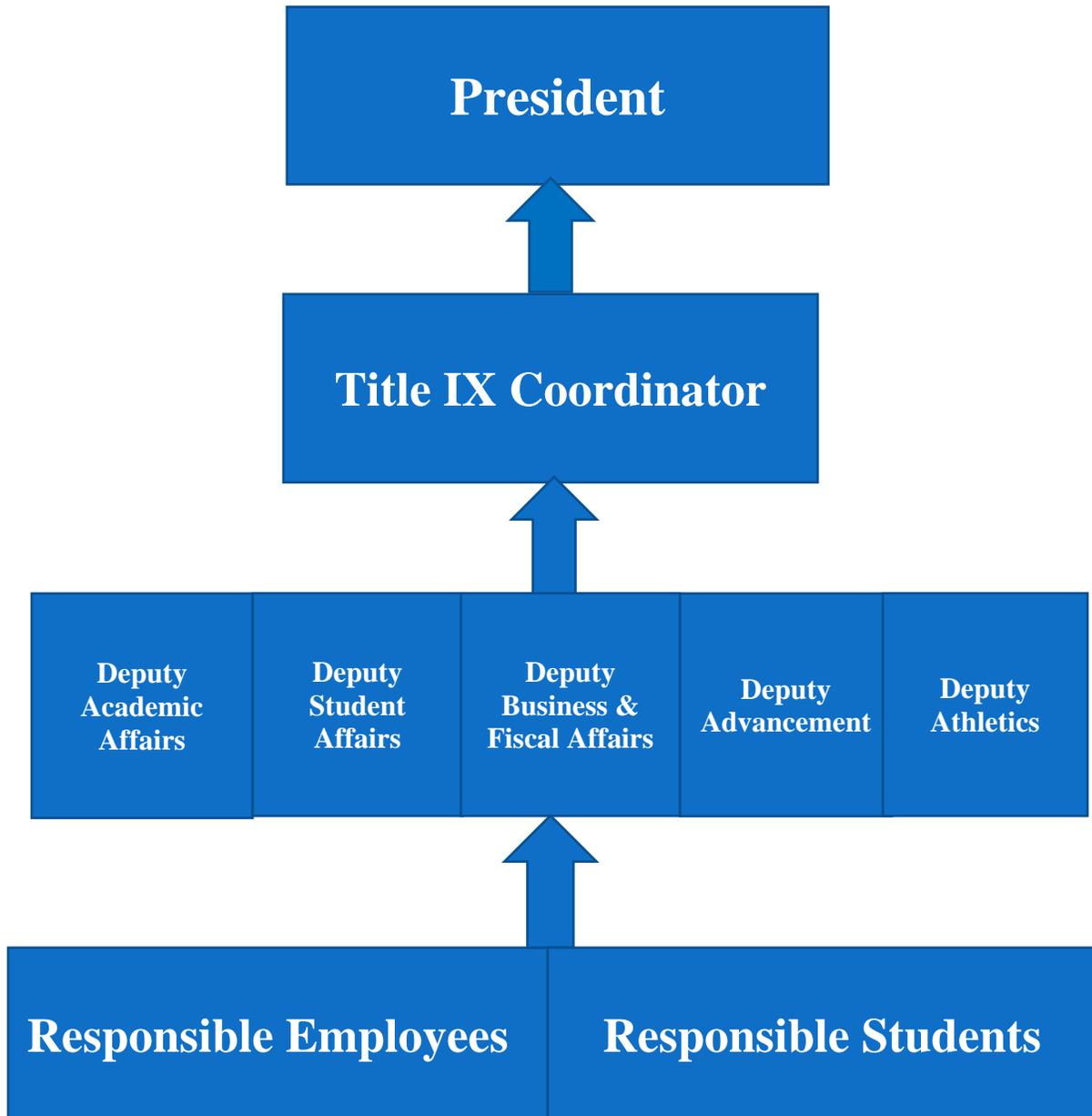
### **Title IX Infrastructure**

The University should foster a safe learning and work environment, free of discrimination or harassment. Because sexual discrimination or harassment can exist openly or secretly, it is important to create an infrastructure where reports of Title IX violations can be made without fear of reprisals and with ease and confidentiality.

