

Sexual Misconduct Grievance Policy and Procedures

Title IX Policy and Grievance Procedures

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A. Notice of Non-Discrimination; Complaints Concerning Discrimination, Hostile Environment, and/or Sexual Harassment under Title IX.

Harassment & Sexual Misconduct Policy

FIDM/Fashion Institute of Design & Merchandising is committed to providing a safe learning working environment for students and employees that is free of all forms of discrimination, harassment, exploitation, or intimidation. Sexual misconduct is a form of discrimination. All members of the college community should be aware that the college strongly opposes harassment and sexual misconduct and such behavior is prohibited by federal and state law and college policy. This policy applies to all FIDM community members, including students, faculty, administrators, staff, and third parties conducting business or having any official capacity with the college or on college property. FIDM is prepared to take prompt action to prevent and correct such behavior of individuals who engage in sexual harassment, as well as any other unlawful harassment based on factors such as race, ethnicity, religion, national origin, sexual orientation, gender identity, disability, or age. Violation of this harassment and sexual misconduct policy will not be tolerated and corrective action up to and including disqualification or termination may be taken.

We encourage all students to report these incidents. FIDM is committed to protecting the privacy of all individuals involved in a report of sexual harassment, sexual misconduct, and sexual violence. Throughout the process of investigation of a report of harassment and sexual misconduct, every effort will be made to protect the privacy interests of all individuals, and respect and safeguard private information, to the extent possible consistent with the legal obligations of FIDM to investigate and respond effectively. Retaliation against a person who properly reports, complains about, or participates in the investigation of such harassment is strictly prohibited.

Reports of sexual misconduct and inquiries concerning FIDM's policy may be directed to the Title IX Coordinator Katherine Slauta at 619-235-2049 x1830.

Inquiries and complaints regarding the application of Title IX and other laws, regulations and policies prohibiting discrimination may be directed to the Title IX Coordinator, 919 S. Grand Ave., Los Angeles, CA 90015, 213-624-1200 x3405/FAX 213-624-7695. Complaints may also be filed directed with the Department of Education Office for Civil Rights – San Francisco Office, 50 Beale Street, Suite 7200, San Francisco, CA 94105-1813, 415-486-5555/FAX 415-486-5570; TDD: 800-877-8339, Email: ocr.sanfrancisco@ed.gov.

B. Policies, Processes and Procedures

Title IX Policy and Grievance Procedures

Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681(a), a federal law which prohibits discrimination on the basis of sex in education programs or activities, and includes addressing sexual harassment, sexual violence and other gender-based harassment occurring in an institution of education.

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

Title IX’s sex discrimination extends to claims based on gender identity or nonconformity with stereotypical notions of masculinity or femininity. The U.S. Department of Education’s Office for Civil Rights (OCR) is the primary authority for investigating alleged violations of Title IX in educational institutions.

When sexual harassment or sexual violence has occurred and is brought to the attention of the Title IX Coordinator/Human Resources, FIDM will take steps to end the harassment or violence, prevent its reoccurrence, and address its effects. A Title IX civil investigation is a fact-finding proceeding and decision-making process the college uses to determine: (1) whether or not the conduct occurred; and (2) if the conduct occurred, what actions the college will take to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, which may include imposing sanctions on the alleged perpetrator and providing remedies for the complainant and broader student population.

1. Jurisdiction

FIDM’s Harassment & Sexual Misconduct policy applies to all FIDM community members, students, faculty, administrators, staff, and third parties conducting business or having any official capacity with the college or on college property. FIDM has jurisdiction over Title IX related complaints regarding conduct that occurred on campus, during or at an official FIDM program or activity (regardless of location), or off campus when the conduct creates a hostile environment on campus.

FIDM is prepared to take prompt action to prevent and correct such behavior of individuals who engage in sexual harassment, as well as any other unlawful harassment based on factors such as race, ethnicity, religion, national origin, sexual orientation, gender identity, disability, or age.

Title IX Policy and Grievance Procedures apply to complaints of sexual harassment, including sexual assault and sexual violence, carried out by employees, faculty, students, and third parties.

FIDM will investigate all complaints alleging violation of college policy regardless of where the alleged conduct occurs. If it is determined that sex-based discrimination or misconduct has occurred, appropriate discipline will be imposed and steps taken to address and stop the misconduct, as well as remedy its effects. FIDM will cooperate with any criminal investigation, separate from the college's (civil) investigation.

FIDM's Title IX Coordinator is responsible for coordinating the college's efforts to comply with and carry out its Title IX responsibilities, oversees the college's response to all reports of Title IX violations, and assess campus climate to identify and address any pattern or systemic problems.

The Title IX Coordinator oversees student-on-student Title IX complaints, as well as student complaints against contractors, third parties, and/or visitors. The Title IX Coordinator collaborates with the Human Resource department on Title IX complaints involving student-faculty/employee complaints. Human Resource conducts faculty and employee Title IX complaints against other faculty, employees, contractors, third parties, and/or visitors, and regularly updates the Title IX Coordinator to ensure compliance with Title IX regulations.

