

FLORIDA SOUTHWESTERN STATE COLLEGE

UNDERSTANDING AND REPORTING SEXUAL MISCONDUCT



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IMPORTANT INFORMATION

If you or someone you know may have been a victim of sexual assault or other sexual misconduct, you are strongly encouraged to seek immediate assistance.

ASSISTANCE CAN BE OBTAINED 24 HOURS A DAY, 7 DAYS A WEEK, FROM

Florida SouthWestern State College Department of Public Safety

Lee Campus Building D Room 101, 239-489-9203

Collier Campus Building A, Room 100, 239-732-3712

Charlotte Campus Building N, Room 105, 941-637-5608

Hendry Glades Building B, Room 102, 863-674-6017 (business hours only)

During business hours (8:30 a.m. to 4:30 p.m., Monday through Friday), you are strongly encouraged to contact Jana Sabo, College's Title IX Coordinator/Equity Officer by telephone at 239-489-9051, by email at equity@fsw.edu, or in person in Building G, Room 219B. Please see this packet for additional information about seeking medical assistance and emotional support, as well as important contact information, including crisis hotlines, advocacy groups, local law enforcement agencies and hospitals

Equal Opportunity Statement: Florida SouthWestern State College is committed to providing an educational and working environment free from discrimination and harassment.

All programs, activities, employment and facilities of Florida SouthWestern State College are available to all on a non-discriminatory basis, without regard to race, sex, age, color, religion, national origin, ethnicity, disability, sexual orientation, marital status, genetic information or veteran's status. The College is an equal access/equal opportunity institution. Questions pertaining to educational equity, equal access, or equal opportunity should be addressed to Jana Sabo, Title IX Coordinator/Equity Coordinator, 8099 College Parkway, Fort Myers, FL 33919, (239) 489-9051.

Suggested Actions for Victims of Sexual Assault

For sexual activity to be all right, it must be consensual. Being a victim of sexual assault is not your fault. Nothing in what you say, the way you look, where you are or who you are with gives anyone else the right to hurt you. It does not matter if you are dating or have ever been intimate with the person; it does not give that person the right to force you to participate in sexual acts. Even if you have had sexual activity of any sort with this person in the past, consent is still needed. If you are the victim of a sexual assault, the College's first priority is to help you take steps to address your safety, medical needs and emotional well-being. You are encouraged to take the following actions, as applicable, regardless of whether you have made a decision about whether to pursue criminal or College disciplinary charges.

1. Ensure Your Physical Safety. Go to a safe place such as a Resident Assistant's room, a friend's room or any office open on campus. You may seek help from local law enforcement agencies or by contacting the College Public Safety Department. Public safety personnel are on duty at the College Public Safety Department 24 hours a day, seven days a week. Contact information is provided in Exhibit B. Try to avoid being alone, especially with your attacker and be alert to your surroundings.

2. Seek Medical Assistance and Treatment. Even if you do not want to report the assault to the police, Public Safety or the College, it is crucial that you obtain medical attention as soon as possible after a sexual assault to make sure you are all right. The medical exam in addition to treating injuries can determine the possibilities of pregnancy, whether or not you have been drugged, and offer treatment to prevent or treat sexually transmitted diseases. You do not need to make a formal report or press charges to receive medical care.

If you choose to have an evidence collection kit (or "rape kit") completed, it is important to do so within 72 hours. Even if you have not decided to file charges, it is advisable to have the evidence collection kit completed so that you can preserve the options of obtaining a protective order and /or filing criminal charges at a later date. For a list of local healthcare facilities see the Resources in Exhibit B.

In order to best preserve evidence for an evidence collection kit, it is advisable to avoid showering, bathing, going to the bathroom or brushing your teeth before the kit is completed. You should also wear to the facility the same clothing that you were wearing during the assault or take with you in a paper – not plastic bag. An evidence collection kit can still be completed even if you have showered or bathed.

