

FSW Title IX

Reporting and Resolution Process

Academic Year 2020 - 2021

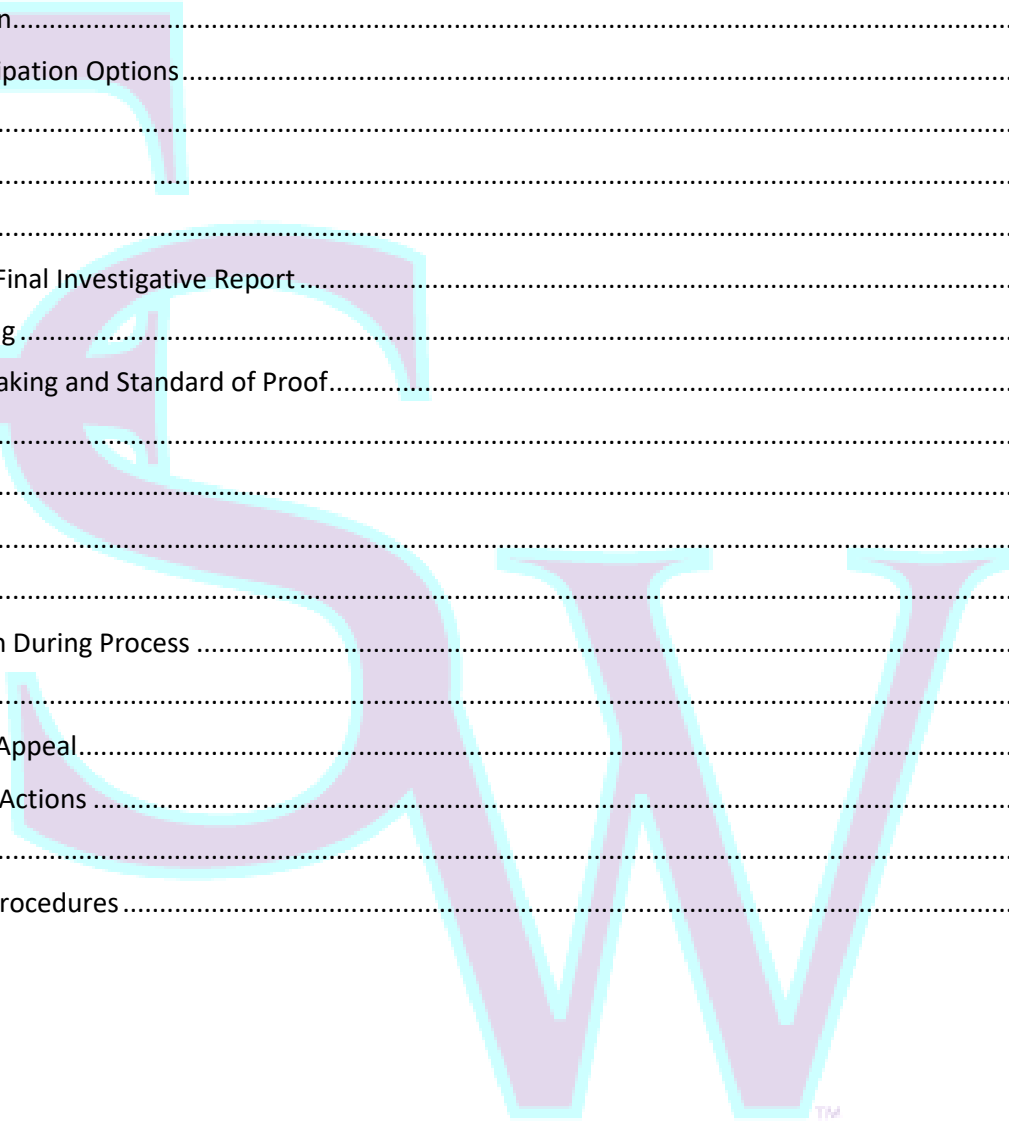


TITLE IX

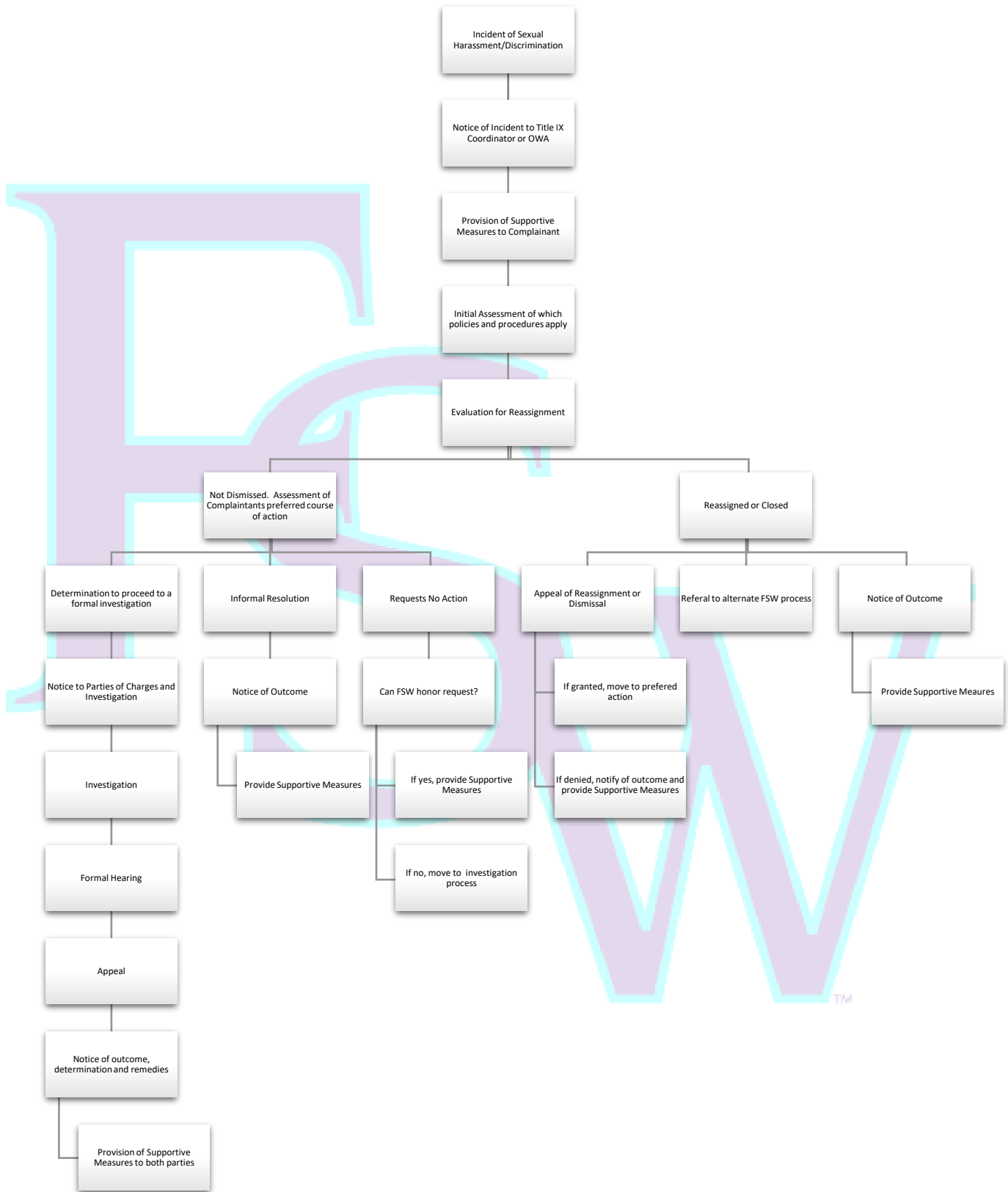
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FSW One Page Flow Chart



Florida SouthWestern State College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, FSW has developed internal procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. Florida SouthWestern State College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

Definitions

- Advisor means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- Complainant means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- Complaint (formal) means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that FSW investigate the allegation.
- Confidential Resource means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- Consent means the express communication or mutually understandable actions of words of the parties who are, or have been, involved
 - A sexual encounter is considered consensual when individual(s) willingly and knowingly engage in sexual activity.
 - Consent cannot be procured by the use of physical force, compelling threats, intimidating behavior, or coercion: The use of coercion can involve the use of pressure, manipulation, substances, and/or force. Ignoring the objections of another person or pressuring them is a form of coercion. Consent may never be given by a minor even if the other participant did not know the minor's age.
 - Knowingly engaging in sexual activity with someone who is incapacitated by alcohol or drug use, unconsciousness, disability, involuntary physical constraint, sleep, or other forms of helplessness does not constitute consent. Incapacitation is a state where a person cannot make a rational, reasonable decision because the person lacks the ability to understand his or her decision.
 - The use of alcohol or drugs does not diminish one's responsibility to obtain consent and does not excuse conduct that constitutes sexual misconduct under FSW's rules,

regulations and policies. If at any time during a sexual act confusion or ambiguity regarding consent arises, each individual involved in the activity should stop and clarify the other's willingness to continue. Neither person should make assumptions about the other's willingness to continue.

- Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Previous relationships or previous consent for sexual activity cannot imply consent to sexual activity on a different occasion.
- Silence, passivity, or lack of resistance cannot be interpreted as consent.
- Consent can be withdrawn at any time.

- Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration to the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purpose of this definition-
 - Dating violence does not include acts covered under the definition of domestic violence.
 - Dating violence includes, but is not limited to, sexual or physical abuse of the threat of such abuse.

- Day means a business day when Florida SouthWestern State College is in normal operation.

- Domestic Violence means violence committed-
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws in the jurisdiction in which the crime of violence occurred;
 - By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

*To categorize an incident as Domestic Violence, the relationship between the perpetrator and the victim must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- Education program or activity means locations, events, or circumstances where Florida SouthWestern State College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Florida SouthWestern State College.
- Final Determination means a conclusion by the preponderance of the evidence that the alleged conduct occurred and whether it did or did not violate policy.
- Finding means a conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged.

- Formal Grievance Process means a method of formal resolution designated by Florida SouthWestern State College to address conduct that falls within the procedures included below, and which complies with the requirements of 34 CFR Part 106.45.
- Grievance Process Pool includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- Hearing Decision-maker or Panel refers to those who have decision-making and sanctioning authority within Florida SouthWestern State College's Formal Grievance process.
- Investigator means the person or persons charged by Florida SouthWestern State College with gathering facts about an alleged violation of FSW Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- Mandated Reporter means an employee of Florida SouthWestern State College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator/Equity Officer.
- Notice means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- Official with Authority (OWA) means an employee of Florida SouthWestern State College explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of FSW.
- Parties include the Complainant(s) and Respondent(s), collectively.
- Recipient means a postsecondary education program that is a recipient of federal funding.
- Remedies are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Florida SouthWestern State College's educational program.
- Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- Resolution means the result of an informal or Formal Grievance Process.
- Sanction means a consequence imposed by Florida SouthWestern State College on a Respondent who is found to have violated this policy.

- Sexual Assault means any attempted or actual sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent.
 - Rape is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
 - Include the crime as Rape, regardless of the age of the victim, if the victim did not consent or if the victim was incapable of giving consent. If the victim consented, if the offender did not force or threaten the victim, and the victim was under the age of statutory consent, include the crime as Statutory Rape.
 - Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 - Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape is sexual intercourse with a person who is under the statutory age of consent.

- Sexual Harassment for use in this procedure is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.

- Sexual Discrimination is differential treatment based upon sex, gender identity or sexual preference that affects the terms of conditions of employment or education.

- Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to-
 - Fear for the persons' safety or the safety of others; or
 - Suffer substantial emotional distress.

For the purposes of this definition-

- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victims.

Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

- Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

- *Title IX Coordinator* is at least one official designated by Florida SouthWestern State College to ensure compliance with Title IX and Florida SouthWestern State College's Title IX program. References to the Coordinator throughout this procedure may also encompass a designee of the Coordinator for specific tasks. FSW's Title IX Coordinator, Jana Sabo, can be reached by emailing jsabo1@fsw.edu, calling 239-489-9051, or in person at 8099 College Pkwy, Building S, Room 213, Ft Myers, FL 33919.
- *Title IX Team* refers to the Title IX Coordinator, Investigator, and any member of the Grievance Process Pool.

Scope

The FSW community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. When the Respondent is a member of the FSW community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the FSW community. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with FSW policy.

Jurisdiction

Florida SouthWestern State College policies and these procedures apply to the education program and activities of Florida SouthWestern State College, to conduct that takes place on the campus or on property owned or controlled by FSW, at FSW-sponsored events, or in buildings owned or controlled by FSW recognized student organizations. The Respondent must be a member of FSW's community in order for its policies and procedures to apply.

This procedure can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to FSW's educational program. FSW may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial FSW interest.

Regardless of where the conduct occurred, the Title IX Coordinator will address notice/complaints to determine whether the conduct occurred in the context of FSW employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial FSW interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of Florida SouthWestern State College.

If the Respondent is unknown or is not a member of the FSW community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of FSW's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator (students may also contact the Assistant Dean of Students for supportive measures).

In addition, the FSW Police Department may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from FSW property.

All vendors serving Florida SouthWestern State College through third-party contracts are subject to the policies and procedures of their employers as well as FSW policies and procedures to which their employer has agreed to in their contracts with FSW.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the title IX Coordinator may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to FSW where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to FSW's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, FSW will typically apply the policy in place at the time of the alleged misconduct and the procedure in place at the time of the notice/complaint.

