



UNIVERSITY OF CENTRAL FLORIDA

Office of the President

SUBJECT: EMERGENCY POLICY Title IX Grievance Policy THIS POLICY IS SUBJECT TO CHANGE	Effective Date 8/19/2020	Policy Number EP-20-3 2-012	
	Supersedes	Page 1	Of 27
	Responsible Authority Director, Institutional Equity		

DATE OF INITIAL ADOPTION AND EFFECTIVE DATE 8/14/ 2020

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APPLICABILITY/ACCOUNTABILITY

The Title IX Grievance Policy will become effective on August 14, 2020 and will only apply to Title IX sexual harassment (as defined herein) alleged to have occurred on or after August 14, 2020. Incidents of Title IX sexual harassment alleged to have occurred before August 14, 2020, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.

This policy applies to the university community, which includes all students and employees,; direct support organizations' non-student employees (DSOs), and third parties. This policy pertains to acts of prohibited conduct defined herein committed by or against students, employees, DSOs, and third parties when the jurisdictional criteria herein are satisfied.

The requirements and protections of this policy apply equally regardless of sex, gender, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law or university policy. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness.

REVOCAION

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication.

Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated in accordance with the existing Prohibition of Discrimination, Harassment and Interpersonal Violence Policy (Nondiscrimination Policy) (No. 2-004) and Nondiscrimination Regulation (No. 3.001).

NOTICE

This policy is subject to change. Any policy amendments or updates will be communicated through the university policies website (policies.ucf.edu) and will take effect as of the date and time of publication. It is expected that this policy, or subsequent versions of it, will be in force beginning on August 14, 2020 and may be modified at any time until finalized and approved by the University's Policies and Procedures Committee, which will occur within ninety (90) days after the effective date of August 14, 2020.

BACKGROUND AND POLICY STATEMENT

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with an individual's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence) for the purposes of Title IX;
- Addresses how the university must respond to reports of misconduct falling within that definition of Title IX sexual harassment;
- Mandates a grievance process that the university must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of Title IX sexual harassment; and,
- Requires implementation of the new regulations by August 14, 2020.

It is the responsibility of every member of the university community to foster an environment free of Title IX sexual harassment. Based on the Final Rule, the university of Central Florida (university) prohibits Title IX sexual harassment and will implement the following Title IX Grievance Policy, effective August 14, 2020, to respond to allegations of this nature. A student or employee determined by the university to have committed an act of Title IX sexual harassment is subject to disciplinary action, up to and including permanent separation from the university. Third parties or DSOs who commit acts of Title IX sexual harassment may have their relationship with the university terminated and/or their privileges of being on university premises withdrawn.

DEFINITIONS

Title IX Sexual Harassment: For the purposes of this Title IX Grievance Policy, "Title IX sexual harassment" includes any conduct on the basis of sex which occurs within the university's education program or activity that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo¹);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education program or activity;
3. Sexual assault (as defined in the Clery Act), which includes any sexual contact that occurs without consent;
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any act of violence or threatened act of violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; and, (iii) The frequency of interaction between the persons involved in the relationship.
5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of 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 Florida statute or 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 Florida.
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

And also meets the following criteria:

- a. The conduct is alleged to have occurred on or after August 14, 2020;
- b. The conduct is alleged to have occurred against a person located in the United States; and,
- c. The conduct is alleged to have occurred in or as part of the University's education program or activity

Note that conduct that does not meet one or more of these criteria may still be prohibited under other applicable policies or regulations including, but not limited to, the Nondiscrimination Regulation (3.001), Nondiscrimination Policy (2-004), and Rules of Conduct (UCF Regulation 5.008).

¹ As defined in UCF's Nondiscrimination Policy 2-004.

Advisor: An individual who poses questions authored by the Complainant or Respondent during the cross-examination portion of a live hearing, so that the parties do not have direct contact with each other. An advisor of choice may accompany a party to any and all meetings under this policy but may not participate directly in any meetings or hearings except as articulated within this policy.

Consent: An understandable exchange of affirmative words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. Consent must be informed, freely and actively given. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. The lack of a negative response, lack of resistance or protest, and silence are not consent. An individual who is incapacitated by alcohol and/or other drugs, whether voluntarily or involuntarily consumed, may not give consent. Past consent to sexual activity does not imply ongoing future consent. Consent cannot be given if any of the following are present: force, coercion, or incapacitation.