3. Obtain Emotional Support. The FSW Office of Counseling or national/local victim services can help victims sort through their feelings and begin the recovery process. The professionals are trained to provide crisis intervention on short-term and emergency issues and can provide referral services for outside providers and law enforcement. Counseling from the College Office of Counseling is free of charge to all students. In some instances, the law may require the disclosure of certain information shared by students with counselors. However, absent a legal mandate to the contrary, counseling services are strictly confidential, are not part of students' College records, and will not be reported to other College personnel. You may ask people if they are mandated reporters and then decide what you want to do. Exhibit B contains contact information for several local and national hotlines as well as the contact information for the FSW Office of Counseling.

4. Other Support. Make sure that you have a safe place to stay. If you do not wish to seek emotional support from a hotline or counseling center, think about talking to a family member, a friend or another person whom you trust. See if someone can go with you to get medical treatment.

5. Obtain Information / Report Misconduct. You are encouraged to report incidents of sexual misconduct to the College's Title IX Coordinator, other designated College individuals or offices as outlined in the Sexual Misconduct Guide (even if you have filed a report directly with law enforcement). College personnel can help you access resources and can provide you with support and information, including information on the College's procedures for investigating and addressing instances of sexual misconduct.

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Questions about this guide should be directed to
 Jana Sabo, Title IX Coordinator/Equity Officer,
 Building G-219B, 239-489-9051 or equity@fsw.edu.

ARTICLE I

INTRODUCTION

Notice of Non-discrimination. Florida SouthWestern State College (hereinafter FSW or College) is committed to maintaining an educational and work environment in which no member of the College community is excluded from participation in, denied the benefits of, or subjected to discrimination or harassment in any College program or activity on the basis of race, sex, age, color, religion, national origin, ethnicity, disability, sexual orientation, marital status, gender identity, genetic information or veteran status. Gender-based and sexual harassment, including sexual violence, are forms of sex discrimination which, in the educational environment, may deny or limit an individual's ability to participate in or benefit from College programs or activities.

As a recipient of federal funds, Florida SouthWestern State College is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX"), which prohibit discrimination on the basis of sex in educational programs or activities, admission and employment. Under certain circumstances, sexual misconduct (as defined below) constitutes sexual discrimination prohibited by Title IX.

Inquiries concerning the application of Title IX may be referred to the College's Title IX Coordinator or to the U.S. Department of Education's Office for Civil Rights. The College's Title IX Coordinator is Jana Sabo, whose office is in Room 219B in Building G on the Lee Campus. She can be reached by telephone at 239-489-9051 or by email at equity@fsw.edu.

Overview. The College is committed to providing programs, activities, and an educational environment free from sex discrimination. The College is committed to fostering a community that promotes prompt reporting of all types of sexual misconduct and timely and fair resolution of sexual misconduct complaints. In furtherance of that commitment, this guide sets forth available resources and establishes procedures for responding to complaints of sexual misconduct.

Jurisdiction. These procedures apply to College students and employees and volunteers. It applies to any allegation of sexual misconduct made by or against a student or an employee of the College or a third party, regardless of where the alleged sexual misconduct occurred, if the conduct giving rise to the complaint is related to the College's academic, educational, athletic, or extracurricular programs or activities. The College's investigatory and disciplinary authority may not extend to third parties who are not or no longer students or employees of the College. Although there is no geographical or time limitation to making a complaint, sexual misconduct that is alleged to have occurred at a significant distance from the College and/or outside of College property may be more difficult for the College to investigate.

In the case of allegations of sexual misconduct, the procedures in this guide supersede all other College procedures and policies (except Board-adopted policies) set forth in other College documents.

Timing. A complaint of sexual misconduct may be filed at any time, regardless of the length of time between the alleged sexual misconduct and the decision to file the complaint. The College strongly encourages individuals to file complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding. A delay in filing a complaint may compromise the subsequent investigation.

Definitions. The definitions applicable to this guide are set forth in Exhibit A.

ARTICLE II

STATEMENTS OF POLICY

Prohibition on Sexual Misconduct. This guide is designed to protect the rights and needs of alleged victims, complainants (if not the alleged victim), and respondents. Creating a safe environment is the responsibility of all members of the College community.

