



# COLLEGE OF CENTRAL FLORIDA POLICY MANUAL

<b>Title:</b> DISCRIMINATION, HARASSMENT, AND RELATED MISCONDUCT	<b>Number:</b> 1.03	<b>Page:</b> Page 1 of 25
<b>See Procedures:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<b>Legal Authority:</b> Florida Statutes 760.01, 794.011, 1000.05, 1001.02, 1001.64, 1012.855; Title VI and VII CRA of 1964, Amended 1972, Title IX Education Amendments Act of 1972, 34 CFR Part 106 (2020) Section 504 of Rehabilitation Act of 1973, GINA Act of 2008; Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 20 U.S.C. Section 1092 (f); Section 304, Violence Against Women Reauthorization Act of 2013, Pregnancy Discrimination Act of 1978, Age Discrimination Employment Act of 1967, Vietnam Veterans Readjustment Assistance Act of 1974, Americans with Disabilities Act of 1990; Americans with Disabilities Act Amendments Act of 2008.	<b>Board Adoption/Revision Approval Dates:</b> 10/30/2019, 12/2/2020	

## I. POLICY STATEMENT

- A. The College of Central Florida (College) is committed to providing equal opportunity for employment and educational opportunities to all applicants for employment, employees, applicants for admission, students, and others affiliated with the College, without regard to race, ethnicity, color, national origin, age, religion, disability, marital status, sex/gender, genetic information, sexual orientation, gender identity, pregnancy, veteran status and any other factor protected under applicable federal, state, and local civil rights laws, rules and regulations (collectively referred to as “Protected Status”).
- B. The college strives to be a community in which all members can learn and work in an atmosphere free from all forms of harassment, including sexual harassment, discrimination, intimidation and/or retaliation. This policy prohibits all forms of discrimination and harassment based on Protected Status. It expressly, therefore, also

College of Central Florida does not discriminate against any person on the basis of race, color, ethnicity, religion, gender, pregnancy, age, marital status, national origin, genetic information, sexual orientation, gender identity, veteran status or disability status in its programs, activities and employment. For inquiries regarding nondiscrimination policies contact Dr. Mary Ann Begley, Director of Diversity and Inclusion – Title IX Coordinator, Ocala Campus, Building 3, Room 117H, 3001 S.W. College Road, 352-291-4410, or [Equity@cf.edu](mailto:Equity@cf.edu).

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prohibits sexual assault and sexual exploitation, which by definition involve conduct of a sexual nature and are prohibited forms of sexual or gender-based harassment. This policy further prohibits stalking, dating violence, and domestic violence, which need not be based on an individual’s protected status. Finally, this policy prohibits complicity for knowingly assisting in an act that violates this policy and retaliation against an individual because of his or her good faith participation in the reporting, investigation, and/or adjudication of violations of this policy. These behaviors are collectively referred to in this policy as prohibited conduct.

- C. All members of the college community are responsible for conducting themselves in accordance with this policy and other college policies and procedures. College students and employees who violate this policy may face discipline up to and including expulsion or termination.
  
- D. College community members should be aware that every employee is responsible for making the college aware of any concerns or complaints of discrimination, harassment and/or related misconduct. The section on Mandated Reporting details employee responsibilities and duties. The College has designated that The Director of Diversity and Inclusion serves as the Title IX Coordinator and is the individual responsible for receiving any information that may indicate discrimination, harassment and/or related misconduct.
  
- E. The College has an obligation to make reasonable efforts to investigate and address known or suspected instances of prohibited conduct. To foster a climate that encourages prevention and reporting of prohibited conduct, the College will actively promote prevention efforts, educate the college community, respond to all reports promptly, provide supportive protective measures to address safety and emotional well-being, and act in a manner that recognizes the inherent dignity of the individuals involved.
  
- F. The College, as an educational community, will promptly and equitably respond to reports of sexual assault, interpersonal violence, and stalking in order to eliminate the harassment, prevent its recurrence, and address its effects on any individual or the community. The college recognizes that sexual assault, dating violence, domestic violence, and stalking encompass a broad spectrum of conduct and will respond according to both the severity of the offense and the threat it poses to the campus community.