Notice/Complaints of Discrimination, Harassment, or Retaliation

Notice or complaints of discrimination, harassment, or retaliation may be made using any of the following options:

- 1) File a complaint with, or give verbal notice to, the Title IX Coordinator/Equity Officer. Such a report may be made at any time (including during non-business hours) by using the telephone number, email address, or office address listed for the Title IX Coordinator or any other official listed. FSW's Title IX Coordinator/Equity Officer is Jana Sabo and can be reached via email at jsabo1@fsw.edu, by telephone at 239-489-9051, by U.S mail at 8099 College Pkwy, Ft Myers, FL 33919 or in person at the Thomas Edison campus of FSW on the 2nd floor of the S building, room 213.
- 2) Report online using the reporting form posted at www.fsw.edu/reportviolence

Anonymous reports are accepted but FSW's ability to investigate can be limited. FSW tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as FSW respects Complainant requests to reassign or close complaints unless there is a compelling threat to health or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows FSW to provide supportive measures to the Complainant.

A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that FSW investigate the allegation(s). As used in this paragraph, the phrase "document filed/signed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by FSW) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

Supportive Measures

FSW will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to FSW's education program or activity, including measures designed to protect the safety of all parties or FSW's educational environment, and/or deter harassment, discrimination, and retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, The Title IX Coordinator will inform the Complainant, in writing, that they may file a formal complaint with FSW either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

Florida SouthWestern State College will maintain the privacy of the supportive measures, provided that privacy does not impair FSW's ability to provide the supportive measures. FSW will act to ensure as minimal an academic impact on the parties as possible. FSW will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program (EAP)
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering campus housing assignment(s)
- Arranging to dissolve a campus housing contract and offering a pro-rated refund
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Implementing contact limitations (mutual no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Issuing Trespass orders and/or Timely Warnings
- Class schedule modifications, alternate course completion options, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

Emergency Removal

Florida SouthWestern State College can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Behavioral Intervention Response Team (BIRT) using its standard objective violence risk assessment procedures.

Florida SouthWestern State College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, restricting a student's or employees' access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

In cases in which an emergency removal of a student is imposed, the student will be given notice of the action and the option to object to the emergency removal by requesting to meet with the Vice Provost, Student Affairs prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within 48 hours of notification of the student, objections to the emergency removal will be deemed waived. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no other appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Vice Provost, Student Affairs for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Vice Provost, Student Affairs has the discretion under this procedure to implement or stay the recommended emergency removal. Violation of an emergency removal under this procedure will be grounds for discipline, which may include expulsion or termination.

Promptness

All allegations are acted upon promptly by Florida SouthWestern State College once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but FSW and the Title IX Office will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in FSW procedures will be delayed, the Title IX Coordinator will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

Privacy

Every effort is made by Florida SouthWestern State College to preserve the privacy of reports. FSW will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

Florida SouthWestern State College reserves the right to designate which FSW officials have a legitimate educational interest in being informed about incidents that fall within this procedure, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The Title IX Coordinator may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

Retaliation

Protected activity under FSW policy includes reporting an incident that may implicate FSW policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, or acting in good faith to oppose conduct that constitutes a violation of FSW Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Florida SouthWestern State College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for Florida SouthWestern State College or any member of FSW's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under FSW's policy and procedures.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

Mandated Reporting

Florida SouthWestern State College employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these

employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at FSW for a Complainant or third-party (including parents/guardians when appropriate):

Confidential Resources

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors in the Counseling Offices
- On-campus Victim Advocate (Assistant Dean of Students)
- Off-campus (non-employees):
 - Licensed professional counselors and other medical providers
 - Employee Assistance Program (EAP)
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains
 - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

FSW employees who are confidential will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client.

Mandated Reporters and Formal Notice/Complaints

Mandated Reporters are College employees who have the authority to redress sexual misconduct, or who have the duty to report incidents of sexual misconduct or other misconduct, who is a FSW community member could reasonably believe has this authority or duty. Mandated Reporters must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from FSW.

Supportive measures may be offered as the result of such disclosures without formal action by FSW.

The following employees (or categories of employees as listed on the current organizational chart and college salary schedule) are the Colleges Mandated Reporters:

- All Executives
- All Administrators

- Title IX Coordinator/Equity Officer
- Investigator, Equal Opportunity Programs
- All Human Resources Staff –excluding Student Assistants
- All Athletic Staff - excluding Student Assistants
- All Student Success Advisors and Student Engagement Staff – excluding Student Assistants and Peer Mentors
- Adaptive Services Staff
- All Residence Life Staff
- All Public Safety Staff
- All International Education Staff –excluding Adjuncts, Faculty and Student Assistants.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of FSW policy and can be subject to disciplinary action for failure to comply.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under FSW policy is not required to report their own experience, though they are, of course, encouraged to do so.

When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether FSW proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires FSW to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. FSW may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and FSW's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of FSW's policy.