- a. **Responsibility:** It is the responsibility of the initiator of the sexual activity to obtain clear and affirmative responses at each stage of sexual involvement.
- b. **Incapacitation:** a state where an individual cannot make rational, reasonable decisions because of age, mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated due to the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition. A person who is incapacitated lacks the capacity to give consent because they cannot understand the facts, nature, or extent of the sexual interaction. An individual may be incapacitated by force, threat, coercion, manipulation, reasonable fear of injury, intimidation, use of position of influence, or through the use of one's mental or physical helplessness or incapacity. Factors used to evaluate consent are found in the Nondiscrimination Policy (2-004).
- c. **Standard:** A determination of whether consent exists will be based on the information the initiator of the sexual act knew or should have known as a sober, reasonable person. Being impaired by alcohol or other drugs does not relieve an initiator of a sexual act from obtaining consent.

Decision-Maker: An individual identified by the university to oversee the live hearing described herein and to determine, upon objective review of the documentary and testimonial evidence presented, whether the Respondent violated this policy and what, if any, sanctions to apply if in violation.

Education Program or Activity: For the purposes of this Title IX Grievance Policy, the university's "education program or activity" includes:

- Any on-campus premises

- Any off-campus premises over which the university has substantial control. This includes buildings or property owned or controlled by a recognized student organization.
- Any activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of University's programs and activities over which the university has substantial control.

Formal Complaint: For the purposes of this Title IX Grievance Policy, "formal complaint" means a document – including an electronic submission - filed by a Complainant with a signature or other indication that the Complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging Title IX sexual harassment against a Respondent about conduct within the university's education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of Title IX sexual harassment.

Complainant: For the purposes of this Title IX Grievance Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute Title IX sexual harassment as defined under this policy.

Relevant Evidence and Questions: "Relevant" evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true. "Relevant" evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of the Title IX Grievance Policy:

- Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
 - They concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g. attorney-client privilege).
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

Respondent: For the purposes of this Title IX Grievance Policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute Title IX sexual harassment as defined under this policy.

Sexual Contact: Contact of a sexual or intimate nature including, but not limited to:

- a. Touching, kissing, fondling (whether over or under clothing) of an individual for the purpose of sexual gratification; and/or
- b. contact, however slight, between the mouth, anus or sex organ of one individual with either the anus or sex organ of another individual; and/or
- c. contact, however slight, between the anus or sex organ of one individual and any other object.

Support Person: An individual who may accompany a party to any and all meetings under this policy but may not participate directly in any meetings or hearings. A party may have one support person in addition to their Advisor accompany them throughout the process. A party may change their support person at any time so long as the change does not disrupt the process. Examples of a support person include, but are not limited to, a friend, family member, or emotional support person. One individual can serve as both a Support Person and Advisor during the live hearing.

TITLE IX PROCEDURES

A. REPORTING

Privacy vs. Confidentiality: Consistent with other university policies and regulations, references made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to *privacy* mean university offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. The University will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Those individuals designated as a Responsible Employee under Policy 2-004 are also responsible employees under this policy. Nothing in this policy shall alleviate any reporting obligations incumbent on one's status as a responsible employee, dean, director, department head, or supervisor as mandated in UCF Policy 2-004.

B. ACCOMMODATIONS FOR INDIVIDUALS WITH QUALIFYING DISABILITIES

This policy does not alter any university obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the

Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the initiation of the Title IX Grievance Policy that do not fundamentally alter the procedures herein. The Parties must specifically request disability accommodations from the Title IX Coordinator for the Title IX Policy, even where the Parties may be receiving accommodations in other university programs and activities.

C. MAKING A REPORT REGARDING TITLE IX SEXUAL HARASSMENT

Any person may report sex discrimination, including Title IX sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact information for the University's Title IX Coordinator:

Matthew Ricke, Ph.D.