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## **Title IX Team Infrastructure**

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### **Title IX Safe Spaces**

Florida Memorial University will designate the following campus locations as **Safe Spaces**. These locations are places where any employee or student can secure assistance in reporting an incident or receiving support after an incident. The following are Florida Memorial University Safe Spaces:

- a. Office of Human Resources
- b. Campus Safety
- c. Office of the Compliance Officer (Athletics)
- d. Offices of the Provost & Academic Deans
- e. Centers for Academic Support & Retention
- f. Office of Residential Life
- g. Office of Student Affairs
- h. Student Development Center
- i. Susie C. Holley Religious Center

Title IX Spaces are places where employees or students may report infractions, receive initial support and counseling concerning their rights as a victim or as a person against whom an allegation is made. Title IX Spaces will be marked across campus with a highly visible identifier (e.g., Blue Circle) and marketed to students, faculty and staff to ensure they can easily be found. All employees and students should be acquainted with the list of Safe Spaces.

### **Investigative Process**

All suspected violation of Title IX's prohibition against gender-based discrimination or harassment must be reported and investigated. All reports may not lead to a Full Investigation; however, upon actual or constructive notice, the University has an affirmative obligation to follow up. Investigative levels are as follows: (1) Preliminary and (2) Full. A **Preliminary Investigation** occurs upon any notice of a potential violation but ends if a determination is made that no further action is necessary. A **Full Investigation** entails a complete review of facts, interviews of witness, collection of supporting documents and a determination of **Responsibility** or **No Responsibility** based on the Preponderance of the Evidence. Investigations, whenever practical, should be completed within 60 days.

Although a Deputy may exist in each division, potential violations of Title IX may be reported to any employee of the University and that employee has a duty to immediately follow these steps:

1. Take the Reporter (victim or non-victim) to a Title IX Space so that any fear of reprisal or retribution is removed and so that confidentiality is preserved.

Immediately contact the Deputy in your division whose responsibility to document the incident and report it to the Coordinator.

2. Immediately contact the Deputy or designee of your division. The Deputy will immediately report to the Title IX Coordinator. Any Reporter(s) should be encouraged to file a formal complaint online via the Title IX Reporting form on the University website at [www.fmuniv.edu](http://www.fmuniv.edu).
3. All reports will be investigated preliminarily at minimum.
4. When necessary, students should be encouraged to voluntarily contact a parent or guardian and should be informed of their rights and responsibilities. Title IX overrides FERPA; so, a student may not prevent school officials from contact with parents or guardians. Generally, a student will be notified of the university's intent to alert parents or guardians; however, there is no requirement, per Title IX, that the student give consent.
5. The Title IX Coordinator will work cooperatively with university resources (e.g., HR, Campus Safety, Student Affairs, Student Development Center, etc.) to prevent further harm to Reporters, Responders or Witnesses through temporary or permanent acts such as holds, interventions, relocations, suspensions or the like to ensure safety or to protect the interests of the University or any party concerned.
6. **Hearings are not required for a Title IX finding;** but all disciplinary actions against a student or employee may flow through the Judicial Affairs Committee or Human Resources, as applicable, for purposes of a fairness. Judicial processes within the University are neither civil nor criminal in nature; however, they must follow appropriate standards of due process and confidentiality. Anyone found Responsible for violating the university's Title IX policy will be subject to sanctions which may include written warnings, suspensions, expulsions or separation from the University. This list is not exclusive of other measures.
7. Once notified, the Title IX Coordinator is the Principal Investigator and should commence a Preliminary Investigation; and, if necessary, a Full Investigation of any reported incident. The Title IX Coordinator, upon completion of any investigation, should provide a Report of Findings and preserve all records related to the incident, including Campus Safety Reports, incident reports, statements from the Reporters, Responders or Witnesses, police reports, etc. All records shall remain in the custody of the Title IX Coordinator for the university unless otherwise directed.
8. The Title IX Coordinator will work with the necessary resources (i.e., Judicial Affairs, Human Resources) to ensure that sanctions are fair and proportional to the violation. The Title IX Coordinator will collaborate with the requisite university authorities and contribute to the sanctions decision but should not be the sole decider.