When FSW proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this procedure irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

Note that FSW's ability to remedy and respond to notice may be limited if the Complainant does not want FSW to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing FSW's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow FSW to honor that request, the Title IX Coordinator will offer informal resolution options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by FSW, and to have the incidents investigated and properly resolved through these procedures.

Federal Statistical Reporting Obligations and Timely Warning

Campus Security Authorities (CSAs) as defined by the Clery Act have a duty to report certain crimes to the FSW Police Department. All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location are provided for publication in the Annual Security Report and daily campus crime log.

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Florida SouthWestern State College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Florida SouthWestern State College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

False Allegations and Evidence

Deliberately false and/or malicious accusations under this procedure, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under FSW policy.

Amnesty for Participants

The Florida SouthWestern State College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to FSW officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the Florida SouthWestern State College community that Complainants choose to report misconduct to FSW officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, FSW maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

FSW RESOLUTION PROCESS

FSW Resolution Process Overview

Florida SouthWestern State College will act on any formal or informal notice/complaint of violation of the policy on Nondiscrimination that is received by the Title IX Coordinator or any other Official with Authority.

The process below applies only to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrators, or faculty members.

If other FSW policies are invoked, such as policies on protected class harassment or discrimination as defined above, please see the appropriate College Operating Procedures for a description of the procedures applicable to the resolution of such offenses.

Additional FSW College Operating Procedures can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking as defines above) when jurisdiction does not fall within this procedure, as determined by the Title IX Coordinator.

Unionized/other categorized employees are subject to the terms of their agreements/employees' rights to the extent those agreements do not conflict with federal or state compliance obligations.

The procedures below may be used to address collateral misconduct arising from the investigation of or

occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in College Operating Procedures.

Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps FSW needs to take.

The Title IX Coordinator will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to proceed formally; and/or
- 2) An informal resolution (informal resolution is not available for complaints that allege an employee sexually harassed a student); and/or
- 3) A Formal Grievance Process including an investigation and a hearing.

The investigation and grievance process will determine whether or not FSW policy has been violated. If so, FSW will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

Initial Assessment

Following receipt of notice or a complaint of an alleged violation of FSW Policy, the Title IX Coordinator engages in an initial assessment, which is typically one (1) to five (5) business days in duration. The Title IX Coordinator will determine if the complaint falls under the jurisdiction of Title IX and if the Complainant wishes to pursue a formal resolution through FSW.

The Title IX Coordinator must reassign or close a formal complaint or any allegations therein if, at any time during the initial assessment, investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the procedure, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by Florida SouthWestern State College (including buildings or property controlled by recognized student organizations), and/or FSW does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of Florida SouthWestern State College.

The Title IX Coordinator may reassign or close a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by Florida SouthWestern State College; or

- 3) Specific circumstances prevent FSW from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any reassignment or closure, the Title IX Coordinator will promptly send written notice of the reassignment or closure and the rationale for doing so simultaneously to the parties.

Violence Risk Assessment

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Behavior Intervention Response Team (BIRT) as part of the initial assessment. Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other BIRT members. A VRA authorized by the Title IX Coordinator should occur in collaboration with BIRT. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g. Baker Act in Florida), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

Counter Claims

Florida SouthWestern State College is obligated to ensure that the grievance process is not abused for retaliatory purposes. FSW permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of FSW policy.

Right to an Advisor

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available. In the event either party cannot identify their own Advisor, FSW will maintain a pool of trained Advisors which will be made available to either party. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution

process, prior to a hearing.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

Advisor's Role

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Florida SouthWestern State College cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, FSW is not obligated to provide an attorney.

All Advisors are subject to the same FSW policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address FSW officials in a meeting or interview unless invited to. The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the investigator(s) or other Decision-maker(s) except during cross-examination at the hearing. The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this procedure will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

FSW expects that the parties may wish to have the documentation and evidence related to the allegations shared with their Advisor. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process. The parties must provide consent, in writing, to a release of information to the Advisor before FSW is able to share records with an Advisor. Advisors are expected to maintain the privacy of the records shared with them.

FSW expects an Advisor to adjust their schedule to allow them to attend meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. FSW may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at

least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

As a public entity, Florida SouthWestern State College fully respects and accords the Weingarten rights of employees. For parties who are entitled to union representation, FSW will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors.

Advisors in Hearings

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, the Title IX Coordinator will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct cross-examination, FSW will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Florida SouthWestern State College policy. While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. FSW encourages parties to discuss this with their Advisors before doing so.

Disabilities Accommodations in the Resolution Process

Florida SouthWestern State College is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to FSW's resolution process.