Title IX Coordinator
Katherine Slauta
350 Tenth Ave. 3rd Floor
San Diego, CA 92101 619-
235-2049 x1830
kslauta@fidm.edu

Human Resource Manager
Julie Ann Otteson
919 S. Grand Ave.
Los Angeles, CA 90015 213-624-
1200 x3530
jotteson@fidm.edu

2. Definitions

Complainant: Within the college's processes the Complainant is the party making the allegations.

Respondent: Within the college's processes the Respondent is the person who the allegations have been made against.

Proceeding: Proceeding means all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, and formal or informal meetings.

Result: Result means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result must include any sanctions imposed by the institution. Notwithstanding 20 UXC 1232g (FERPA), the result must also include the rationale for the result and the sanctions.

Coercion: Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against his/her will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

Incapacitation: Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because he/she lacks conscious knowledge of the nature of the act, and/or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if he/she is asleep, unconscious, or otherwise unaware that sexual activity is occurring. Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known that the Complainant was incapacitated.

Affirmative Consent: FIDM policy defines affirmative consent as affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

Sexual Harassment: Sexual harassment is a form of discrimination that can undermine the foundation of trust and mutual respect that must prevail for the college to fulfill its educational mission. Two types are quid pro quo harassment, and harassment when conducted creates a hostile environment.

Quid Pro Quo: Quid pro quo sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly, a term or condition of an individual's employment or educational benefits or services, or submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting the individual.

Hostile environment: Hostile environment sexual harassment is defined as intimidating, threatening, or offensive verbal or physical conduct of sexual nature, including incidents of sexual assault, or violence, which is unwelcome and is sufficiently severe or pervasive to interfere with an employee's work environment or a student's education.

Sexual harassment is not limited to conduct motivated by sexual attraction. It may occur between members of the opposite sex or members of the same sex, regardless of their sexual orientation. It also includes offensive non-sexual conduct directed at an individual because of his or her gender. Examples:

Verbal harassment - Sexual requests, jokes, innuendoes, comments, or sexual remarks about clothing, body or sexual activities.

Physical harassment - Attempted or actual kissing, fondling, or other inappropriate touching or feeling.

Visual harassment - Drawings, written/email messages, or comments of suggestive nature.

Sexual Violence: Sexual violence is an extreme form of hostile environment/sexual harassment. The scope of these offences includes those that are forced and/or against a person's will, rape, sexual assault, sexual battery and sexual coercion.

Sexual Assault: Sexual assault is defined as any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental incapacity; because of his/her youth; or physical incapacity. Sexual assault includes, but is not limited to rape, forcible sodomy, penetration with a foreign object, sexual battery or the threat of sexual assault.

Sex Offenses* may be categorized as:

Forcible: Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. For the use of force to be demonstrated, there is no requirement that a Complainant resists the sexual advance or request. However, resistance by the Complainant or when the Complainant is incapable of giving consent will be viewed as a clear demonstration of non-consent.

Rape (Except Statutory Rape): Rape is defined as the carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the

person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

Sodomy: Sodomy is oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault With An Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Fondling: Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Non-forcible: Non-forcible is defined as unlawful, non-forcible sexual intercourse.

Incest: Incest is non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Statutory Rape is non-forcible sexual intercourse with a person who is under the statutory age of consent.

Stalking*: A course of physical or verbal conduct directed at another individual that could be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. A course of conduct consists of at least two acts. The feared harm or injury may be physical, emotional, or psychological, or related to the personal safety, property, education, or employment of that individual. Stalking includes cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Retaliation: Retaliation is acts or attempts to retaliate or seek retribution. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence, reprisal and/or an adverse action related to employment or education. Retaliation may be committed by

or against an individual or a group, and that a Complainant, Respondent or third party may commit or be the subject of retaliation. Retaliation against a person who properly reports or participates in the investigation of violations is strictly prohibited. Retaliation may result in additional sanctions or legal action, or both.

Intimate Partner Violence (IPV)^{♦*}: Intimate partner violence, often referenced as Domestic Violence and/or Dating Violence, describes physical violence, sexual violence, stalking and psychological aggression (including coercive acts) by a current or former intimate partner. An intimate partner is a person with whom one has a close personal relationship that can be characterized by the following: emotional connectedness; regular contact; ongoing physical contact and sexual behavior; identity as a couple and/or; familiarity and knowledge about each other's lives.

The relationship need not involve all of these dimensions. Examples of intimate partners include current or former spouses, boyfriends or girlfriends, dating partners, or sexual partners. IPV can occur between heterosexual or same-sex couples and does not require sexual intimacy.

IPV can vary in frequency and severity. It occurs on a continuum, ranging from one episode that might or might not have lasting impact to chronic and severe episodes over a period of years.

The college will not tolerate IPV of any form. For the purposes of this policy, the college does not define IPV as a distinct form of misconduct. Rather, the college recognizes that sexual harassment, sexual assault, stalking, and retaliation all may be forms of IPV when committed by a person who is or has been involved in a sexual, dating or other social relationship of a romantic or intimate nature with the Complainant.