## **II. SCOPE AND APPLICABILITY OF POLICY**

### **A. Individuals Covered**

- 1. This policy and associated procedures apply to the conduct and protect college

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students, employees, interns, volunteers, and visitors. The non-discrimination provisions also apply to contractors and other third parties under circumstances within the college's control. However, this policy does not apply to complaints concerning performance appraisals, grades, or complaints that are not based on protected status.

2. When used in this policy, Complainant refers to any individual who may have been the subject of any prohibited conduct by an individual or organization covered under the policy, regardless of whether the Complainant makes a report or seeks action under the policy. Respondent refers to any individual who has been alleged to have violated the policy.

## B. Jurisdiction

1. This Policy applies to all prohibited conduct that occurs on campus (including the Ocala Campus, Citrus Campus, Levy Campus, Vintage Farm Campus, Hampton Campus, Appleton Museum, and any other property owned or leased by the college) and off-campus at college-sponsored events and activities. It also applies to online or electronic conduct, if the conduct occurs in the context of an employment or education program or activity of the College, has continuing adverse effects on campus, or has continuing adverse effects in an off-campus employment or education program or activity.
2. This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to the College's educational program. The College may extend jurisdiction when the Title IX Coordinator determines that the conduct affects a substantial College interest.
3. Regardless of when, where, and with whom the conduct occurred, the college will offer reasonably available resources and assistance to individuals covered by this policy who report or experience prohibited conduct. In cases of sexual assault, dating violence, domestic violence, and stalking, if the Respondent is not a member of the college community, the College will also assist the Complainant in identifying and contacting external law enforcement agencies and community resources.
4. All vendors serving the College through third party contracts are subject to the policies and procedures of their employers (or if applicable, to this Policy and accompanying procedure to which their employer has agreed to be bound by their contracts).
5. The Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences discrimination in an internship, study abroad

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program, or other environment external to the College where sexual harassment or nondiscrimination policies and procedure of the facilitating or host organization may give recourse to the Complainant.

### C. 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 the College’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, the Recipient will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

### D. Online Harassment and Misconduct

The policies of the College are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the College’s education program and activities or use College networks, technology, or equipment.

While the College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the College community.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the College’s control (e.g., not on College networks, College’s Canvas Learning Platform, websites, or between College email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be

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subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the College only when such speech is made in an employee's official or work-related capacity.

### III. PROHIBITED CONDUCT

This policy prohibits all forms of discrimination and harassment based on an individual's protected status, including, race, color, national origin, ethnicity, age, religion, disability, marital status, sex/gender, genetic information, sexual orientation, gender identity, pregnancy, veteran status and any other factor protected under applicable federal, state, and local civil rights laws, rules and regulations. Additionally, this policy prohibits sexual assault, sexual exploitation, dating violence, domestic violence, stalking, complicity, and retaliation.

Prohibited conduct that constitutes discrimination and harassment based on protected status:

1. May be blatant and involve an overt action, threat, or reprisal; or may be subtle and indirect, with a coercive aspect that is unstated but implied.
2. May or may not include intent to harm.
3. May not always be directed at a specific individual.
4. May be committed by anyone, regardless of Protected Status, position, or authority.
5. May be committed by a stranger, an acquaintance, or someone with whom the Reporting Party has a current or previous relationship, including a romantic or sexual relationship.
6. May be committed by or against an individual or by or against an organization or group.
7. May occur in the classroom, in the workplace, or in any other setting.
8. May be a pattern of behavior or, if sufficiently severe, a one-time event.
9. May be committed in the presence of others, when the Complainant and Respondent are alone, or through remote communications, including email, text messages, or social media.
10. May take the form of threats, assault, property damage, economic abuse, and violence or threats of violence.
11. May include harassing or retaliatory behavior directed to a sexual or romantic partner, family member or friend of the Complainant.

