



<b>Procedure:</b>	<b>Title IX Procedure &amp; Grievance Process</b>
<b>Policy No. #</b>	<b>1.7012</b>
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<b>Policy Owner:</b>	Florida Memorial University
<b>Policy Contact:</b>	Title IX Coordinator

## **INTRODUCTION**

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex at educational institutions that receive federal financial assistance. Florida Memorial University (FMU) does not discriminate on the basis of sex against students or applicants for admission, or employees or applicants for employment or in the administration of its policies or in any aspect of its operations in accordance. These grievance procedures implement the University's Title IX Policy.

All individuals responsible for implementing these grievance procedures must be free from bias or conflict of interest.

### **I. ACTIONS PRECEDING AN INVESTIGATION**

#### **Emergency Removal**

FMU may remove a respondent from its education program or activities on an emergency basis after undertaking an individualized safety and risk analysis and determining that an immediate threat to the physical health or safety of any student or other individual exists. In such a situation, FMU will provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. FMU also reserves the right to place employee respondents on administrative leave while the investigation and/or grievance procedures are pending.

If a reported Title IX violation discloses an immediate threat to the campus community, FMU shall issue a timely notice of the incident in the interests of the health and safety of the campus community.

#### **Consolidation**

FMU may consolidate formal complaints of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

#### **Written Notice**

After a complaint is filed, the Title IX Coordinator will notify the parties of the following information in writing:

- The identities of the parties involved in the incident, if known.
- The conduct allegedly constituting sexual harassment.
- The date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
- The parties may inspect and review evidence.
- The provision of the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If the scope of an investigation expands beyond the conduct initially alleged, the investigator or Title IX Coordinator will give written notice to the parties.

### **Informal Resolution**

After the complaint has been filed, the Title IX Coordinator may offer the parties informal resolution options such as mediation, restorative justice, or arbitration. Informal resolution may resolve the formal complaint without the need for an investigation or adjudication and may result in disciplinary measures for the respondent. FMU will obtain the parties' voluntary, written consent to the informal resolution process and will not require waiver of an investigation and adjudication as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right. Informal resolution will not be used if the complainant is a student and the respondent was acting as a University employee at the time of the alleged violation. If the parties enter informal resolution, either party may withdraw and resume the formal process at any time before a resolution agreement is signed. Informal resolution is confidential, and statements made in an informal resolution process may not be used in the formal resolution process. Furthermore, individuals who facilitate informal resolution may not be called as fact witnesses at a hearing. If a complaint is resolved informally, the Title IX Coordinator will close the case, which cannot be re-opened unless the terms of the agreement are violated or new compelling evidence is discovered.

### **Dismissal of Complaint**

If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in the University's education program or activity, or did not occur against a person in the United States, then the Title IX Coordinator will dismiss the formal complaint; such a dismissal does not preclude action under another provision of the University's code of conduct.

The Title IX Coordinator may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing, a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein, the respondent is no longer enrolled or employed by FMU; or specific circumstances prevent FMU from gathering evidence sufficient to reach a determination regarding the formal complaint or allegations. Upon dismissal of a complaint the Title IX Coordinator will promptly and simultaneously send written notice to the parties.

A party may appeal a dismissal by following the process outlined later in these procedures, by submitting a letter to the Title IX Coordinator outlining all reasons for the appeal.

### **Procedure Under Code of Conduct**

If allegations are not covered by Title IX, FMU may elect to bring charges under its Codes of Conduct and other policies. If some of the allegations would be covered by Title IX and some would not, only the allegations covered by Title IX would be resolved by the Title IX Grievance procedures.

### **Role of Parents**

Parents and guardians (do not become complainants or respondents) have the legal rights to act on behalf of parties, including by filing formal complaints in Title IX matters. If a party is a minor, a parent or guardian may act on behalf of the child in the process, including filing a complaint. If the party is not a minor, parents may report an alleged violation but may not file a complaint on behalf of their child. Parents whose child signs a waiver under the Family Educational Rights Privacy Act (FERPA) may communicate with University administrators directly. However, parents may not talk during interviews or hearings. A parent may serve as the designated advisor of a party and conduct cross-examination at a hearing.