Anyone needing such accommodations or support should contact the Title IX Coordinator, who will review the request and, in consultation with the person requesting the accommodation and the Office of Adaptive Services, determine which accommodations are appropriate and necessary for full participation in the process.

Informal Grievance Resolution

Informal Resolution can include three different approaches:

- When the parties agree to resolve the matter through an alternate resolution mechanism such as facilitated discussion;
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they should contact the Title IX Coordinator to so indicate.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the Title IX Coordinator will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by FSW.

The Title IX Coordinator will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

Florida SouthWestern State College will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and FSW are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of FSW policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary. When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the

community.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

Formal Grievance Resolution Process

Notice of Investigation and Allegations (NOIA)

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that FSW presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about FSW’s policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that FSW’s policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to FSW’s VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or reassignment of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official FSW records, or emailed to the parties' FSW issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Resolution Timeline

Florida SouthWestern State College will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

Appointment of Investigator(s)

Once the decision to commence a formal investigation is made, the Title IX Coordinator directs the Investigator, Equal Opportunity Programs, or other designee, to begin the investigation, usually within two (2) business days of determining that an investigation should proceed.

Investigation Timeline

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Florida SouthWestern State College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

Delays in the Investigation Process

Florida SouthWestern State College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The Investigator will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The Investigator will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the Title IX Coordinator will implement supportive measures as deemed appropriate.

FSW action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

Witnesses (as distinguished from the parties) who are employees of FSW are expected to cooperate with and participate in the investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. FSW will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

The Investigator will write a comprehensive draft investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. The investigator will gather, assess and synthesize evidence, but not make conclusions regarding policy violation. Appendices including relevant physical or documentary evidence will be included.

The Investigator will provide the parties and their respective Advisors (if so desired by the parties) an electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which FSW does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).

The Investigator will incorporate relevant elements of the parties' written responses to the draft report into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.

The Investigator shares the report with the Title IX Coordinator for their review and feedback. The Investigator will incorporate all relevant feedback and share the final report with all parties and their Advisors through electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker depending on whether the Respondent is an employee or a student. Allegations involving student-employees will be directed to the appropriate Decision-maker depending on the context of the alleged misconduct.

Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Hearing Panel Composition

The Title IX Coordinator will designate a Decision-maker and two additional panel members from FSW's Panel/Advisor pool. The Decision-maker will also Chair the hearing.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Panel/Advisor pool sit in throughout the resolution process in the event that a substitute is needed for any reason.

The Title IX Coordinator may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Decision-maker or designee.

Alternative Hearing Participation Options

If a party prefers not to attend, or cannot attend the hearing in person, the party will request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person will let the Title IX Coordinator know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

Pre-Hearing Preparation

The Title IX Coordinator will provide the names of persons who will be participating in the hearing (Complainant, Respondent, Investigator and witnesses), all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing. Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator, unless all parties and the Decision-maker assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Decision-maker do not assent to the admission of evidence newly offered at the hearing, the Decision-maker will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker and panel members at least three (3) business days in advance of the hearing. All objections to any Decision-maker or panel member must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker and panel member a list of the names of all parties, witnesses, and Advisors at least three (3) business days in advance of the hearing. Any Decision-maker or panel member who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Decision-maker at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Decision-maker.

The Decision-maker may convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they (the parties or their Advisors) wish to ask or discuss at the hearing, so that the Decision-maker can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing. The Decision-maker must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

The Decision-maker, only with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Decision-maker will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator may be argued to be relevant. The Decision-maker may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Decision-maker may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

Hearing Procedures

At the hearing, the Decision-maker has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Harassment, and Nondiscrimination.

Participants at the hearing will include the Decision-maker, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

The hearing facilitator or Decision-maker will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf. The Decision-maker will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and will then be excused.

The Decision-maker will explain the procedures and introduce the participants. This may include a final opportunity for challenge or recusal of the Decision-maker or panel members on the basis of bias or conflict of interest. The Decision-maker will rule on any such challenge unless the Decision-maker is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

Recording Hearings

Hearings (but not deliberations) are recorded by Florida SouthWestern State College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of FSW will be

permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

Investigator Presents the Final Investigative Report

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker, panel members and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker or panel members should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Decision-maker will direct that it be disregarded.

Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Decision-maker. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Decision-maker. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Decision-maker upon request or agreed to by the parties and the Decision-maker), the proceeding will pause to allow the Decision-maker to consider it, and the Decision-maker will determine whether the question will be permitted, disallowed, or rephrased.