[♦]Intimate Partner Violence: Definitions (Centers for Disease Control and Prevention)
<http://www.cdc.gov/violenceprevention/intimatepartnerviolence/definitions.html>

*The college will record and report all crimes in categories identified in the Clery Act and the Campus SaVE Act.

3. Reporting/Filing Complaints

If the college knows or reasonably should know of possible sex-based discrimination or sex-based misconduct, a thorough and impartial investigation will be promptly conducted to determine if there has been a violation of FIDM's Harassment & Sexual Misconduct policy. All FIDM employees have a duty to report (unless they fall under the "Confidential Reporting" section below) awareness of sexual misconduct. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy

Coordinators. Generally, climate surveys, classroom writing assignments, or events (such as Take Back the Night) do not provide notice that must be reported by employees. Remedial actions may result without formal university action.

A complaint can be made in person or verbally to the appropriate FIDM official.[†] In addition to and/or in lieu of a verbal report, a grievance form is provided at the end of this document and may be submitted to the Title IX Coordinator via email, mail, or in person.

[†] This can be a single individual or a group of people, such as a conduct board or appellate board, as deemed suitable.

Anonymous reports can be made by victims and/or third parties using the same form and directed to FIDM Personal Counselors or Title IX Coordinator. Anonymous reports may still prompt a need for the college to investigate.

FIDM policy does not limit the timeframe for reporting an incident.

Title IX Coordinator
Katherine Slauta
350 Tenth Ave. 3rd Floor San
Diego, CA 92101 619-235-
2049 x1830
kslauta@fidm.edu

Personal Counseling

Los Angeles:

Jessica Cattani, M.A.
213-624-1200 x4556
jcattani@fidm.edu
LA campus, room #A203b

Shannon DiLauro, M.ED.
213-624-1200 x4574 sdilauro@fidm.edu
LA campus, room #208C

Orange County:

Boontarika Sripom,
949-851-6200 x1799 bsripom@fidm.edu
OC campus, room #149

San Diego:

Kacey Wehr, M.S., LMFT
619-235-2049 x1831 kwehr@fidm.edu
SD campus, room #3145

San Francisco:

Shannel Busuioc, MFT
415-675-5200 x1529 sbusuioc@fidm.edu
SF campus, room #514

Reporting Options: Confidentiality vs. Privacy

A Complainant's request for confidentiality will be respected to the extent possible consistent with the college's legal obligation to investigate and respond. The college's ability to respond may be limited in the event of such a request (including pursuing discipline against the Respondent). In cases indicating pattern, predation, threat, weapons and/or violence, FIDM will unlikely be able to honor a request for complete confidentiality. In cases where the victim requests confidentiality and the circumstances allow the college to honor that request, FIDM will offer interim supports and remedies to the Complainant and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect to have reports taken seriously by FIDM when formally reported, and for the prompt, equitable, reliable, and impartial investigation of complaints.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy.

Confidentiality: Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These campus and community professionals include mental health providers, ordained clergy, rape crisis counselors and attorneys, all of whom have legally protected confidentiality. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others. Disclosures to these resources will not trigger a college investigation into an incident against the victim's wishes.

Privacy: Privacy generally means that information related to a report of misconduct will only be shared with a limited circle of individuals. The use of this information is limited to those college officials who “need to know” in order to assist in the active review, investigation or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

Confidential Reporting

An individual who would like the details of an incident to be kept confidential, the reporting party may speak with FIDM on-campus Personal Counseling staff. FIDM Personal Counselors provide mental-health counseling to members of the college community are not required to report any information about an incident to the Title IX Coordinator without a victim’s permission. This confidentiality is maintained except in extreme cases of immediate threat or danger to the reporting party, the college and general community, or abuse of a minor. FIDM Personal Counselors are categorized as “voluntary reporters” and are able to maintain Complainants’ confidentiality. To perform their duty to accomplish and satisfy mandated reporting for Clery Act and Title IX regulations without starting the domino effect of actual or constructive notice without the consent of the alleged victim, Personal Counselors withhold personally identifiable information from all reports made to the college and other necessary resources.

Off-campus confidential reporting options are available through local rape crisis counselors, victim advocacy centers, domestic violence resources, local or state agencies, and emergency care facilities. Information about these and other resources may be obtained from the Personal Counseling department, the Title IX Coordinator, and online on the student and faculty/employee portal, and at fidm.com.

Private Reporting

FIDM encourages victims of sexual violence to talk to somebody about what happened – with the intention to get the victim the support they need, and allow the college to fulfill its obligation to take immediate and appropriate steps to investigate or otherwise determine what occurred. All FIDM employees are enabled to receive a report of discrimination and/or sexual misconduct. FIDM deems all faculty and staff as “Responsible Employees”. These resources may talk to a victim in confidence, and generally only report to the college that an incident occurred without revealing any personally identifying information.