9. At all times, records related to any Title IX investigation will be held in a secure place available only to the Office of the President, or designee, and the Title IX Coordinator.
10. FMU fully advocates for student and employee rights as mandated by due process for victims or the accused. The University will honor due process of all parties in every case. FMU is required to conduct fair investigations and, if necessary, hearings.
11. Any employee against whom an allegation is made will be subject to Title IX investigative processes and procedures in keeping with due process. With employees, the Title IX Coordinator will consult with Human Resources.
12. Wherever, there is a conflict between the Faculty Handbook or Employee Handbook, Student Handbook and Title IX policy, Title IX prevails. For purposes of Title IX, 3<sup>rd</sup> Party contract employees will also be subject to the investigative process.
13. Any student or employee against whom an allegation is made is be subject to Title IX investigative processes and procedures. With students, the Title IX Coordinator will work with the Student Affairs office and the Judicial Affairs Committee.
14. Any person found Responsible for violating Title IX may be subject to penalties ranging from Warnings, Suspensions, Expulsions or Terminations in keeping with the nature of a finding of responsibility and the nature of the incident. In imposing sanctions, the Title IX Coordinator will work with University resources.
15. Annually, the Title IX coordinator will provide a Summary Report to the Office of the President by June 30 or the end of the fiscal year. All records should be secured.

### **Support Resources**

The Title IX Coordinator, upon notice, will ensure that the student or employee receives crisis support from the **Wellness Team** (i.e., Campus Safety, the Student Development Center, the Jessie Trice Clinic, Susie C. Holley Religious Center) or other University resources and, if necessary, the assistance of the police or other external resources (e.g., a Rape Treatment Center). Supporting Resources can include the Campus Safety, Employee Assistance Program and Academic Advisors, depending on the parties involved. These supports will be extended to the Reporter and Responder as long as needed and good judgment requires. The Title IX Officer is responsible to provide support for any victim or alleged perpetrator.

### **CLERY**

Each year the university is required to report criminal incidents to the United States Department of Education under the CLERY Act (1990). Title IX connects to the CLERY annual requirement that crimes happening on the University campus be reported to the

federal government and published as a report through the University website. This is a part of notification to the public of the University's safety climate. Therefore, the Title IX Coordinator must work in conjunction with CLERY reporting process to ensure that potential students and families are aware of University's and community's safety record. All incoming students should be made aware of CLERY and Title IX through information and training campaigns regarding negative gender or sexual behaviors.

Florida Memorial University strongly holds that any behaviors which violate Title IX are unacceptable. Due to the potential federal, criminal and civil liability which may arise from a Title IX incident, it is critical that these procedures be followed. Any employee failing to comply may be subject to disciplinary action. A student may be subject to judicial actions within the University's disciplinary policy and Judicial Affairs Committee; and any employee may be subject to disciplinary action through the Employee Handbook and the Faculty Handbook.

### **Title VI**

Both Title IX (1972 - Education) and Title VI of the Civil Rights Act (1964 - Religion) prohibit discrimination. Title VI prohibits religious discrimination; hence, together, they coincide with the general federal premise against discrimination of any kind in places where the federal government has jurisdiction.

### **Title VII**

Both Title IX (1972 - Education) and Title VII (1964 - Employment) prohibit discrimination based on gender. Title IX is a federal law that prohibits sex discrimination in education, covering women and men, girls and boys, and staff and students in any educational institution or program that receives federal funds. Title VII prohibits discrimination in employment on the basis of sex, as well as race, color, national origin, and religion. Hence in this case of employment claims, a violation of each is possible.

### **ADA**

Both Title IX (1972 - Education) and Title VII (1964 - Employment) prohibit discrimination based on gender. The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else. The ADA gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion.

It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications. The ADA is divided into five titles (or sections) that relate to different areas of public life. The Americans with disabilities Act is divided into five titles (or sections) that relate to different areas of public life.

In 2008, the Americans with Disabilities Act Amendments Act (ADAAA) was signed into law and became effective on January 1, 2009. The ADAAA made a number of significant

changes to the definition of “disability.” The changes in the definition of disability in the ADA apply to all titles of the ADA, including Title I (employment practices of private employers with 15 or more employees, state and local governments, employment agencies, labor unions, agents of the employer and joint management labor committees); Title II (programs and activities of state and local government entities); and Title III (private entities that are considered places of public accommodation).