## **Estimated Timelines for Formal Process**

FMU will conduct a prompt and equitable investigation into Title IX complaints. The investigation will be conducted by trained individuals who have no actual bias or conflict of interest. FMU will seek to complete the first draft of the investigative report and distribute it to the parties within 45 business days of the filing of a complaint. FMU is required to give parties the opportunities to review and comment on both the first draft of the report and the final report. FMU will seek to complete the review and comment phase within 30 business days. FMU will seek to complete the hearing phase within 30 business days. If a party appeals, FMU will seek to complete that process in 15 business days. FMU may extend these timeframes for good cause for reasons including, but not limited to, the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. If FMU will not meet a timeframe, it will notify the parties in writing and include the reason for the action.

## **II. INVESTIGATION**

Investigations will be conducted by qualified professionals who have received training on the issues identified in the Title IX policy. The investigator may conduct interviews remotely to expedite the investigation. FMU may delay temporarily the fact-finding portion of an investigation in cases that are actively under investigation by off-campus law enforcement. In these cases, FMU will not conduct independent interviews or gather evidence while off-campus law enforcement is actively interviewing witnesses or gathering evidence on the matter that concerns the University. In such cases, the Title IX Coordinator will weigh all factors and ensure there has been direct communication with off-campus law enforcement before deciding to proceed with a University investigation.

### **Privileged records**

FMU will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless FMU obtains that party's voluntary, written consent to do so.

### **Advisors**

Either party may be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. FMU will not limit the choice or presence of advisors for any interview, meeting, or grievance proceeding. However, advisors may not speak during the interview except to request a break from the investigator so they may confer with a party outside the interview room. If an advisor violates this rule, the advisor will be warned. If an advisor violates the rule for a second time, the investigator may remove the advisor from the interview.

### **Notice of Interview**

Parties will receive at least four business days of notice before the interview so that they have sufficient time to prepare. A party may elect to participate with less notice. FMU will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of an investigative interview. Advisors may be present at the interview but may not talk in the interview room. They may communicate with their advisee or the investigator by passing a written note. Advisors who do not follow these rules of decorum will be warned by the investigator and may be removed from the interview if they continue to violate the rules.

## **Witnesses and Evidence**

The parties will receive equal opportunity to present witnesses, including fact, character, and expert witnesses, and other inculpatory and exculpatory evidence. FMU will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. FMU will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint. FMU will also provide evidence it does not intend to rely upon in reaching a determination regarding responsibility as well as inculpatory or exculpatory evidence whether obtained from a party or other source. In addition, FMU will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination. It will require the parties to sign non-disclosure agreements before reviewing the evidence and will make the evidence available in a format so that it cannot be copied.

## **Review of Investigative Report**

Prior to completion of the investigative report, FMU will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format. The parties will have 10 business days to submit a written response of no more than five pages, which the investigator will consider prior to completion of the investigative report.

## **Final Report**

The Investigator will write a report that fairly summarizes relevant evidence and send the report in electronic format to the parties and their advisors (if any) at least 10 business days prior to a hearing for their review. Each party may provide a written response to the report of up to five pages. The investigator cannot make a decision regarding responsibility. The investigator can make credibility assessments, but those assessments cannot become determinations of responsibility.

## **III. HEARINGS**

Formal rules of process, procedure, and technical rules of evidence, such as applied in criminal or civil court, will not be used in Title IX hearings. Deviations from prescribed procedures shall not necessarily invalidate a decision, unless significant prejudice to a complainant, respondent or the University results. Because a hearing is a fact-finding proceeding and does not recommend or adjudicate punishments, the Title IX Coordinator may decide to forego a hearing if the respondent accepts responsibility and forward the case to the appropriate individual for determining sanctions. This acceptance must be in writing, affirming acceptance of responsibility for the charge(s) and acknowledging that the full range of sanctions may be imposed. A respondent who accepts responsibility in writing forfeits all rights to an appeal process. If the respondent is a student, the Dean of Students will dismiss and close the case.