Responsible Employee

FIDM designates all its employees, inclusive of student employees, Resident Assistants and Security, as Responsible Employees under Title IX regulations. A Responsible Employee is an individual who a student reasonably believes has the duty to report and/or the authority to address and rectify incidents of sexual misconduct. A Responsible Employee is required to report knowledge of sexual misconduct immediately, or within 24 hours, to the college's Title IX Coordinator or the Personal Counseling department. A Responsible Employee may make a request of their immediate supervisor for assistance in contacting the Title IX Coordinator or Personal Counseling department. No information will be divulged to their immediate supervisor. Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of college policy and can be subject to disciplinary action.

Clery Act and Campus Security Authorities

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) requires colleges to keep and disclose information about crime on and near their respective campuses. A Campus Security Authority (CSA) is an individual or organization specified in the institution's security policy to which students and employees may report criminal offenses (e.g. Security personnel). CSA's are employees of an institution who has significant responsibility for student activities (e.g. Student Activity staff, FIDM Housing Department staff - inclusive of Resident Assistants (RA's), and official FIDM student organization members). CSA's are obligated to report Clery Act qualifying crimes that are reported to them which occurred on Clery reportable locations to the appropriate college authorities. CSA's are able to receive reports of sexual misconduct and maintain the Complainant's rights of privacy. CSA's are not able to maintain the Complainant's complete confidentiality.

False Reports

The college will not condone intentional false reporting of incidents. The college takes the accuracy of information very seriously as a charge of sexual harassment, sexual violence; stalking or intimate partner violence may have severe consequences. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation of sexual misconduct. However, when a Complainant or third party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Complainant may be subject to disciplinary action. It is a violation of the Student Conduct Code to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

Reports Involving Minors or Suspected Child Abuse

Under California law, an individual must make a mandatory report of suspected child abuse and neglect, including sexual assault when that individual, in his/her professional capacity or within the scope of his/her employment, has knowledge of or observes a minor under the age of 18 whom the individual knows or reasonably suspects has been the victim of child abuse or neglect.

All college employees, whether designated as a mandatory reporter under federal or California state law or not, are required to immediately report any suspected child abuse and neglect to the Title IX Coordinator, FIDM Personal Counselors, and/or Security Director. The source of abuse does not need to be known in order to file a report.

The college will report all suspected child abuse and neglect, including sexual assault, to law enforcement and/or to Los Angeles County Department of Child and Family Services. The college must act quickly regarding all reasonable suspicions of sexual or physical abuse. It is not the responsibility of any employee, student, or volunteer to investigate suspected child abuse. This is the role of Child Protective Services and law enforcement authorities.

FERPA

Compliance with these provisions does not constitute a violation of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA). FIDM may disclose the outcome of any student conduct proceedings to the person filing the complaint without prior written consent when the disclosure is to a victim of an alleged perpetrator of a crime of violence including physical sexual misconduct. Furthermore, FERPA permits the college to notify the student filing the complaint of any sanctions assigned to another student that may affect him or her.

4. Grievance Policy, Process & Procedure

The Title IX Coordinator (TIXC) has primary responsibility for investigating reports of discrimination, harassment and sexual misconduct. The TIXC is situated to appropriately respond to, and investigate suspected discrimination or harassment, and identify and remedy systemic problems. The TIXC is also the gatekeeper for determining when complaints merit formal investigation.

When the TIXC becomes aware of a specific incident or course of conduct that may constitute a violation of the college's Non-Discrimination, Harassment & Sexual Misconduct policy, through a direct complaint or otherwise, the TIXC will immediately begin an investigation upon request of the Complainant, or evaluate the complaint to determine if a formal investigation is necessary to protect the parties or the broader college community, and what policy violations should be alleged as part of the complaint. If deemed necessary by the TIXC, interim remedial measures

(Appendix A) such as no contact orders, and other means necessary to avoid contact between the Complainant and the Respondent may be taken prior to completion of the investigation. The TIXC will work with the appropriate departments to implement interim measures as necessary. Officials involved in these proceedings are appropriately trained on the handling of complaints of sexual harassment, FIDM's Harassment & Sexual Misconduct Policy, Title IX and grievance policy and procedures, and applicable confidentiality requirements.

Equitable Rights, Responsibilities and Opportunities

A Complainant and Respondent are provided equitable rights and opportunities throughout all proceedings – e.g. have others present in meetings; receive timely notice meetings at which one or the other or both may be present; simultaneous notifications of results. Proceedings are completed in a reasonable and prompt timeframe wherein both parties, and appropriate officials, have timely access to information that will be used during informal and formal disciplinary meetings. Written notification of results, rationale, and available appeal procedures are delivered simultaneously.

Coordination with Law Enforcement

FIDM encourages Complainants to pursue criminal action for incidents of sexual harassment, sexual violence and intimate partner violence that may also be crimes under California law. The college will assist a Complainant in making a criminal report and cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law.

The college's policy, definitions and burden of proof may differ from California criminal law. A Complainant may seek recourse under this policy and/or pursue criminal action. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this policy has occurred.

Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. If a criminal complaint is filed with a local law enforcement agency, FIDM will comply with law enforcement agency requests for cooperation and that such cooperation may require the college to temporarily suspend the fact-finding aspect of a Title IX investigation while the law enforcement agency gathers evidence. FIDM will promptly resume its Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process.