### IV. DEFINITIONS

**Age:** The number of years from the date of a person's birth. With respect to employment, individuals who are forty (40) years of age or older are protected from Discrimination and Harassment. There is no age threshold for students or other participants in educational programs or activities.

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**Complainant:** 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):** 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 the College investigate the allegation.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Color:** An individual’s skin pigmentation, complexion, shade, or tone.

**Complicity:** Any act that knowingly aids, facilitates, promotes, or encourages the commission of Prohibited Conduct by another person.

**Consent:** Consent is the communication of an affirmative, conscious, and freely made decision by each participant to engage in agreed upon forms of sexual contact. Consent requires an outward demonstration, through understandable words or actions, which conveys a clear willingness to engage in sexual contact.

Consent cannot to be inferred from silence, passivity, or a lack of resistance, and relying on non-verbal communication alone may result in a violation of this Policy. For example, a person who does not physically resist or verbally refuse sexual contact may not necessarily be giving Consent. There is no requirement that an individual verbally or physically resist unwelcome sexual contact for there to be a violation of this Policy.

Consent cannot to be inferred from an existing or previous dating or sexual relationship. Even in the context of a relationship, there must be mutual Consent to engage in sexual contact for each occasion and each form of sexual contact.

Consent to one form of sexual contact does not constitute Consent to any other form of sexual contact, nor does Consent to sexual contact with one person constitute Consent to sexual contact with any other person.

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Additionally, Consent to sexual contact on one occasion is not Consent to engage in sexual contact on another occasion.

Consent cannot be obtained by coercion, intimidation, threats or force, implied or expressed.

Consent cannot be obtained by taking advantage of a person’s mental or physical incapacitation or impairment where the person cannot understand the fact, nature, or extent of the sexual situation.

A person who has given Consent to engage in sexual contact may withdraw Consent at any time. However, withdrawal of Consent requires an outward demonstration, through understandable words or actions that clearly conveys that a party is no longer willing to engage in sexual contact. Once Consent is withdrawn, the sexual contact must cease immediately.

Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.

Note that generally in Florida, consent cannot legally be given by a minor under the age of 18, with certain specified statutory exceptions. Where a student who meets the legal age of consent, there will be a strong presumption that sexual activity between an adult employee and student is unwelcome and nonconsensual.

**Dating Violence:**

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

**Disability:**

A physical or mental impairment that substantially limits one or more major life activities; or a record of such impairment; or regarding an individual as having such impairment. A qualified person with a disability must be able to perform the essential functions of the employment, internship, or volunteer position or the academic or extracurricular

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program, with or without reasonable accommodation.

**Discrimination:** Conduct that is based upon an individual’s race, ethnicity, national origin, color, religion, age, disability, sex, pregnancy status, gender identity, sexual orientation, marital status, genetic information, veteran’s status and any other factor protected under federal, state, and local civil rights laws, rules and regulations and that is sufficiently serious, persistent, or pervasive enough so as to unreasonably interfered with or limit:

- An employee’s or applicant for employment’s access to employment or conditions and benefits of employment;
- A student’s or admission applicant’s ability to participate in, access, or benefit from educational programs, services, or activities;
- An authorized volunteer’s ability to participate in a volunteer activity; or
- A guest’s or visitor’s ability to participate in, access, or benefit from the College’s programs.

Discrimination includes failing to provide reasonable accommodations, consistent with state and federal laws, to a qualified person with a disability.

**Domestic Violence:** Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Florida, or by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of Florida.

**Education Program or Activity:** Locations, events, or circumstances where the 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 the College.

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what



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you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Gender-Based Harassment:

Sexual harassment also includes harassment based on gender, sexual orientation, gender identity, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex/gender or sex/gender-stereotyping, even if the acts do not involve conduct of a sexual nature. Also included is harassment for exhibiting what is perceived as a stereotypical characteristic for one’s sex or for failing to conform to stereotypical notions of masculinity and femininity, regardless of the actual or perceived sex, gender, or sexual orientation of the individuals involved.