The Decision-maker may explore arguments regarding relevance with the Advisors, if the Decision-maker so chooses. The Decision-maker will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Decision-maker has final say on all questions and determinations of relevance, subject to any appeal. The Decision-maker may consult with legal counsel on any questions of admissibility. The Decision-maker may ask Advisors to frame why a question is or is not relevant from their perspective, but will not entertain argument from the Advisors on relevance once the Decision-maker has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Decision-maker may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Decision-maker should not permit irrelevant questions that probe for bias.

Deliberations, Decision-making and Standard of Proof

The Decision-maker and panel members will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The preponderance of the evidence standard is used. The hearing facilitator may be invited to attend the deliberation by the Decision-maker, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker may – at their discretion – consider the statements, but they are not binding.

The Decision-maker will review the statements and any pertinent conduct history provided by appropriate administrators and will determine the appropriate sanction(s).

The Decision-maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions or recommendations. This report typically should not exceed three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this procedure are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

Student Sanctions

Florida SouthWestern State College makes every attempt to provide an educational sanction that will help a student to make better choices in the future. The educational sanction applied will become

progressively more demanding if the student repeats violations, demonstrating that learning has not taken place. An Accumulation of a variety of violations may result in severe sanctions such as suspension, expulsion or negative notation on a transcript. Violations affecting the health, safety and wellbeing of the community are deemed the most severe and may result, upon the first violation, in a negative notation being placed on a transcript, suspension or expulsion.

The following are the usual sanctions that may be imposed upon students singly or in combination:

- *Warning:* A formal statement, in writing, that the conduct was unacceptable and a warning that further violation of any FSW policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling Assessment and Compliance:* A mandate to meet with and engage in either FSW-sponsored or external counseling (at the student's expense) for general mental health or other counseling issues. Students must comply with all recommendations established as a result of any assessment resulting from the imposition of this sanction.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met.
- *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend FSW-sponsored events.
- *Withholding Diploma:* Florida SouthWestern State College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree:* Florida SouthWestern State College reserves the right to revoke a degree previously awarded from FSW for fraud, misrepresentation, and/or other violation of FSW policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Service Hours:* Completion of tasks under the supervision of a College department or outside agency.
- *Educational Activities:* Attendance at educational programs, interviews with appropriate officials, planning and implementing educational programs or other educational activities.
- *Loss of Privileges:* Denial of specified privileges for a designated period of time.
- *Removal from Classroom/Course:* Removal from the classroom/course, including but not limited to, dismissal from the course or reassignment to another section.
- *Change in Housing Assignment:* Removal or reassignment of the student to another location in College Housing.
- *Exclusion or Removal from College Housing:* Exclusion or removal may be permanent or for a specified period of time. If the student is excluded or removed from Housing, the Housing Agreement will be canceled. The Terms and Conditions of the Housing Agreement regarding cancellation fees and prorations of rental fees will apply.
- *Other Actions:* In addition to or in place of the above sanctions, FSW may assign any other

sanctions as deemed appropriate.

Employee Sanctions

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, FSW may assign any other sanctions as deemed appropriate.

Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Decision-maker to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within three (3) business days of receiving the Decision-maker' deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official FSW records, or emailed to the parties' FSW issued email or through the Maxient system. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by FSW from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent FSW is permitted to share such information under state or federal law; any sanctions issued which FSW is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to FSW's educational or employment program or activity, to the extent FSW is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by FSW to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

Withdrawal or Resignation During Process

Students: If a student has an allegation pending for violation of the policy on Unlawful Harassment, Discrimination and Retaliation, FSW may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from FSW, the resolution process ends, as FSW no longer has disciplinary jurisdiction over the withdrawn student.

However, FSW will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to FSW. Such exclusion applies to all campuses of FSW. A hold will be placed on their ability to be readmitted. They may also be barred from FSW property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to FSW unless and until all sanctions have been satisfied.

During the resolution process, FSW may put a hold on a responding student's transcript or place a notation on a responding student's transcript or dean's disciplinary certification that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as FSW no longer has disciplinary jurisdiction over the resigned employee.

However, FSW will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with FSW, and the records retained by the Title IX Coordinator will reflect that status.

All FSW responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

Appeals

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome.

The Title IX Coordinator will assign the Decision-maker to hear the appeal. No appeal Decision-maker will have been involved in the process previously, including any reassignment or closure appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or reassignment or closure was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this procedure, that request will be denied by the Decision-maker and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this procedure, then the Appeal Decision-maker will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Decision-maker to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Decision-maker and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in five (5) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses, and the Appeal Decision-maker will render a decision in no more than five (5) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that

may result which FSW is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent FSW is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' FSW-issued email or transmitted through the Maxient system. Once mailed, emailed, transmitted and/or received in-person, notice will be presumptively delivered.