Amnesty for Alcohol or Other Drug Use

The college community encourages the reporting of prohibited conduct under this policy. Individuals who participate as a Complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to student conduct sanctions for a violation of the college's Alcohol & Substance-Free Environment policy at or near the time of the incident, unless the college determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty (SB-967 E.D.C. § 67386(b)(10)). FIDM may, however, initiate an educational discussion or pursue other educational remedies.

Conflict of Interest or Allegation of Bias

The grievance process cannot be equitable unless it is impartial. Therefore, any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed. All FIDM officials involved in the investigation, findings determination, and appeals should not have other job responsibilities that may create a conflict of interest.

If the assigned investigator has a conflict of interest with either of the parties or the subject matter of the case, the investigator may recuse himself/herself, or the party alleging a conflict of interest may request that a different investigator be assigned to the case.

The Complainant or Respondent may petition for an alternative investigator based on a conflict of interest by providing notice in writing to the TIXC as soon as practicable upon discovery of the potential conflict. The request should detail the nature of the conflict of interest and why the requesting party believes that the assigned investigator cannot conduct a fair and impartial investigation. The decision of whether or not to assign an alternative investigator rests with the TIXC or appropriate FIDM official. A written response to the request will be provided within three (3) business days upon receipt of the request. FIDM reserves the right to obtain an independent outside investigator if the situation presented or the parties involved would create an inherent conflict of interest.

a) Investigation of Complaint Process

The Complainant will be referred to the Personal Counseling Department for available resources such as victim advocacy, housing assistance, academic support, counseling, disability services, and health and mental health support and services.

Investigations, including the implementation of disciplinary action(s) for employees or students, are generally completed within sixty (60) calendar days from the time the TIXC receives sufficient information regarding the complaint to begin an investigation.

The college will inform both parties at regular intervals of the status of its investigation.

Generally, information gathering should be completed within thirty (30) calendar days of notice of a complaint. Review of any physical documentation of the incident, including but not limited to, screenshots, audio and visual recordings, text message logs, emails, phone logs, social media postings, etc. is completed during this time. Informational interviews with Complainant, Respondent, and relevant witnesses, will occur to the extent they are willing to be interviewed.

Once information gathering is complete, the investigator will prepare an information summary, which generally includes findings of fact and an analysis under relevant university policies. It is within the discretion of the investigator and TIXC to determine if further information gathering is warranted and/or if the information summary should be modified based on the feedback of Complainant and Respondent.

At the conclusion of the Title IX assessment, the Title IX team will determine the appropriate manner of resolution and, if appropriate, refer the report for further investigation, informal resolution or formal resolution. The determination as to how to proceed will be communicated to the Complainant in writing.

If the investigator determines that no formal investigation is required, the investigator will provide the reasons for this determination in writing. For example, in some cases there is not enough information available to make a baseline determination that a violation of the Non-Discrimination, Harassment & Sexual Misconduct policy applies (i.e. it may be unclear that the alleged harassment was on the basis of sex, gender expression or identity, or sexual orientation). In other instances, the issue reported can be resolved informally or through other processes without an investigation. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution. A Respondent will be notified when the college seeks action that would impact a Respondent, such as protective measures that restrict his/her movement on campus, the initiation of an investigation or the decision to involve the Respondent in informal resolution.

In a determination of a formal investigation, the investigator will conduct the investigation in a manner appropriate to the circumstances of the case. An investigation is designed to provide an unbiased and reliable gathering of the facts. The investigation will be thorough, impartial and equitable; all individuals will be treated with appropriate sensitivity and respect, and conducted in a manner that is respectful of individual privacy concerns.

All Title IX complaints involving sexual violence may not be mediated.

An investigation typically includes interviews with the Complainant, the Respondent and any witnesses. The interviews will be supplemented by the gathering of any physical, documentary

or other evidence. As part of the investigation, the college will provide an opportunity for the parties to present witnesses and other evidence.

When an investigation is complete, the investigator will prepare a full investigation report (“report”). The report will include an overview of the complaint, a review of all relevant information gathered (including the information summary), Respondent’s and Complainant’s written response(s) to the information summary (if any), and a finding regarding violation of any relevant university policies. If the finding indicates a violation of college policy, the investigator may also include recommended employment and/or disciplinary action(s).

This report and recommendations are reviewed and evaluated by the TIXC and other appropriate FIDM officials review and approval of the report and authorize issuance of findings and any recommended disciplinary or employment action(s). A notice of findings - whether a violation of college policy occurred or not - will be sent simultaneously to both Complainant and Respondent. This notice includes actions to be taken to resolve the complaint.

Each party is allowed to appeal the investigation findings and/or sanctions as provided by Non-Academic Appeals and/or Human Resource guidelines. Failure to appeal within the specified time period will make the original decision final and conclusive. A submission for appeal does not predicate alterations to the findings and/or sanctions.