Gender Expression/Gender Identity:

An individual’s socially-constructed status based on the behavioral, cultural, or psychological traits typically associated with societal attribution of masculinity and femininity, typically related to one’s assigned sex at birth. This includes gender expression, which is how someone expresses his or her gender through appearance, behavior, or mannerisms, and gender identity, which is the gender with which an individual identifies psychologically, regardless of what gender he or she was assigned at birth. A person’s gender expression may not be the same as his or her gender identity.

Genetic Information:

Information about (i) an individual’s genetic tests, (ii) the genetic tests of family members of such individual, and (iii) the manifestation of a disease or disorder in family members of such individual. Genetic Information includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services by such individual or any family member of such individual.

Grievance Process

The Discrimination, Harassment and Related Misconduct Grievance Process for Employees and Students is the method of resolution designated by the College to address conduct that falls within the Policy and complies with the requirements of 34 CFR Part 106.45.

Harassment:

A type of discrimination that occurs when verbal, physical, electronic, or

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other conduct based on an individual's Protected Status interferes with that individual's educational environment, work environment; participation in a College program or activity; or receipt of legitimately-requested services (e.g., disability or religious accommodations) and creates hostile environment harassment or quid pro quo harassment.

**Hostile Environment Harassment:**

Unwelcome conduct based on protected status that is so severe, persistent, or pervasive that it alters the conditions of education, employment, or participation in a college program or activity, thereby creating an environment that a reasonable person in similar circumstances and with similar identities would find hostile, intimidating, or abusive under both a subjective and objective assessment. An isolated incident, unless sufficiently severe, does not amount to hostile environment harassment.

In determining whether hostile environment harassment has been created by an employee towards a student, the following factors may be considered:

- The identity and relationships of people involved;
- The number of individuals involved;
- The type, frequency, and duration of the conduct;
- The location (where and when) of the conduct and the context in which it occurred;
- The degree to which the conduct affected one or more student's education;
- The type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally;
- The degree of influence the employee has over the particular student involved, including in circumstances in which the harassment took place;
- The age and educational level of the student involved;
- As applicable, whether, in light of student's age and educational level and the way the school is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student even if the employee was not; and
- Whether a reasonable person in the student's position would have found the conduct undesirable or offensive.

**Incapacitation:**

Sleep, unconsciousness, intermittent consciousness, or any other state where an individual is unaware or unable to give make a rational, reasonable decision to consent or appreciate the consequences of his or her consent to sexual contact.

Incapacitation may also exist because of alcohol or other drugs, and/or

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mental or developmental disability that impair the ability to consent to sexual contact. In respect to alcohol, evidence of incapacity can come from context clues such as the following:

- A witness or the accused may know how much the other party has consumed;
- Slurred speech;
- Bloodshot eyes;
- The smell of alcohol on the breath;
- Shaky equilibrium;
- Vomiting;
- Outrageous or unusual behavior; and/or
- Unconsciousness

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

**Mandated Reporter:** An employee of the College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.

**National Origin/Ethnicity:** An individual’s actual or perceived country or ethnicity of origin.

**Notice:** 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:** An employee of the College explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the College.

**Protected Status:** Consistent with federal, state, and local laws, the college prohibits discrimination and harassment based on race, ethnicity, color, national origin, age, religion, disability, marital status, gender, genetic information, sexual orientation, gender identity, veteran’s status and any other factor protected under applicable federal, state, and local civil rights laws, rules, and regulations.

**Quid Pro Quo** Unwelcome conduct based on Protected Status where submission to or

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**Harassment:** rejection of such conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual’s education, employment, or participation in a College program or activity.

**Race:** An individual’s actual or perceived racial or ethnic ancestry or physical characteristics associated with a person’s race, such as a person’s color, hair, facial features, height, and weight.

**Religion:** All aspects of religious observance and practice, as well as belief. A well-formed and thought-out set of beliefs held by more than one individual, which may not necessarily involve belief in a supreme being. The College will accommodate an individual’s observances and practices required by his or her creed, unless it is unable to reasonably accommodate an individual’s creed-required observance or practice without undue hardship.