Assistant Director & Title IX Coordinator

Office of Institutional Equity

Location: Barbara Ying Center/CMMS (Bldg. 81), Suite 101

Email: Matt.Ricke@ucf.edu

Phone: 407-823-1336

Website (including online reporting form): <https://letsbeclear.ucf.edu>

Confidential vs. Nonconfidential Reporting Options

The following university officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinator, Deputy Title IX Coordinators, Title IX Investigators, or designees
- Student Care Services employees
- UCF Police Department employees, including sworn officers
- Student Conduct and Academic Integrity employees
- Housing and Residence Life employees
- Any employee designated as a Clery Campus Security Authority (CSA)
- Any employee designated as a Responsible Employee pursuant to Policy 2-004

The following university officials may provide confidentiality upon receiving a report of conduct prohibited under this policy:

- Counseling and Psychological Services employees

- Student Health Services employees
- Victim Services employees
- Student Legal Services employees
- Volunteer chaplains for religious and nonreligious registered student organizations

Please note that statutory exemptions to confidentiality exist under certain circumstances, such as imminent threat of harm to self or others, child or elder abuse, or abuse of an individual with a disability.

D. UNIVERSITY RESPONSE AND NON-INVESTIGATORY SUPPORTIVE MEASURES

Complainants (as defined above), who report allegations that could constitute a violation of this policy, have the right to receive supportive measures from the university regardless of whether they desire to file a formal complaint. Supportive measures are non-disciplinary and non-punitive. Remedial and supportive measures include, but are not limited to:

- on-campus counseling or employee assistance program referrals
- extensions of deadlines or other course-related adjustments
- modifications of work or class schedules
- campus escort services
- restrictions on communication between the Parties (no contact orders)
- changes in work or housing locations
- leaves of absence
- increased security and monitoring of certain areas of the campus

Upon receipt of a report of an alleged violation of this policy, the Title IX Coordinator or designee will promptly contact the Complainant to discuss the availability of supportive measures, inform the Complainant that supportive measures are available regardless of the Complainant's choice to file or not file a formal complaint, and explain the process by which the Complainant may file a formal complaint with the university and with law enforcement.

E. EMERGENCY REMOVAL

The university retains the authority to remove a student Respondent from the university's program or activity on an emergency basis, where the university (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX sexual harassment justifies a removal.

If the university determines such removal is necessary, the student Respondent will be provided notice and an opportunity to challenge the decision immediately following the removal consistent with the Golden Rule Student Handbook.

F. ADMINISTRATIVE LEAVE

The university retains the authority to place a non-student employee Respondent on administrative leave during the review of allegations under this policy, consistent with university regulations and any applicable collective bargaining agreements.

G. TITLE IX GRIEVANCE PROCESS

1. **Filing a Formal Complaint:** The timeframe for the review of an allegation of Title IX Sexual Harassment begins with the filing of a Formal Complaint. The investigation of an allegation of Title IX Sexual Harassment will be concluded within a reasonably prompt manner, provided that the investigation may be extended for a good reason, including but not limited to the absence of a party, a party's Advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
 - a. To file a Formal Complaint, a Complainant must provide the Title IX Coordinator or designee with a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this policy if they are currently participating in, or attempting to participate in, the education programs or activities of the university, including as an employee. For Complainants who do not meet these criteria, the university will utilize existing policy in the Nondiscrimination Policy (2-004).
 - b. If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. The university will inform the Complainant of this decision in writing, and the Complainant need not participate in the investigation further but will receive all notices issued under this policy.
 - c. Nothing in the Title IX Grievance Policy prevents a Complainant from seeking the assistance of state or local law enforcement alongside utilizing the process described herein.

2. **Consolidation of Multiple Formal Complaints:** The university may consolidate Formal Complaints alleging Title IX sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Title IX sexual harassment arise out of the same facts or circumstances.

3. **Jurisdictional Assessment:** The Title IX Coordinator or designee will determine if the Title IX Policy should apply to a Formal Complaint. This policy will apply only when all of the following elements are met, in the reasonable determination of the Title IX Coordinator or designee:
 - a. The conduct is alleged to have occurred on or after August 14, 2020;
 - b. The Respondent(s) is affiliated with the University;
 - c. The Complainant(s) is participating in or attempting to participate in a university educational program or activity;
 - d. The conduct is alleged to have occurred in the United States;
 - e. The conduct is alleged to have occurred in the university's education program or activity; and
 - f. The alleged conduct, if true, would constitute Title IX sexual harassment as defined in this policy.

If all of the elements are met, the university will investigate the allegations according to the policy.