Although the college strives to complete all investigations, issue a report, and implement employee and/or student disciplinary actions within sixty (60) calendar days of receipt of notice, occasionally more time may be needed to complete an investigation and associated processes. If additional time is necessary, Complainant and Respondent will be notified in writing.

b) Grievance Procedure

Procedural requirements applicable to complaints of sexual violence under other federal laws may also apply, including the requirements of the Clery Act. The rights established under Title IX are interpreted consistent with any federally guaranteed due process rights.

A timely investigation process consists of at least the following components as applicable to the specific complaint to provide for a prompt, adequate, reliable, and impartial disciplinary proceeding:

1. Complaint or Notice
 - a. The college is presumed notified if a responsible employee knew, or in the exercise of reasonable care, should have known about the sexual harassment or violence.

- b. Actual or constructive notice or complaint may be made in-person, verbally or in written format by the victim, witness, or third-party. Notice may also be indirect from sources such as social media outlets, videos, or other forms of media.
 - c. Anonymous reports may be submitted to FIDM Personal Counselors, or to the Title IX Coordinator using the Sexual Misconduct and Discrimination Report (Appendix D).
2. Preliminary Investigation (initial strategy)
- a. Perform initial inquiry to determine if a comprehensive investigation is desired or necessary.
 - b. Determine if there is reasonable cause to charge the accused individual, and what policy violations should be alleged as part of the complaint.
 - c. Investigate all complaints to determine: the extent of the harassment; the acuity of the threat it represents to students; and what might be necessary to put an end to it.
 - d. Identify, provide and implement interim remedial measures (at no cost) to the Complainant.
 - e. In a manner appropriate to the circumstances of the case, investigation typically include interviews with the Complainant, the Respondent and any witnesses. The interviews will be supplemented by the gathering of any physical, documentary or other evidence. As part of the investigation, the College will provide an opportunity for the parties to present witnesses and other evidence.
 - f. Maintain requisite documentation that a comprehensive civil rights investigation and is completed and kept for record keeping and investigative files.
 - g. *Responding to Anonymous Reports* - Determine if a trend or pattern may be apparent, and if so attempt some form of remedial response.
3. Case Review
- a. Determine if there is substantiating evidence to believe that policy has been violated.
 - b. If that threshold is reached, coordinate for a formal investigation, and prepare for issuance of notification of charge(s).
 - c. If investigation cannot produce sufficient evidence of policy violation, the case will be closed, no formal investigation conducted and no formal charge will be issued.
4. Charge
- a. Prepare and deliver a notice of investigation and notice of charges to both Complainant and Respondent.
 - b. The charge letter will address specific allegations of violation(s) to the Non-discrimination and/or Harassment & Sexual Misconduct policy. Comprehensive and sufficient details are included as basis for allegations.
5. Formal Comprehensive Investigation

- a. Commence a thorough, reliable, equitable, and impartial investigation.
 - b. Any interim measures in effect will continue, and may be modified during an investigation.
 - c. Determine the strategy for the investigation.
 1. Intended timeframe to complete the investigation
 2. Witness interviews
 3. Evidence gathering
 4. Review and analyze information and evidence gathered
 - d. A full investigation report is completed which includes at minimum a statement of the allegations and issues, the positions of the parties, a summary of the evidence, findings of fact, and a determination by the investigator as to whether it is more likely than not (“preponderance of the evidence”) that the misconduct occurred.
 - e. The report also may contain a recommendation by the investigator for actions to resolve the complaint, including educational programs, remedies for the Complainant, appropriate discipline for the Respondent, and referral to disciplinary procedures as appropriate.
6. Findings
- a. Based on a review and evaluation of the full investigation report, a determination is made that a policy violation did or did not occur based on the preponderance of the evidence.
 - b. The results of the findings cite the reasons for this conclusion in a written report. This notice may also include actions to be taken to resolve the complaint. The notice of findings will be sent simultaneously to both the Complainant and the Respondent.
 - c. The Respondent is allowed to respond and indicate acceptance of the findings, acceptance of the findings in part and reject them in part, or may reject all findings.
7. Implementation of Remedies/Sanctions
- a. Sanctions imposed are implemented immediately.
 - b. Sanctions will remain in effect during any appeal.
 - c. Any modifications to sanctions will be applied upon issuance of the final decision.
8. Appeals
- a. Both Complainant and Respondent may request an (1) appeal of the decision and sanctions rendered.
 - b. The request for an appeal follows the Non-Academic Appeal process as set forth in the Student Conduct Code or Human Resource guidelines* as applicable.
 - c. Each party will be notified if an appeal request is made, as well as the outcome of an appeal.

- d. If the request for appeal is not based on the list of acceptable grounds for appeal, the request will be denied.
- e. Failure to appeal within the specified time period will make the original decision final and conclusive.