### **Scheduling of Hearing**

The complainant and respondent shall receive at least seven business days written notice of the specific charges and the date, time, and location of the scheduled proceeding and their rights as outlined in these procedures. The notice will also include the purpose of the hearing and expected participants. Generally, once scheduled, a hearing will not be delayed unless due to a serious documented illness of a party or advisor, the introduction of new evidence, or University closing.

**Witnesses**

Both parties may provide the names of witnesses from the FMU community who have relevant and material information pertaining to the incident, as well as character or expert witnesses. Any additional witnesses must be submitted to the hearing coordinator in writing at least three business days prior to the proceeding. The University may also invite witnesses.

**Role of Advisor in Hearings**

The University will conduct live hearings. Advisors may not speak at the hearing except to ask the other party and any witnesses relevant questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. An advisor may submit requests in writing to the hearing officer, may pass notes to their advisee, or may request a break to consult with their advisee. An advisor whose behavior does not meet the rules of decorum at the hearing will be warned. If the behavior continues, the advisor can be removed.

**Appointment of Advisor**

Whether or not a party chooses to participate in the hearing, if a party does not have an advisor of choice for the live hearing, the University will provide one at no fee to conduct cross-examination on behalf of that party. The appointed advisor does not need to be an attorney.

**Use of Technology**

At the request of either party, the live hearing may occur with one or both of the parties choosing to be located in a separate room from the hearing officer with technology enabling the officer and parties to simultaneously see and hear the parties or witnesses answering questions. Live hearings may be conducted with all parties physically present in the same geographic location or the University may elect to hold them virtually with technology enabling participants simultaneously to see and hear each other.

FMU will make audio or audiovisual recordings of witness interviews in cases of sexual violence and all live Title IX hearings. Other individuals at these proceedings are prohibited from making their own recordings. When the University is not recording a meeting or proceeding, individuals who wish to make their own recording must expressly request permission from the University to do so. FMU will make its recordings available for inspection and review by the parties. Individuals may watch or listen to recordings but may not duplicate them.

**Rules of Cross-Examination**

The University will invite the parties to submit cross-examination questions in advance of the hearing so that the hearing officer can determine their relevance. Only relevant cross examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question during the hearing, the hearing officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The hearing officer's decision on relevance is final and may not be challenged by a party or advisor. Hearings will not follow legal rules of evidence.

**Prohibited Evidence**

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. In addition, testimony or evidence regarding any party's mental health will not be permitted absent written authorization prior to the hearing from the hearing officer.

### **Refusal to Submit to Cross-Examination**

If a party or witness does not submit to cross-examination at the live hearing, the hearing officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the hearing officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

### **Hearing Agenda**

The hearing agenda is normally as follows, although the hearing officer may make reasonable alterations as necessary to ensure a prompt, thorough, and equitable hearing for all parties:

- The hearing officer reads instructions and procedures to the parties and witnesses, and reviews the alleged violation(s).
- The complainant may make an opening statement. The statement should be no more than ten minutes in length and address the facts surrounding the alleged offense. The hearing officer will then ask the complainant questions. After the hearing officer has concluded asking questions, the respondent's advisor may cross-examine the complainant. The hearing officer may ask additional questions following the cross examination.
- The respondent may make an opening statement. The statement should be no more than ten minutes in length and address the facts surrounding the alleged offense. The hearing officer will then ask the respondent questions. After the hearing officer has concluded asking questions, the complainant's advisor may cross-examine the respondent. The hearing officer may ask additional questions following the cross examination.
- Invited witnesses may provide statements. After each witness statement, the hearing officer will then ask that witness questions. After the hearing officer has concluded asking questions, advisors for each party may question the witness. The hearing officer may ask additional questions following the cross examination.
- The complainant may make a closing statement. The statement should be no more than ten minutes in length. The hearing officer may then ask the complainant questions. After the hearing officer has concluded asking questions, the respondent's advisor may question the complainant. The hearing officer may ask additional questions following the cross examination.
- The respondent may make a closing statement. The statement should be no more than ten minutes in length. The hearing officer may then ask the respondent questions. After the hearing officer has concluded asking questions, the complainant's advisor may ask the respondent questions. The hearing officer may ask additional questions following the cross examination.
- The hearing officer concludes the proceeding and deliberates in private.