The College strongly encourages prompt reporting of all types of sexual misconduct and is committed to fostering a community that promotes timely and fair resolution of sexual misconduct cases. To that end, the College has defined sexual misconduct to include any unwelcome conduct of a sexual nature. Only conduct that rises to the level of “Material Sexual Misconduct” as defined in Exhibit A, and involves allegations against a student respondents will trigger the formal process outlined in Article V. Allegations involving an employee respondent will be administered in accordance with College Operating Procedures through the Human Resources Department.

Prohibition on Retaliation. Retaliation against any person for filing, supporting, or providing information in good faith in connection with a complaint of sexual misconduct is strictly prohibited. Violations of this prohibition will be addressed through this guide and/or other College disciplinary procedures, as deemed appropriate in the College’s discretion. Any person who feels that he or she has been subjected to retaliation should make a report to the Title IX Coordinator. If the concern about retaliation involves the Title IX Coordinator, an individual may contact the chief student affairs officer at 239-433-6950.

Prohibition on Providing False Information. Any individual who knowingly files a false complaint under this guide, who knowingly provides false information to College officials, or who intentionally misleads College officials involved in the investigation or resolution of a complaint may be subject to disciplinary action.

Reporting and Confidentiality Options. The College encourages victims of sexual violence to seek help to get the support they need. This guide is intended to make students and employees aware of the various reporting and confidential disclosure options available to them. The College encourages victims to talk to someone identified in one or more of these groups.

Amnesty from Student Discipline for the Reporting Party. Assisting students who are reporting sexual misconduct is the College’s primary interest. In order to facilitate reporting, the Dean of Students may choose not to charge students who report sexual misconduct and any material witnesses with student Code of Conduct violations for behavior that would be considered violations (for example consuming alcohol or consuming illegal drugs). The College may choose, however, to recommend educational or therapeutic remedies for those individuals.

Reporting Options

Privileged and Confidential Communications –Professional and Pastoral Counselors. Professional, licensed counselors and pastoral counselors who provide mental-health counseling to members of the college community (and including those who act in that role under the supervision of a licensed counselor) are not required to report any information about an incident to the Title IX Coordinator without a victim’s permission.

FREE CONFIDENTIAL COUNSELING ON CAMPUS

Lee Campus: Q-103; (239) 489-9046
Charlotte Campus: J-115; (941) 833-5329
Collier Campus: J-211; (239) 732-3414
Hendry/Glades Center: (239) 732-3414

**Appointments are required (except for emergencies) and can be made by calling each campus.
After hours or weekends call 239-218-7116.**

Reporting to “Responsible Employees.” A “responsible employee” is a College employee who has the authority to redress sexual misconduct, or who has the duty to report incidents of sexual misconduct or other student misconduct, or who a student could reasonably believe has this authority or duty.

When a victim tells a responsible employee about an incident of sexual misconduct, the victim has the right to expect the College to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

A responsible employee must report to the Title IX Coordinator all relevant details about the alleged sexual misconduct shared by the victim. The College will need to determine what happened – including the names of the victim and alleged perpetrator(s) if known, any witnesses, and any other relevant facts, including the date, time and location.

To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the College’s response to the report. A responsible employee should not share information with law enforcement without the victim’s consent or unless the victim has also reported the incident to law enforcement or unless otherwise required by the law. Clery requires certain information to be provided to campus public safety.

The following employees (or categories of employees as listed on the current organizational chart and college salary schedule) are the College's "responsible employees":

- **All Executives**
- **All Administrators**
- **Title IX Coordinator/Equity Officer**
- **All Human Resources Staff** – excluding Student Assistants.
- **All Athletic Staff** - excluding Student Assistants.
- **All Academic Advisors, TRIO Advisors/Counselors, Campus Life, New Student Programs and Adaptive Services Staff**
- **All Residence Life Staff**
- **All Public Safety Staff**
- **All International Education Staff** – excluding adjuncts, Faculty and support staff (non-exempt level).

Before a victim reveals any information to a "responsible employee", the employee should ensure that the victim understands the employee's reporting obligations – and, if the victim wants to maintain confidentiality, direct the victim to confidential resources.