Sanction Status During Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

FSW may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

Failure to Comply with Sanctions, Interim and Long-term Remedies, and/or Responsive Actions:

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from FSW and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program (EAP)
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training

- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by FSW to the Respondent to ensure no effective denial of educational access.

FSW will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair FSW's ability to provide these services.

Recordkeeping

Florida SouthWestern State College will maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to FSW education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. FSW will make these training materials publicly available on FSW's website; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to FSW's education program or activity; and
 - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Florida SouthWestern State College will also maintain any and all records in accordance with state and federal laws.

Revision of FSW Policy and Procedures

This procedure supersedes any previous procedure addressing harassment, sexual misconduct, discrimination, and/or retaliation and will be reviewed and updated annually by the Title IX Coordinator. Florida SouthWestern State College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

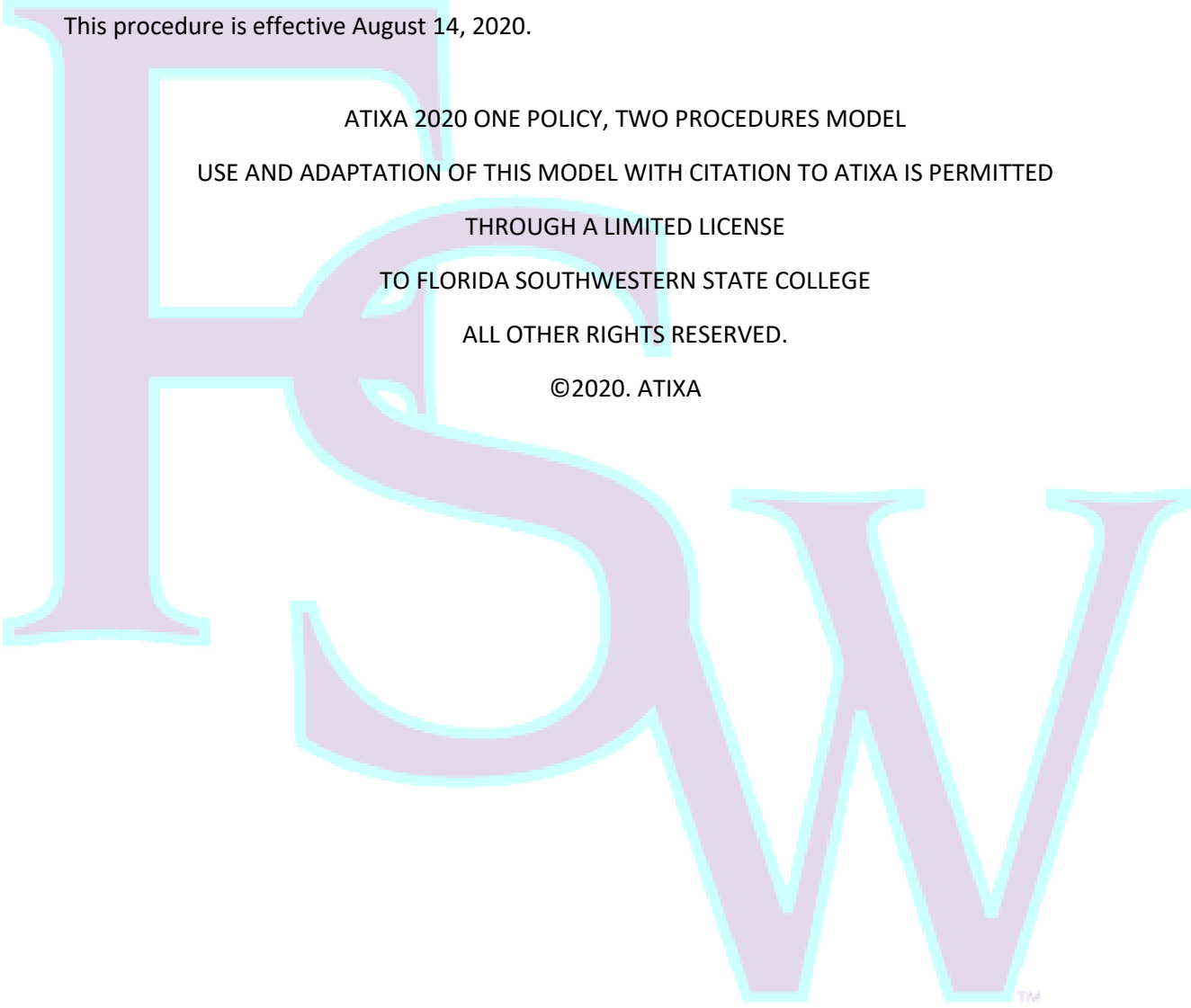
During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional

website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this procedure.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This procedure is effective August 14, 2020.



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