### **Additional Resources**

“The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) ensures compliance by recipients of the Department’s financial assistance with federal laws prohibiting discrimination on the basis of race, national origin, sex, disability, or age, or in the access of certain patriotic organizations to school facilities.”

(See <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>).

See <https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.pdf> regarding prohibition of discrimination of any kind on college or University campuses including Section 504 of the Rehabilitation Act of 1973 concerning disabilities.

The Violence Against Women Reauthorization Act of 2013, (VAWA), also known as the Campus Sexual Violence Elimination Act (Campus SaVE Act).

Title IX of the Education Amendments of 1972, as amended.

Title VII of the Civil Rights Act of 1964, as amended.

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended October 26, 2010 Dear Colleague Letter on harassment and bullying, issued by the U.S. Department of Education

April 4, 2011 Dear Colleague Letter on sexual violence, issued by the U.S. Department of Education ; April 24, 2013 Dear Colleague Letter on Title IX retaliation, issued by the U.S. Department of Education; April 29, 2014 Questions and Answers on Title IX and Sexual Violence, issued by the U.S. Department of Education.

Title IX Legal Manual, U.S. Department of Justice Civil Rights Division.



## **Florida Memorial University Title IX**

### **Student Awareness**

Florida Memorial University expects good citizenship and character from its students. The Student Handbook and Title IX prohibit behaviors which create a hostile educational environment. Acts of sexual intimidation, communication, threats, aggression, bullying, cyberbullying, abuse, physical assault, rape and sexual assault or battery or other unwanted or unsolicited behaviors may result in a Title IX investigation and sanctions in the form of disciplinary action up to and including counseling, warning, suspensions and/or expulsions.

Title IX requires that the University investigate reports of sexually inappropriate behavior among students. Every student is expected to act civilly on campus. Every student is expected to report potential Title IX violations. Student must respect all peers – regardless of gender or gender affiliation. No student holds power over another. Here are some important facts students should know:

- Intimate partner intimidation, aggression or violence violates Title IX.
- Sexual Harassment is unwelcome words or conduct of a sexual nature.
- Sexual Harassment includes creating a hostile environment, quid pro quo (i.e., sexual favors in exchange for something) and retaliatory harassment (e.g., bullying, cyberbullying or posting intimate pictures on social media).
- A minor (under the age of 18) cannot give consent to unwanted sexual acts.
- Consent to sexual engagement requires a willing, knowing, voluntary partner.
- Consent cannot be given under intimidation, threat or force of any kind.
- Force need not be physical. It can be pressure or words.
- Consent can be given but withdrawn at any time; anything after that is illegal and criminal.
- Lack of protest (silence or lack of physical resistance) by a partner does not equal consent.

- An incapacitated person – drunk, under the influence of drugs, drugged by prescribed medication - cannot give consent.
- Unwelcome remarks about looks, clothing, and physical (bodily) appearance constitutes harassment.
- Constant leering looks, wanted compliments, offensive actions or words constitutes harassment.
- “No” means “no” at any point during an intimate encounter. Anything that happens after that is involuntary, harassing, discriminatory, a violation of Title IX and punishable
- No person or persons in positions of authority may use that position to take advantage of student or for sexual purposes. This is an unethical abuse of power and a violation of Title IX.

All students have an affirmative duty to the university community to report conduct which is suspected to violate Title IX. If you are the victim of or witness to any behavior which you suspect violates Title IX, please contact:

Dr. Jeffrey Dean Swain  
 Dean of Campus Ministry &  
 Title IX Coordinator  
 Susie C. Holley Religious Center  
 15845 N.W. 42<sup>nd</sup> Avenue  
 Miami Gardens, Florida 33054  
 305-626-3674  
[jeffrey.swain@fmuniv.edu](mailto:jeffrey.swain@fmuniv.edu)

It should be noted that FERPA does not override Title IX if a parent or guardian must be contacted based on the nature of the incident. The university also reserves the right to take any temporary or immediate action necessary to protect parties or its interest. If you wish to report such behavior anonymously, please complete a **Title IX Incident Reporting Form** on the Title IX section of the university website (See the orange banner at the bottom of the first page).