If the victim wants to tell the "responsible employee" what happened, but also maintain confidentiality, the employee should tell the victim that the College will consider the request, but cannot guarantee that the College will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the "responsible employee" will also inform the Coordinator of the victim's request for confidentiality.

"Responsible employees" will not pressure a victim to request confidentiality, but will honor and support the victim's wishes, including for the College to fully investigate an incident. By the same token, "responsible employees" will not pressure a victim to make a full report if the victim is not ready to do so.

All Other Employees and Students. All other employees may agree to safeguard an individual's privacy, but are **strongly encouraged** to share any information about such conduct with the Title IX Coordinator or a member of the Department of Public Safety, in recognition of the understanding that centralized reporting is an important tool to address, end and prevent prohibited conduct.

Similarly, **all students** (who are not otherwise required to report as a Responsible Employee) are **strongly encouraged** to report any information, including reports or partial reports, to the Title IX Coordinator or a member of the Department of Public Safety.

Reporting to Public Safety. College employees in the Department of Public Safety are obligated to enforce Florida criminal law and may be required to undertake criminal investigations if a report of criminal misconduct is made to them. The College is also subject to state law and mandatory reporting requirements such as those contained in Section 39.201 Florida Statutes pertaining to child abuse, abandonment or neglect; Section 415.1034 Florida Statutes pertaining to abuse neglect or exploitation of vulnerable adults; Section 1012.799 Florida Statutes pertaining to student on student sexual offense; and Section 794.027 on the duty to report sexual battery.

Anonymous Reporting. Complainants may also complete a Sexual Assault and Misconduct Report Form anonymously online or send it to Jana Sabo, Title IX Coordinator/Equity Officer at Florida SouthWestern State College, 8099 College Parkway, Fort Myers, FL 33919.

Public Awareness Events. Florida SouthWestern State College provides entry and ongoing programming to students and employees throughout the academic year. Such programming is intended to make the college community more aware of matters regarding not only sexual misconduct and its prevention but also the importance of bystander intervention. These and other public awareness forums, in which students disclose incidents of sexual violence, are not considered notice to the College of sexual violence for purposes of triggering its obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts, and the College will provide information about students' Title IX rights at these events.

Off-campus Counselors and Advocates. Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with the College unless the victim requests the disclosure and signs a consent or waiver form. A list is attached as Exhibit B.

NOTE: While these off-campus counselors and advocates may maintain a victim's confidentiality vis-à-vis the College, they may have reporting or other obligations under state law such as mandatory reporting under Section 39.201 Florida Statutes pertaining to child abuse, abandonment or neglect; Section 415.1034 Florida Statutes pertaining to abuse neglect or exploitation of vulnerable adults; Section 1012.799 Florida Statutes pertaining to student on student sexual offense; and Section 794.027 concerning the duty to report sexual battery.

Confidentiality Options

If a victim discloses an incident to a responsible employee, but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the College must weigh that request against the College's obligation to provide a safe, non-discriminatory environment for all students and employees (including the victim).

If the College honors the request for confidentiality, a victim must understand that the College's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited. There are times when the College may not be able to honor a victim's request in order to provide a safe, non-discriminatory environment for all students.

The College has designated Jana Sabo, the Title IX Coordinator/Equity Officer to evaluate requests for confidentiality once a responsible employee is on notice of alleged sexual violence.

When weighing a victim's request for confidentiality or that no investigation or discipline be pursued, a range of factors will be considered, including, but not limited to the following:

- The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence, such as:
 - Whether there have been other sexual violence complaints about the same alleged perpetrator
 - Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence
 - Whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others
 - Whether the sexual violence was committed by multiple perpetrators
- Whether the sexual violence was perpetrated with a weapon
- Whether the victim is a minor
- Whether the College possesses other means to obtain relevant evidence of the sexual violence (e.g., security cameras or personnel, physical evidence)
- Whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group

If the College determines that it cannot maintain a victim's confidentiality, the College will inform the victim prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the College's response.

If the College determines that it can respect a victim's request for confidentiality, the College will also take action as necessary to protect and assist the victim while maintaining confidentiality.

The College may not require a victim to participate in any investigation or disciplinary proceeding.