**Respondent:** An individual who is alleged to have violated the College Policy on Discrimination, Harassment, and Related Misconduct and who is named in a report alleging violation.

**Retaliation:** Acts or words taken against an individual because of the individual’s participation in a protected activity that would discourage a reasonable person from engaging in protected activity. Protected activity includes an individual’s: (i) good faith participation in the reporting, investigation, or resolution of an alleged violation of this Policy; (ii) opposition to policies, practices, or actions that the individual reasonably believes are in violation of the Policy; or (iii) requests for accommodations on the basis of religion or disability. Retaliation may include intimidation, threats, coercion, or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith is not substantiated. Retaliation may be committed by the Respondent, the Complainant, or any other individual or group of individuals.

**Romantic Relationships:** Romantic Relationships that might be appropriate in other circumstances are prohibited when they occur between a member of the college and a person for whom that individual has a professional responsibility (for example, an Instructor and a student in their class or an employee and a direct supervisor). Such relationships likely result in an appearance of unfair advantage and abuse of power accruing from the relationship.

**Sex/Gender:** An individual’s biological status of male or female, including pregnancy. Conduct of a sexual nature is by definition based on sex as a Protected

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Status.

Sexual Assault: Sexual assault involves having or attempting to have sexual contact with another individual without consent. Sexual assault includes:

- a) Sex Offenses, Forcible: Any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
- b) Forcible Rape: 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 Complainant.
- c) Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- d) Sexual Assault with an Object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- e) Forcible Fondling: The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- f) Sex Offenses, Non-forcible:
  - i) Incest: Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Florida law.
  - ii) Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 18.

Sexual assault includes, without limitation, sexual battery as defined in

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Section 794, Florida Statutes.

Sexual Exploitation: Taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment and it outside of Title IX under this policy. Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy.
- Taking pictures, video, or audio recording of another in a sexual act, or in any other
- sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent), including the making or posting of revenge pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections
- Forcing a person to take an action against that person’s will by threatening to show, post, or share information, video, audio, or an image that depicts the person’s nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Creation, possession, or dissemination or child pornography

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**Sexual Harassment:** Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as conduct on the basis of sex that satisfies one or more of the following:

- 1) Quid Pro Quo:
  - a. an employee of the College,
  - b. conditions the provision of an aid, benefit, or service of the recipient,
  - c. on an individual’s participation in unwelcome sexual conduct; and/or
  
- 2) Sexual Harassment:
  - a. unwelcome conduct,
  - b. determined by a reasonable person,
  - c. to be so severe, and
  - d. pervasive, and,
  - e. objectively offensive,
  - f. that it effectively denies a person equal access to the College’s education program or activity.

**Sexual Orientation:** The inclination or capacity to develop intimate emotional, spiritual, physical, and/or sexual relationships with those of the same or different sex or gender, or irrespective of sex or gender.

**Stalking:** Engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to fear for the person’s safety, or the safety of others; or suffer substantial emotional distress.

For the purposes of this definition, the following applies:

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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 Complainant.
- 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:** Actions taken by the college to ensure equal access to its education programs and activities and to foster a more stable and safe environment

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during the process of reporting, investigation, and/or resolution.

**Transgender:** An umbrella term for individuals whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth.

**Unwelcome Conduct:** Conduct is unwelcome if an individual did not request or invite the conduct and regarded the conduct as undesirable or offensive. Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.

Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

In cases involving a student who meets the legal age of consent in his or her state, there will still be a strong presumption that sexual activity between an adult employee and a student is unwelcome and nonconsensual. Subject to the strong presumption that sexual conduct between an adult employee and a student, the following factors are considered in determining welcomeness:

- The nature of the conduct and relationship of the school employee to the student, including the degree of influence (which could, at least in part, be affected by the student’s age), authority, or control the employee has over the student; and
- Whether the student was legally or practically unable to consent to the sexual conduct.

## **V. NOTICE—COMPLAINTS OF DISCRIMINATION, HARASSMENT, AND OR/RETALIATION**

Notice or complaints of discrimination, harassment, and/or retaliation may be made by filing a complaint or giving verbal notice to the Title IX Coordinator. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator.