5. Rights and Responsibilities

An investigation is a balanced and equitable process that provides the same opportunities to both parties throughout the investigation. The Complainant and Respondent are entitled to the same level of support at all aspects of the investigation process, findings, implementation of sanctions, and appeals. Both the Complainant and Respondent are entitled to, and have the responsibility for the following*:

- a. Both parties will be informed of their rights and responsibilities that apply during the investigation process.
- b. Both parties have the right to end the informal grievance process and begin the formal process at any time.
- c. Both parties have the opportunity to provide a statement regarding the incident, a list of witnesses, and any other relevant information. Third-party expert testimony is not permitted.
- d. Each party is accommodated a designated FIDM official to assist in disseminating information including, but not limited to, policies, procedures, and rights to promote a thorough and unbiased investigation and disciplinary proceeding.
- e. Both parties are afforded similar and timely access to any information utilized in the investigative process.
- f. The Complainant and the Respondent are allowed one (1) representative/advisor of their choice, at their own expense. These procedures are entirely administrative in nature and are not considered legal proceedings. An attorney may not serve in this role. This representative/advisor may accompany the Complainant/Respondent to any related meetings or proceedings. The representative may not speak or otherwise actively participate in meetings or proceedings, though they may communicate with the Complainant or Respondent as necessary, as long as it does not disrupt the proceedings. At the discretion of the investigator(s), if the representative/advisor is disruptive he/she will be removed from any and/or all meetings or proceedings.
- g. Neither party is restricted from discussing and sharing information relating to their complaint with others that may support them or assist them in presenting their case.
- h. Evidence of the Complainant's past relationships with anyone other than the Respondent is disallowed.
- i. Direct questioning and cross-examination of the Respondent and Complainant by each other is not permitted.
- j. Either party may request to not be in the same room at the same time.

- k. The Complainant is not required to be present at any disciplinary process as a prerequisite to proceed.
- l. Both parties will be informed at regular intervals of the status of its investigation.
- m. Both parties are provided fair and equitable rights to appeal/review the initial investigation/determination regarding the complaint, the investigative findings, and/or the sanctions/remedies.
- n. Both parties have equal opportunities to participate in any further process.
- o. Notice in writing of the findings and any appeal process will be sent simultaneously to both parties.
- p. Each party is permitted one (1) appeal to the findings and/or sanctions. If no appeal is submitted within the accorded timeframe the findings will be determined as final.
- q. All parties will be informed of any changes that occur prior to the time that the results become final, and when such results become final.

**This list is intended to be thorough and comprehensive, not exhaustive.*

Retaliation

An individual reporting sexual harassment or misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven. It is a violation of college policy to retaliate in any way against an individual as a result of that person's filing a complaint, or for participating in the investigation of a complaint.

Any person found to have retaliated against another for making a complaint under Title IX, being a witness in a Title IX investigation, or being otherwise involved in the complaint and/or investigative process, will be subject to discipline up to and including disqualification or termination.

Acts of suspected retaliation should be reported immediately to the Title IX Coordinator.

6. Recommendations and Application of Sanctions and Remedies

Upon finding(s) of sexual misconduct, recommendations for sanctions and remedies ensue. The intent for sanctions and remedies is not to "undo" an act of sexual misconduct, rather an attempt to include some restoration of harm caused. Conduct codes and related procedures apply to behaviors exhibited by students; while policies under Human Resources govern the behaviors of employees. Regardless of whether the behavior was exhibited by a student, employee, or community member, the college has an obligation under Title IX to protect a harassed/affected student's access to an education. Sexual misconduct, hostile work environment, and sexual violence must be addressed, even if the individual(s) who caused it cannot be identified. Sanctions may be issued individually, or a combination of sanctions may be imposed. Sanctions

are determined on a case-by-case basis; however reasonable steps will be taken to foster consistency for similar violations and circumstances.

Imposition of sanctions alone is not an adequate remedy to address sexual harassment and sexual violence on campus. In addition to implementation of sanctions, an evaluation and review of college policies and campus-wide climate is made. Adjustments to response processes, increased monitoring, supervision or security at locations where sexual misconduct is reported to occur, and increased education and prevention efforts to targeted populations shall be considered. These considerations in addition to sanctions and remedies allow the college's interim and long-term intent to stop the sexual misconduct and prevent its recurrence.

If processed through the student conduct system:

Recommendations for disciplinary sanctions (Appendix B) are processed by the Dean of Education. The appropriate FIDM official will meet with the Complainant and Respondent separately to review the recommended sanction(s). Each party is allowed an (1) appeal to the findings and/or sanction through the Non-Academic Appeals process and guidelines. If an appeal is submitted, the Dean of Education or the appropriate FIDM official(s) will review relevant documentation, including the report, and Complainant's and Respondent's statements, if any. If an appeal does not meet the qualifying grounds for appeal, and/or not submitted within the time allotted, the findings and sanctions become final. If modified or alternative disciplinary actions are imposed, a letter including final findings and/or sanctions and thoroughly documented specific reasons for the adjustments shall be delivered to the Respondent (and Complainant as appropriate pursuant to FERPA and/or other relevant laws). A copy will be distributed to the TIXC.

If processed by Human Resources:

Once the report is finalized, written notice, including information regarding employment action, if any, shall be delivered to the Respondent (and Complainant as appropriate pursuant to FERPA and relevant employment privacy laws). This letter may be sent via email and will include information on appeals; to the extent appeals are available.