## **Florida Memorial University Title IX**

### **Employee Awareness**

Florida Memorial University expects good citizenship and character from its employees. The Employee Handbook, Faculty Handbook and Title IX prohibit behaviors which create a hostile work or educational environment. Acts of sexual intimidation, communications, threats, aggression, bullying, cyberbullying, violence, physical assault, abuse, rape and sexual assault or battery or other unwanted or unsolicited behaviors may result in a Title IX investigation which could lead to sanctions in the form of disciplinary action up to and including counseling, warning, suspensions and termination.

Title IX requires that the University investigate reports of sexually inappropriate behavior. Every employee is expected to act civilly and orderly on campus. You must respect your peers – regardless of gender or gender affiliation. No employee, outside of collegial and supervisory roles, holds power over another. Undue exercises of authority for sexual advantage constitutes a violation of Title IX. Here are some important facts employees should know:

- Intimate partner intimidation, aggression or violence violates Title IX.
- Sexual Harassment is unwelcome conduct of a sexual nature that is sex or gender-based.
- Sexual Harassment includes hostile environment, quid pro quo (i.e., sexual favors in exchange for something) and retaliatory harassment (i.e., bullying or posting intimate pictures on social media).
- A minor (under the age of 18) cannot give consent to unwanted sexual acts.
- Consent to sexual engagement requires a willing, knowing, voluntary partner.
- Consent cannot be given under intimidation, threat or force of any kind.
- Force need not be physical. It can be pressure or words.
- Consent can be given but withdrawn at any time; anything after that is illegal and criminal.

- Lack of protest (silence or lack of physical resistance) by a partner does not equal consent.
- An incapacitated person – drunk, under the influence of drugs, drugged by prescribed medication - cannot give consent.
- Unwelcome remarks about looks, clothing, and physical (bodily) appearance constitutes harassment.
- Constant leering looks, wanted compliments, offensive actions or words constitutes harassment.
- “No” means “no” at any point during an intimate encounter. Anything that happens after that is involuntary, harassing, discriminatory and punishable.
- No person or persons in positions of authority may use that position to take advantage of student or another employee for sexual purposes. This is an unethical abuse of power and a violation of Title IX.

All Responsible Employees have an affirmative duty to the university community to report conduct which is suspected to violate Title IX. The university also reserves the right to take any temporary or immediate action necessary to protect parties or its interest. If you are the victim of or witness to any behavior which you suspect violates Title IX, please contact:

Dr. Jeffrey Dean Swain  
 Dean of Campus Ministry  
 Susie C. Holley Religious Center  
 15845 N.W. 42<sup>nd</sup> Avenue  
 Miami Gardens, Florida 33054  
 305-626-3674  
[jeffrey.swain@fmuniv.edu](mailto:jeffrey.swain@fmuniv.edu)

It should be noted that Title IX supersedes the Employee or Faculty Handbook when there is a conflict based on the nature of the incident. If you wish to report such behavior anonymously, please complete a **Title IX Incident Reporting Form** at \_\_\_\_\_.



## Florida Memorial University The Title IX Investigations (Reporting)

### Summary

Florida Memorial University has a responsibility to provide a fair and equitable process for resolving matters that violate the Title IX law. The university has established and oversees the investigative process for compliance. A Title IX investigation should be fair and timely. The University has appointed a Title IX Coordinator and a Deputy within each major division to serve as a point of reporting and to collaborate whenever a report of a potential violation is made. A Preliminary Investigation and/or a Full Investigation must ensue. A Title IX investigation seeks to determine whether a violation has taken place.