### **1. Supportive Measures**

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



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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 the College’s education program or activity, including measures designed to protect the safety of all parties or the College’s educational environment, and/or deter harassment, discrimination, and/or 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 College will inform the Complainant, in writing, that they may file a formal complaint with the College 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 taken into account with respect to the supportive measures that are planned and implemented.

The College will maintain the privacy of the supportive measures, provided that privacy does not impair the College’s ability to provide the supportive measures. College will act to ensure as minimal an academic impact on the parties as possible. The College 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
- Referral to the Student Assistance Program
- Referral to community-based service providers
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, 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.

## 2. Emergency Removal

The 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

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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 Threat Assistance Team using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student or employee will be given notice of the action and the option to request to meet with the Title IX Coordinator 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 in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. 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 appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator 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 Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

The 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: temporarily re-assignment an employee, restricting a student's or employee's 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.

### 3. Promptness

All allegations are acted upon promptly by the 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 the College will avoid all undue delays within its control.

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Any time the general timeframes for resolution outlined in College procedures will be delayed, the College 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.

#### 4. Privacy

Every effort is made by the College to preserve the privacy of reports. The College 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.

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

Only a small group of officials who need to know will typically be told about the complaint. Information will be shared as necessary with Investigators, 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 College 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.

#### 5. Confidentiality

Confidentiality exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The College has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see Section V, paragraph 1. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking

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purposes as required by the federal Clery Act. Other information may be shared as required by law.

## VI. MANDATED REPORTING

All College employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to the Title IX Coordinator 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 the College for a Complainant or third-party (including parents/guardians when appropriate):

### 1. 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 and staff
- Counselors with the Employee Assistance Program
- Counselors with the Student Assistance Program
- Off-campus (non-employees):
  - Licensed professional counselors and other medical providers
  - 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, an elder or an individual with a disability, or when required to disclose by law or court order.

College employees who are confidential will timely submit anonymous statistical information for

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Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

## 2. Anonymous Notice to Mandated Reporters

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandated Reporter maintain the Complainant’s anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information].

Anonymous notice will be investigated by the College to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits the Recipient’s ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant’s personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on Florida state law reporting requirement.

## 3. Mandated Reporters and Formal Notice/Complaints

All employees of the College (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

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 Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the College.

Supportive measures may be offered as the result of such disclosures without formal College

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action.

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 College policy and can be subject to disciplinary action for failure to comply.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though the College is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

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

## **VII. 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 the College 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 the College 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. Recipients 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 the College’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 this policy.

When the College 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 Policy irrespective of their level of participation. Typically, when the Complainant

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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 the College’s ability to remedy and respond to notice may be limited if the Complainant does not want the College 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 the College’s obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the College to honor that request, the College will offer informal resolution options (see below), 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 College, and to have the incidents investigated and properly resolved through these procedures.

### **VIII. FEDERAL TIMELY WARNING OBLIGATIONS**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, 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.

The 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.

### **IX. FALSE ALLEGATIONS AND EVIDENCE**

Deliberately false and/or malicious accusations under this policy, 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 College policy.

### **X. AMNESTY FOR COMPLAINANTS AND WITNESSES**

The College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to College 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.

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Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the College community that Complainants choose to report misconduct to College 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, College 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.

**Students:** Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual misconduct to the Campus Police).

The College maintains a policy of amnesty for students who offer help to others in need. [While policy violations cannot be overlooked, the College may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

**Employees:** Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to College officials.

The College may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

## **XI. RETALIATION**

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

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



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It is prohibited for the College or any member of College’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 this policy and procedure.

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.

## **XII. CONFIDENTIALITY/PUBLIC RECORDS**

All information regarding discrimination, harassment, retaliation, and sexual misconduct will remain confidential to the extent possible to provide for an effective investigation, and as allowed by law.

Written records developed through the use of this internal complaint process are confidential in accordance with state law until a final determination is made.