In cases where employee disciplinary action is recommended, Human Resources will begin the due process procedure, pursuant to college policy.

To the extent allowed by applicable employee privacy laws and college policies, the Complainant will be notified of any change in outcome resulting from an appeal.

Depending on the individual circumstances, the seriousness of the offense and the employment record of the employee involved, any or all of the sanctions may be utilized. For certain acts of misconduct, an employee may be immediately discharged. Furthermore, exceptions or

deviations from the normal procedure may occur whenever FIDM deems it appropriate. Corrective action includes:

1. Verbal and/or written counseling
2. Written notice – First and Final
3. Suspension
4. Termination of employment

7. Finality of Process

This procedure is intended to apply to alleged discrimination or harassment in violation of Title IX. All other misconduct or grievances by students against students or employees against students will be addressed through the student academic/misconduct procedures or non-academic/non-misconduct grievance procedures.

The findings and associated employment or student disciplinary actions based on this process, including all associated appeals and statutory rights outlined in college policies and this document, are final and will not be further addressed through the student conduct process, departmental administration, or human resource processes. Information obtained in these proceedings may be shared with local law enforcement, external governing bodies (e.g. the U.S. Department of Education Office of Civil Right) with a properly issued subpoena.

Appendix A

Interim Remedial Remedies

- Access to counseling services and assistance in setting up initial appointment, both on and off campus.
- Campus No Contact Order
- Rescheduling of exams and assignments (in conjunction with appropriate faculty)
- Providing alternative course completion options (with the agreement of the appropriate faculty)
- Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty or transfer sections (with the agreement of the appropriate faculty)
- Change in housing - arranging to dissolve a housing contract; assistance from the Housing staff in completing housing relocation
- Limit an individual access to certain college facilities or activities pending resolution of the matter
- Voluntary leave of absence
- Providing an escort to ensure safe movement between classes and activities
- Providing academic support services, such as tutoring
- Interim suspension or college-imposed leave
- Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

Appendix B

Sanctions and Remedies

Appropriate sanctions in response to a Respondent found responsible for a violation of this policy may include, but are not limited to, those set forth below.

The Complainant and Respondent will each have the opportunity to present a written statement about impact and/or requested sanctions. Statements will be reviewed only if the Respondent has been found responsible for one or more violation.

In general:

- Any student who is determined to have committed sexual assault may receive a sanction ranging from suspension to disqualification.
- Any student who is determined to have committed non-consensual sexual contact or any other prohibited form of conduct may receive a sanction ranging from conduct warning to disqualification.

Deviation from the recommended sanctions may be applicable, based upon a full consideration of the following factors: (1) the Respondent's prior discipline history; (2) how the college has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the Complainant; (5) the impact of the conduct on the community, its members, or its property; (6) whether the Respondent has accepted responsibility for his/her actions; (7) whether the Respondent is reasonably likely to engage in the conduct in the future; (8) the need to deter similar conduct by others; and (9) any other mitigating or aggravating circumstances.

Restorative justice outcomes may also be considered when taking into account the safety of the community as a whole. These outcomes allow a Respondent to learn about the origins of his/her behavior, his/her responsibility for this behavior, and how s/he can change this behavior.

In appropriate cases, it may be determined that the conduct was motivated by bias, insofar as a Complainant was selected on the basis of his or her race, color, ethnicity, national origin, religion, age, disability or other protected class. If the student misconduct is deemed motivated by bias, it may be elected to increase the sanction imposed as a result of this motivation.

Sanctions that may be imposed under this policy include:

Written Warning: Notice, in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.

Censure/Disciplinary Probation: A written reprimand for violating the Student Conduct Code or other college policy. This conduct status specifies a period of time during which the student's good standing with the college may be in jeopardy. Exclusion from participation in privileged activities for a specified period of time (privileged activities may include, but are not limited to, participation/membership in student organizations, some student employment, and educational travel opportunities). Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other college policy violations may result in further disciplinary action.

The student is officially warned in writing that violation of these terms or any other college policy may be cause for additional conduct action including suspension and up to disqualification.

Restitution: Repayment to the college or to an affected party for damages resulting from a violation of this policy. To enforce this sanction, FIDM reserves the right to withhold its transcripts and degrees or to deny a student participation in graduation ceremonies and privileged events.

Removal from College Housing: Students may be removed from college housing and/or barred from applying for college housing due to disciplinary violations.

Suspension: Exclusion from college premises, attending classes, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Conditions for readmission may be specified in the suspension notice.

Dismissal: Termination of student status and exclusion from all FIDM premises, activities, privileges, and Alumni services. Conditions for consideration for re-admittance may be specified in the dismissal notice. This action will be permanently recorded on the student's academic transcript.

Disqualification: Permanent termination of student status and exclusion from all FIDM premises, activities, privileges, and Alumni services. This action will be permanently recorded on the student's academic transcript.

Other sanctions may be imposed instead of, or in addition to, those specified here. Service, education or research projects may also be assigned. More than one of the sanctions listed above may be imposed for any single violation.