The university has a responsibility to develop and publish marketing materials and training opportunities for students, faculty and staff that apprise them of the investigation model which is as follows:

Notice
Preliminary Investigation
Full Investigation
Charge/Allegation
Finding(s)
Sanction(s)
Appeal

1. Title IX Coordinator is designated to receive reports of potential Title IX violations. A Reporter may be a victim or a 3<sup>rd</sup> Party observer. Students or employees may also use electronic (Title IX Reporting Form) and telephonic communications provided on the university website
2. When an investigation is initiated, the Title Coordinator IX will provide a **Notice of Title IX Investigation** to the Reporter(s), one or more victims, and Responder(s), one or more accused, to apprise them of their right to a fair investigation within five (5) working days and provide an explanation of behavior that constitutes potential harassment and/or discrimination. The **Notice of Investigation** form should inform the Responder(s) of the nature of the allegation so that a proper defense or opposing witnesses may be provided.
3. The university has a responsibility to process reports and complete investigations within 60 days, including a Final Report. It may not always be possible to complete

the scope of an investigation within this timeframe; but it will serve as the standard for acting in a timely matter.

4. The Title IX Coordinator will work with the departmental Deputy to collect information through interviews, review of files, documents, conduct reports, Campus Safety reports, et cetera to see whether the alleged behavior in question constitutes a violation of Title IX policy concerning discrimination or harassment. Any requests for information from the Title IX Coordinator should be complied with within five (5) working days whenever possible.
5. The university will provide support to the victim and/or the person against whom an allegation is made. That support may include counseling, explanation of rights and responsibilities, academic assistance and immediate relief as can be provided by the University's Wellness Team and other internal or external resources, as needed.
6. The Title IX Coordinator will meet with both the Reporter(s), Responder(s), and Witness(es) in the Preliminary Investigation to determine the nature of the potential Title IX violation and to assay the facts and to determine if a Full Investigation is needed. If the matter can be resolved due to lack of evidence, non-cooperation of witnesses or other facts which clearly demonstrates no violation has occurred, the Title IX Coordinator will end the investigation and notify all concerned parties.
7. If a Full Investigation is necessary, the Title IX Coordinator should access the all available resources of the University to conduct an investigation that is thorough, equitable and fair to all Reporters or Responders. This may include face-to-face interviews written statements, recordings and telephonic conversations, collaborations with Campus Safety, the on-site clinic, the Student Development Center, Academic Advisors, Student Affairs personnel, and other University resources. Additionally, the Title IX Coordinator has the authority to speak with any person who may be able to provide information pertinent to the investigation. It is a requirement to all faculty, staff and students cooperate.

Both parties may provide evidence. Each party has a right to provide any evidence. All evidence will be weighed in totality by a Preponderance of the Evidence Standard ("meaning more likely than not"). A Title IX investigation is not a civil or criminal proceeding but could result in notification of outside authorities if a crime has been committed.

If in the course of an investigation, the Coordinator receives, discovers or uncovers information detrimental to the interest of the University or that requires reporting to city, state or federal authorities, the Coordinator must report such information to the Office of the President and report it to the proper authorities, especially criminal behavior.

8. The university will responsibility to weigh the evidence in its totality and make a finding of Responsibility or No Responsibility of violating Title IX. “No Responsibility” means that the Responder(s) receive no sanction. A finding of “**Responsibility**” will result in sanctions proportional to the facts of the incident. For example, a sexual assault finding of Responsibility could result in expulsion or separation from the university.
9. Investigations do not require a formal hearing but the Coordinator may collaborate with University officials (i.e., Deans and Vice Presidents) to ensure that proper Student, Employee and Faculty Handbook issues are considered. However, Title IX supersedes either in the event of a conflict.

In the event of extraordinary circumstances and the Title IX Coordinator, consulting with University President, finds that a hearing would enhance due process or protect the interests of the parties and or University, an **Ad Hoc Hearing Committee** may be convened to hear both sides and make a recommendation for findings and sanctions. The Coordinator may serve as an ex-officio member of any Ad Hoc Committee whenever there is no conflict of interest. Members of this committee must hold the position of Dean, Director or higher.

10. The University, upon a finding of “Responsible” will impose sanctions. Sanctions against a student or employee should be imposed in collaboration with the Judicial Affairs Committee for student issues or with the Office of Human Resources for employees. The Title IX Coordinator will work collaboratively to determine a final sanction outcome, including recommendations; however, the final sanction outcome will be made in consultation with other university officials.
11. Sanctions may range from warnings to suspensions to expulsions for students and from warnings to suspensions (temporary or indefinite) to termination for University students or employees. It is the responsibility of the university to oversee the sanctions process in a fair and just manner. No investigation or sanction outcome should violate the general bounds of due process.
12. Third Party contractors whose employees or volunteers work on campus are subject to FMU’s Title IX policy. Any employees, volunteers or visitors who violate Title IX shall be subject to investigation, and sanctions as a result of a Title IX finding of Responsible.