4. **Allegations Falling Under Two or More Policies:** If the alleged conduct, if true, includes conduct that would constitute Title IX sexual harassment and conduct that would not constitute Title IX sexual harassment, the Title IX Grievance Policy is required to be applied to the investigation and live hearing of only the allegations that constitute Title IX sexual harassment. If the Respondent is accused of allegations beyond the scope of this policy, those allegations may be investigated and/or addressed separately by an appropriate University office(s) before, during, or after the investigation and live hearing under this policy.
5. **Mandatory Dismissal:** The university shall dismiss any Formal Complaint which fails to meet the jurisdictional assessment criteria above. Such mandatory dismissals will be issued, in writing, to the Complainant, explaining the rationale for the dismissal. Once a formal complaint is dismissed, the Complainant may appeal the decision to the Vice President for Compliance and Risk or designee. The appeal should be filed in writing within ten (10) business days, citing how the mandatory dismissal was procedurally incorrect under the Final Rule for Title IX.
6. **Discretionary Dismissal:** The university may, under certain circumstances, exercise discretion in the dismissal of any formal complaint on the following bases: (1) the Complainant withdraws the formal complaint at any time; (2) the Respondent is no longer affiliated with the university; and/or (3) there is insufficient evidence available to warrant additional investigation. Such discretionary dismissals will be issued, in writing, to both the Complainant and Respondent (if the Respondent has received notice of the formal complaint), explaining the rationale for the dismissal. Once a formal complaint is dismissed, the Complainant or Respondent (if applicable) may appeal the decision to the Vice

President for Compliance and Risk or designee. The appeal should be filed in writing within ten (10) business days, citing how the discretionary dismissal was procedurally incorrect under the Final Rule for Title IX.

7. **Notice of Mandatory Dismissal:** Upon reaching a decision that the Formal Complaint will be dismissed, the university will promptly send written notice of the mandatory dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the mandatory dismissal, to the Complainant through the Complainant's university email account. It is the responsibility of Parties to maintain and regularly check their email accounts. Upon mandatory dismissal for the purposes of Title IX, the University retains discretion to utilize other grievance procedures, such as those found in the Nondiscrimination Policy, UCF Regulation 5.009, or UCF Regulation 3.0134, to determine if a violation of other university policies or regulations has occurred. If so, the university will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Policy and removal of the allegations to the other procedures.
8. **Notice of Investigation:** The Title IX Coordinator or designee will draft and provide the Notice of Investigation to any party to the allegations of Title IX sexual harassment. Such notice will occur as soon as practicable after the University receives a Formal Complaint of the allegations, if there are no extenuating circumstances. The Parties will be notified by their university email accounts if they are a student or employee, and by other reasonable means if they are neither. The university will provide sufficient time for the Parties to review the Notice of Allegations and prepare a response before any initial interview. The Notice of Investigation will include the following:
 - a. Notice of the university's Title IX Grievance Policy and a hyperlink to a copy of the policy.
 - b. Notice of the allegations potentially constituting a violation of this policy, and sufficient details known at the time the Notice is issued, such as the identities of the Parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting Title IX sexual harassment; and the date and location of the alleged incident, if known.
 - c. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the live hearing.
 - d. A statement that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney;
 - e. A statement that after all parties have been interviewed but before the conclusion of the investigation, the Parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations

raised in the Formal Complaint, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source;

- f. A statement that university regulations prohibit knowingly making false statements or knowingly submitting false information during the investigation or live hearing.

If, in the course of an investigation, the university decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Investigation and are otherwise prohibited conduct under this policy, the university will notify the Parties whose identities are known of the additional allegations by email to their university-issued email accounts (@knights.ucf.edu or @ucf.edu) or other reasonable means. The Parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

9. **Advisor of Choice and Participation of the Advisor:** The university will provide the Parties equal access to Advisors and support persons; any restrictions on Advisor participation will be applied equally to both Parties. The university has a long-standing practice of requiring students to participate in conduct processes directly and not through an advocate or representative. Students and employees participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice and/or Support Person to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this policy Advisors and Support Persons shall not participate directly in the process as per standard practice in student conduct matters.

The university will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all Parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules. The university's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other university policies apply to matters governed under this policy, and the University cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The university will not be obligated to delay a meeting or hearing under this policy more than five (5) days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the university.