### **Determination of Responsibility**

The hearing officer, which cannot include the Title IX Coordinator or the investigator, will issue a written determination regarding responsibility using the preponderance of the evidence standard. The written determination will include the following:

- Identification of the allegations potentially constituting sexual harassment.

- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
- Findings of fact supporting the determination
- Conclusions regarding the application of the University's code of conduct to the facts
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the complainant
- The University's procedures and permissible bases for the complainant and respondent to appeal.

### **Determination of Sanction**

If a party is found responsible for violating Title IX, the hearing officer will refer the case to the following individuals for determination of a sanction:

- The Dean of Students if the respondent is a student.
- The Director of Human Resources if the respondent is a staff member.
- The Provost if the respondent is a faculty member.

These individuals will decide on sanctions and take measures to ensure the complainant has equal access to the University's programs and activities. In addition, the Provost may refer a case involving a faculty member to the University's tenure revocation process outlined in the Faculty Handbook.

If the respondent serves multiple roles (e.g., is both a student and an employee), the Title IX Coordinator will decide who should determine the appropriate sanction.

Sanctions, if any, will be included in the written determination. The University will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The Title IX Coordinator is responsible for overseeing effective implementation of any remedies.

### **Potential Range of Sanctions**

If a respondent is found to have violated Title IX, it will impose sanctions commensurate with the violation. Potential sanctions include, but are not limited to, the following:

- Probation
- Written warning
- Demotion or pay cuts (for employees)
- Restrictions on access to University programs or areas
- Suspension
- Transcript notation (for students)
- Expulsion (for students)
- Termination of employment
- Revocation of faculty tenure (under the procedures of the Faculty Handbook)
- Discretionary Sanctions: Other sanctions that bear a reasonable relationship to the violation for which the respondent has been sanctioned may be imposed instead of or in addition to those specified above.

Discretionary sanctions include, but are not limited to: service hours, fines, educational reflection assignments, and participation in alcohol or drug awareness programs, and training, counseling, and education regarding sexual offenses.

#### **IV. APPEALS**

Either party may appeal a dismissal of the complaint or a finding by the hearing officer by sending a letter to the Chief of Staff within five business days of receipt of the dismissal notice or the outcome of the hearing officer's decision. A party adjudicated in absentia forfeits all rights to an appeal process unless it is proven that it is for lack of proper notice, except in an extraordinary circumstance. The appeal must specify grounds that would justify consideration. General dissatisfaction with the dismissal or outcome of the proceeding or an appeal for mercy are not appropriate grounds for appeal. The written appeal must specifically address at least one of the following criteria:

- Procedural irregularity that affected the outcome of the matter.
- 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.
- Evidence showing a Title IX Coordinator, investigator, or decision-maker 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.

FMU will notify the other party in writing when an appeal is filed and allow that party five business days to send a letter to the Title IX Coordinator supporting the dismissal or outcome of the hearing officer. The Title IX Coordinator may consult other FMU officials as appropriate before making his/her decision, but shall not gather additional evidence or speak to any of the individuals who provided evidence or testimony at the hearing. If the Title IX Coordinator believes that new evidence, previously unknown to either party, significantly alters the finding of fact, the Title IX Coordinator may return the case to the hearing officer at his/her sole discretion, to hear more evidence. Such a hearing shall occur in the presence of the complainant and respondent and follow all of the procedural rules of a regular hearing. The Title IX Coordinator may not return the case to the hearing officer only for the purpose of reconsidering the original decision.

The decision on the appeal is final and shall be conveyed in writing to both parties, normally within 10 business days of receipt of the response from the party opposing the appeal. The decision will describe the rationale for the appeal outcome. Both parties will receive the written appeal decision simultaneously. Sanctions are not appealable and may only be altered if a finding of responsibility is overturned.

#### **V. PROCEDURAL ALTERATIONS**

The Title IX policies and procedures will be periodically reviewed and edited. FMU will adjudicate cases based upon the procedures in effect at the time of the hearing and the policy that was in effect at the time of the offense.