Upon actual or constructive notice, the University reserves the right to take immediate action (e.g., revoking access to campus) if such person or persons are deemed an immediate threat to the University community (i.e., faculty, staff, or students). All investigative actions will take place via the office of the Florida Memorial University Title IX Coordinator.

13. All records of investigations shall be kept in the possession of the Title IX Coordinator in a secure place and shall be subject to review only by University

officials. The University shall establish that place for the maintenance of records indefinitely.

14. Findings of the Title IX Coordinator may be appealed through the traditional appeal processes of the University. All requests for appeal should be filed with the Title IX Coordinator. In the case of students, the appeal will be forwarded to the Vice President of Student Affairs. Student appeals may be resolved by administrative review by the Vice President of Student Affairs. Employee appeals and Faculty appeals should be filed with the Title IX Coordinator who will forward them to the Office of the divisional Vice President from which the employee comes. That Vice President will hold the final administrative decision in consultation with the Title IX Coordinator. All employee recommendations for sanctions must have final Presidential approval. Any student or employee may appeal a Title IX finding of Responsibility within ten (10) working days. All appeals should be resolved within thirty (30) days.
15. Nothing in the Title IX investigative or sanctions process shall supersede the University President's authority on matters of termination of University faculty or staff.
16. No Reporter(s) or Responder(s) or Witnesses or any person may engage retaliatory behavior. If so, the Title IX Coordinator, in collaboration with the Office of the President, may impose sanctions as needed.



**Florida Memorial University**  
**Title IX**  
**Definitions of Key Terms**

1. Bullying – repeated or severe or aggressive behavior meant to intimidate, hurt or control another physically, mentally or emotionally.
2. Consent – willful, voluntary, informed, active or clear words that indicates permission to engage in mutually agreed upon sexual activity. (See video on “consent” at <https://www.youtube.com/watch?v=u7Nii5w2FaI>).
3. Cyberbullying – using the Internet, mobile telephone computer or other digital technology for repeated or severe or aggressive behavior meant to intimidate, hurt or control another physically, mentally or emotionally.
4. Equity – fair access and notice for prompt resolution of grievances.
5. Force – any attempt to use physical intimidation against another for non-consensual sexual intercourse.
6. Gender discrimination – creating a hostile environment, preventing promotion or advancement or pay increases, preventing access (e.g., athletic team).
7. Intimidation – any effort to force sexual contact through language or physical force.
8. Intimate Partner Violence – sexual violence against known parties (friends, domestic partners, relationships, roommates, co-workers, etc.). This encompasses domestic violence.
9. Non-Consensual Contact – any intercourse by a person or with an objective without consent upon another (i.e., penetration on any kind) – especially by force.
10. Notice – published policies and procedures that provide fair opportunity or, in the case of Title IX, providing reports of violations, harassment or discrimination of a sexual nature.
11. Offensive – a reasonable person would conclude such behavior is unacceptable.
12. Pervasive – widespread, openly practiced or well-known behaviors that create a climate of sexual harassment or discrimination.