10. **Notice of Meetings and Interviews:** The university will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.
11. **Request for Delay:** Each party may request a one-time delay in the investigation or live hearing of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director of Student Conduct and Academic Integrity, Chief of Human Resources, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other Parties. For example, a request to take a five day pause made an hour before a hearing for which multiple Parties and their Advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.
12. **General Rules Governing Investigations:** The Title IX Coordinator or an assigned Investigator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute Title IX sexual harassment after issuing the Notice of Allegations.
 - a. The university, and not the Parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the university and does not indicate responsibility.
 - b. The university cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information.
 - c. The university will provide an equal opportunity for the Parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e., respectively, evidence that tends to prove and disprove the allegations) as described below.
13. **Inspection and Review of Evidence:** Prior to the completion of the investigation, the Parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation. Evidence that will be available for inspection and review by the Parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

- a. Evidence that is relevant, even if that evidence does not end up being relied upon by the university in making a determination regarding responsibility;
- b. inculpatory or exculpatory evidence (i.e., respectively, evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All Parties must submit any evidence they would like the Investigator to consider prior to when the Parties' time to inspect and review evidence begins.

The university will send the evidence made available for each party and each party's Advisor, if any, to inspect and review through an electronic format. The university is not under an obligation to use any specific mechanism or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The Parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the Investigator. The Investigator will consider the Parties' written responses before completing the Investigative Report. Parties may request a reasonable extension as their designated Request for Delay.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

Evidence obtained in the investigation that is determined in the reasoned judgment of the Investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the Parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented separately from the Investigative Report that may be reviewed by the Parties and their Advisors, if any.

14. **Investigative Report:** The Title IX Coordinator or designated Investigator will create an Investigative Report that fairly summarizes relevant evidence, and provide that Report to the Parties at least ten (10) business days prior the hearing in electronic format for each party's review and written response. The Investigative Report is not intended to catalog all evidence obtained by the Investigator, but only to provide a fair summary of that evidence. Only relevant evidence (including both inculpatory and exculpatory – i.e., respectively, tending to prove and disprove the allegations) will be referenced in the Investigative Report. The Investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

Upon issuance of the final Investigative Report, a copy of the Investigative Report will be sent to the Office of Student Rights and Responsibilities (in the case of student Respondents), the university's Provost's Office (in the case of faculty Respondents), or the university's Human Resources office (in the case of non-faculty employee Respondents), who will review the report and initiate the Live Hearing.

15. **Live Hearing:** The university will not issue a disciplinary sanction arising from an allegation of Title IX sexual harassment without holding a live hearing. The live hearing may be conducted with all Parties physically present in the same geographic location, or, at the university's discretion, any or all Parties, witnesses, and other participants may appear at the live hearing virtually through a designated video conferencing platform. This technology will enable participants simultaneously to see and hear each other. If a Hearing is convened electronically, all participants will be expected to be able to be seen and heard. It is incumbent on the Parties to provide their own technology if participating in a hearing remotely. At its discretion, the university may delay or adjourn a hearing based on technological errors not within a party's control. The live hearing will be audio-recorded. This recording will be made available to the Parties for inspection and review.
 - a. **Continuances:** The university may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the university will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.
 - b. **Newly Discovered Evidence:** As a general rule, no new evidence or witnesses may be submitted during the live hearing. If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing. The designated Decision-Maker will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence. If the Decision-Maker answers in the affirmative to both questions, then the Parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.
 - c. **Participation in the Live Hearing:** Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:
 - i. **The Complainant and Respondent (The Parties)**
 1. The Parties cannot waive the right to a live hearing.

2. The university may still proceed with the live hearing in the absence of a party and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that party. For example, A verbal or written statement constituting part or all of the Title IX sexual harassment itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint. The university will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party’s participation in the live hearing.
3. If a party does not submit to cross-examination, the Decision-Maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a “statement” by that party.
4. The Decision-Maker cannot draw an inference about the determination regarding responsibility based solely on a party’s absence from the live hearing or refusal to answer cross examination or other questions.
5. The Parties shall be subject to the university’s Rules of Decorum and may be removed upon violation of those Rules.

ii. The Decision-Maker:

1. A single Decision-Maker will be assigned to oversee the live hearing.
2. The Decision-Maker may not have served as the Title IX Coordinator, Investigator, Advisor or Support Person to any party in the case, nor may the Decision-Maker serve on the appeals body in the case.
3. No Decision-Maker may have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor of or against the Parties to the particular case.
4. The Decision-Maker will be trained on topics including how to serve impartially, issues of relevance, including how to apply the prior sexual history evidentiary protections provided for Complainants, and any technology to be used at the hearing.
5. The Parties will have an opportunity to raise any objections regarding a Decision-Maker’s actual or perceived conflicts of interest or bias. Objections should be filed no later than three

(3) business days after notification of the identity of the Decision-Maker assigned to the live hearing.

iii. Parties' Advisors

1. The Parties have the right to select an Advisor of their choice, who may be, but does not have to be, an attorney.
2. The Advisor of Choice may accompany the Parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination at the live hearing as described.
3. If a party does not have an Advisor of Choice for the live hearing, the university will appoint an Advisor to the party for the purpose of conducting cross-examination.
4. The Parties are not permitted to conduct cross-examination; it must be conducted by the Advisor. As a result, if a party does not select an Advisor or does not bring their selected Advisor to the live hearing, the university will select an Advisor to serve in this role for the limited purpose of conducting the cross-examination during the live hearing at no fee or charge to the party.
5. The Advisor is not prohibited from having a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the Parties to the particular case.
6. The Advisor is not prohibited from being a witness in the matter.
7. If a party does not attend the live hearing, the party's Advisor may appear and conduct cross-examination at the live hearing on their behalf.
8. If neither the party nor their Advisor of choice appear at the hearing, the university will appoint an Advisor to appear on behalf of the non-appearing party for the purpose of cross-examination at the live hearing.
9. Advisors shall be subject to the university's Rules of Decorum and may be removed upon violation of those Rules.

iv. Parties' Support Person

1. The Parties may have one support person accompany the party throughout the investigation and live hearing in addition to the Advisor. This individual's role is to support the party throughout the live hearing, but this individual may not otherwise participate in the live hearing.
2. The university will not appoint a support person to a party.
3. Support persons shall be subject to the university's Rules of Decorum and may be removed upon violation of those Rules.

v. Witnesses

1. Witnesses cannot be compelled to participate in the live hearing and have the right, free from retaliation, to participate or not to participate in the hearing.
2. If a witness does not submit to cross-examination, as described below, the Decision-Maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing.
3. Witnesses shall be subject to the university's Rules of Decorum and may be removed upon violation of those Rules.

16. **Live Hearing Procedures:** For all live hearings conducted under this Title IX Grievance Policy, the procedure will be as follows:

- a. The Decision-Maker will initiate the hearing and establish rules and expectations for the hearing, including the Rules of Decorum;
- b. The Parties will each be given the opportunity to provide opening statements;
- c. The Decision-Maker will ask questions of the Parties and Witnesses;
- d. Parties will be given the opportunity for live cross-examination after the Decision-Maker conducts its initial round of questioning of each Party or Witness;
 - i. During the Parties' cross-examination, the Decision-Maker will have the authority to pause cross-examination at any time for the purposes of asking the Decision-Maker's own follow up questions; and any time necessary in order to enforce the established Rules of Decorum.
- e. Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision-Maker. A Party's waiver of cross-examination does not eliminate the ability of the Decision-Maker to use statements made by the Party.

17. **Live Cross-Examination Procedures:** Each party's Advisor will conduct live cross-examination of the other Party or Parties and Witnesses unless waived by the Advisor or the Party. The Parties may not pose questions during cross-examination. During this live cross-examination the Advisor will ask the other Party or Parties and Witnesses relevant questions and follow-up questions authored by the Complainant or Respondent (including those questions challenging credibility) directly, orally, and in real time. Before any cross-examination question is answered, the Decision-Maker will determine if the question is relevant. Cross-examination

questions that are duplicative of those already asked, including by the Decision-Maker may be deemed irrelevant if they have been asked and answered.