13. Persistent – repeated, intense and unwelcome behaviors.
14. Preponderance of the Evidence – more likely than not that the person is responsible for the behavior.
15. Sexting –using a telephone to convey sexually suggestive messages.
16. Sexual Contact – intentional contact with the body (breasts, groin, buttocks, genitals) or any intentional bodily contact in a sexual manner.
17. Sexual Exploitation – when a person takes non-consensual sexual advantage of another for their own benefit or advantage without permission or by force such as:
  - a. Invasion of sexual privacy.
  - b. Recording nudity or sexual acts without consent.
  - c. Unauthorized distribution of digital, video or audio recordings of nudity or sexual acts.
  - d. Engaging in voyeurism.
  - e. Exceeding permission (letting someone watch from the closet unbeknown to one's partner.
  - f. Intentionally exposing others to sexually transmitted disease.
  - g. Intentional or recklessly exposing one's genitals.
  - h. Stalking or bullying with a sexual intent.
18. Sexual Harassment – unwelcome conduct of a sexual nature or that is gender-based:
  - a. Hostile Environment – constant, ongoing, persistent harassment
  - b. Quid Pro Quo – “This for that” or giving something in exchange for a sexual favor. This can be conveyed verbally or through physical conduct – especially by a person having authority over another.
  - c. Retaliation – an adverse act done against a person as revenge with the intent to intimidate or for revenge.
19. Stalking – repetitive and menacing pursuit or following or attempting to contact another physically, by telephone or through social media. This includes social media and cyberbullying in ways that interfere with safety and/or create discomfort.
20. Threats – physical or verbal intimidation – especially if persistent.
21. Unwelcome Sexual Advances, Statement or Personal Attention - requests for sexual favors and other verbal or physical conduct of a sexual nature (verbal, calls, touching, pressure, favors, dirty jokes, drawings, pictures, etc.).

# APPENDIX A



## Notice of Title IX Investigation

Date

Mr. or Ms. \_\_\_\_\_:

A Preliminary Title IX Investigation based on a report made on \_\_\_\_\_, 20\_\_\_. The investigation will be completed in approximately 60 days. Title IX is a federal law which prohibits discrimination or harassment on the basis of sex or gender as follows:

“No person in the United States, shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

You are by required to appear before the Title IX Coordinator on at \_\_\_\_ am or p.m. on [Month, Day, Year] in the office of the Susie C. Holley Religious Center. The meeting will concern an incident which took place on [Month, Day, and Year] which possibly caused a violation of the University’s Title IX policy.

It is the responsibility of the university to provide an opportunity for fair process for Reporters, Responders or Witnesses to be heard. Title IX is an internal university process; however, you are required to provide information (e.g., statements, video, records, reports) requested by the Coordinator. A finding of Responsibility against any party can result in sanctions which may include but are not limited to warnings, suspensions, expulsions or terminations (separation from the University).

Failure to appear will result in a finding of Responsibility or Non-Responsibility without your input; however, you may receive a sanction for failure to participate. If you have questions, please contact Dr. Jeffrey Dean Swain, Title IX Coordinator, at 305-626-3674 or [jeffrey.swain@fmuniv.edu](mailto:jeffrey.swain@fmuniv.edu).

Respectfully,

Title IX Coordinator

cc: Reporter

# **APPENDIX B**



## **Title IX Investigation Notice of Progress**

Date

Mr. or Ms. \_\_\_\_\_:

Florida Memorial University is still conducting its Title IX investigation regarding a report made on \_\_\_\_\_, 20\_\_\_. The following has occurred since the initial report:

- Action 1
- Action 2
- Action 3

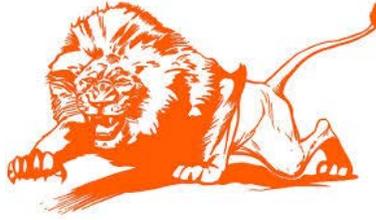
If you have questions, please contact Dr. Jeffrey Dean Swain, Title IX Coordinator, at 305-626-3674 or [jeffrey.swain@fmuniv.edu](mailto:jeffrey.swain@fmuniv.edu).

Respectfully,

Title IX Coordinator

cc: Reporter

# **APPENDIX C**



## **Title IX Investigation Notice of Findings**

Date

Mr. or Ms. \_\_\_\_\_:

Florida Memorial University has completed its Title IX investigation regarding a report made on \_\_\_\_\_, 20\_\_. The investigation, based upon evidence has resulted in a finding of \_\_\_\_\_ No Responsibility \_\_\_\_\_ Responsibility.

If there was a finding of “No Responsibility”, the case is completed and closed with no sanctions. If there was a finding of Responsibility, sanction are imposed as follows:

- Sanction 1
- Sanction 2
- Sanction 3

If you have questions, please contact Dr. Jeffrey Dean Swain, Title IX Coordinator, at 305-626-3674 or [jeffrey.swain@fmuniv.edu](mailto:jeffrey.swain@fmuniv.edu).

Respectfully,

Title IX Coordinator

cc: Reporter

*\*Revised August 26, 2018*