18. **Evaluations of Testimony and Evidence:** While the opportunity for cross-examination is required in all Title IX hearings under this policy, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker.
- a. Decision-makers shall not draw inferences regarding a Party or Witness' credibility based on the Party or Witness' status as a Complainant, Respondent, or Witness, nor shall it base its judgments in stereotypes about how a Party or Witness would or should act under the circumstances.
 - b. Generally, credibility judgments should rest on the demeanor of the Party or Witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.
 - c. Still, credibility judgments should not rest on whether a Party or Witness' testimony is non-linear or incomplete, or if the Party or Witness is displaying stress or anxiety.
 - d. Decision-makers will afford the highest weight relative to other testimony to first-hand testimony by Parties and Witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e., respectively, tending to prove and disprove the allegations) evidence will be weighed in equal fashion.
 - e. Except where specifically barred by the Title IX Final Rule, a Witness's testimony regarding third-party knowledge of the facts at issue will be allowed but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.
 - f. The Final Rule requires that the university allow Parties to call "expert witnesses" for direct and cross examination. The university does not provide for expert witnesses in other nondiscrimination proceedings. While the expert witness will be allowed to testify and be cross examined as required by the Final Rule, the Decision-Maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all Parties present experts as witnesses.
 - g. The Final Rule requires that the university allow Parties to call character witnesses to testify. The university does not provide for character witnesses in other nondiscrimination proceedings. While the character witnesses will

- ii. A statement of, and rationale for, any disciplinary sanctions the university imposes on the Respondent; and
- iii. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the university's education program or activity will be provided by the university to the Complainant; and
- iv. The university's procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in "Appeal").

If there are no extenuating circumstances, the Determination of Responsibility will be issued by the university within ten (10) business days of the completion of the live hearing.

21. **Finality:** The determination regarding responsibility becomes final either on the date that the university provides the Parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.
22. **Appeals:** Each party may appeal (1) the dismissal of a formal complaint or any included allegations, and/or (2) a Determination of Responsibility. To appeal, a Party must submit its written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal. The limited grounds for appeal available are as follows:
 - a. Procedural irregularity that materially affected the outcome of the matter (i.e., a failure to follow the university's own procedures);
 - b. New evidence that was not reasonably available at the time the Determination of Responsibility or dismissal was made, that could materially affect the outcome of the matter;
 - c. The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general, that materially affected the outcome of the matter; or
 - d. For students, any other ground for appeal established in an applicable student appeal procedure in university policy or regulation.

The submission of appeal stays any sanctions for the pendency of the appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, the university will as soon as practicable notify the other Party in writing of the appeal, however the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals may be no longer than ten (10) pages, plus relevant documents not otherwise included in the investigation or live hearing documentation. Appeals should be submitted in electronic form using Times New Roman, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes, and cite to relevant documents. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by the Vice President for Compliance and Risk or designee (appeal officer). The appeal officer will be identified in the Determination of Responsibility letter. The appeal officer will be free of conflict of interest and bias, and will not otherwise serve as the Investigator, Title IX Coordinator, or decision-maker in the same matter.

The outcome of any appeal will be provided in writing simultaneously to both Parties and include a rationale for the decision.

RETALIATION

The university will keep the identity of any individual who has made a report or complaint of Title IX sexual harassment confidential, including the identity of any individual who has made a report or filed a Formal Complaint of Title IX sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of Title IX sexual harassment any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual 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 this Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. Any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, constitutes retaliation.

Complaints alleging retaliation may be filed according to the university's Nondiscrimination Policy (2-004) or Reporting Misconduct and Protection from Retaliation Policy (2-700).

CONTACT

Title IX Coordinator for UCF:

Matthew Ricke, Ph.D.

Assistant Director & Title IX Coordinator

Office of Institutional Equity

Location: Barbara Ying Center/CMMS (Bldg. 81), Suite 101

Email: Matt.Ricke@ucf.edu

Phone: 407-823-1336

Website (including online reporting form): <https://letsbeclear.ucf.edu>

RELATED INFORMATION

Let's Be Clear (Title IX) Website and Reporting Form

<https://letsbeclear.ucf.edu>

Prohibition of Discrimination, Harassment and Related Interpersonal Violence Policy, No. 2-004.2

<https://policies.ucf.edu/documents/2-004.pdf>

[The Golden Rule Student Handbook \(including the Rules of Conduct\)](https://goldenrule.sdes.ucf.edu/)

<https://goldenrule.sdes.ucf.edu/>

The full text of the U.S. Department of Education's Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>.


UCF's Clery Annual Security Report (ASR) and Campus Crime Statistics

<https://police.ucf.edu/crime-statistics>

INITIATING AUTHORITY President

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

Policy Number: EP-20-3

President or Designee: Alexander Cartwright  Digitally signed by Alexander Cartwright
Date: 2020.08.19 15:53:02 -04'00' Date: 8/19/2020