The College will remain ever mindful of the parties' well-being, and will take ongoing steps to protect the parties from retaliation or harm and work with the parties to create a safety plan. Retaliation against the parties, whether by students or College employees, will not be tolerated.

The College will also:

- Assist the victim in accessing other available resources, victim advocacy, academic support, counseling, disability, health or mental health services both on and off campus--See Exhibit B
- Provide other security and support to the parties, which could include issuing a no-contact order, helping arrange a change of living or working arrangements or course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests
- Inform the victim of the right to report a crime to campus or local law enforcement – and provide the victim with assistance if the victim wishes

ARTICLE III

HOW AND WHERE TO FILE A COMPLAINT ALLEGING SEXUAL MISCONDUCT

For information regarding seeking medical assistance and emotional support, as well as important contact information for local law enforcement agencies and hospitals, see support and contact information in Exhibit B.

Because sexual misconduct may in some instances constitute both a violation of College policy and criminal activity, and because College policy and procedure is not a substitute for instituting legal action, **the College encourages individuals to report alleged criminal sexual misconduct promptly to campus officials and law enforcement authorities, where appropriate.** Individuals may choose not to report alleged sexual misconduct to such campus officials and/or law enforcement authorities. The College respects and supports the individual's decision with respect to reporting; nevertheless, the College may notify appropriate law enforcement authorities if required or warranted by the nature of the allegations at issue. Individuals may file a complaint at any time, but the College strongly encourages individuals to file complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding.

Complaint Options

Filing a complaint with Local Law Enforcement. Individuals may file a complaint directly with local law enforcement agencies by dialing 911 or reporting to the law enforcement agencies listed in Exhibit B. Individuals may inform law enforcement authorities about sexual misconduct and discuss the matter with a law enforcement officer without making a formal criminal complaint (or a College complaint). Individuals who make a criminal complaint may also choose to pursue a College complaint simultaneously. A criminal investigation into the matter does not preclude the College from conducting its own investigation (nor is a criminal investigation determinative of whether material sexual misconduct, for purposes of this guide, has occurred). However, the College's investigation may be delayed temporarily while the criminal investigators are gathering evidence. In the event of such a delay, the College may take supportive measures when necessary to protect the parties and/or the College community (see available Supportive Measures section in the guide). Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate the matter is determinative of whether material sexual misconduct, for the purposes of this guide, has occurred. Individuals may contact the Title IX Coordinator, the chief student affairs officer or the chief human resources officer for assistance in filing a complaint with local law enforcement.

Filing a Complaint with College Administration. Individuals may choose not to report alleged sexual misconduct to campus officials. The College respects and supports the individual's decision with respect to reporting; **however, if information about sexual misconduct comes to the attention of the College, the College may (1) start an investigation even in the absence of a filed complaint and/or (2) notify appropriate law enforcement authorities if required or warranted by the nature of the information of which it becomes aware.**

Anyone wishing to make a complaint to the College Administration should contact one of the following individuals or offices:

- College's Title IX Coordinator/Equity Officer is Jana Sabo, 239-489-9051, equity@fsw.edu
- Office of the Vice President for Student Affairs and Enrollment Management , 239-433-6950, offices located in building I, room 216A
- Human Resources Office, 239-489-9293 and offices located in building N, room 120
- The College Department of Public Safety, 24 hours a day, seven days a week

Lee Campus: Building D Room 101, 239-489-9203

Collier Campus: Building A, Room 100, 239-732-3712

Charlotte Campus: Building N, Room 105, 941-637-5608

Hendry Glades: Building B, Room 102, 863-674-6017 (business hours only)

If any of the parties designated above is the respondent or is otherwise at issue in a complaint, or if an individual is uncomfortable making a complaint to one or more of the parties listed above, a report of alleged sexual misconduct may be made to any other party or office listed above.

If an employee of the College Department of Public Safety, the Office of Student Affairs and Enrollment Management, or the Human Resources Office receives a report of alleged Sexual Misconduct, that employee must notify the College's Title IX Coordinator. Individuals may also file anonymous reports by completing a form online at www.fsw.edu (will link this to the IX webpage) or completing a written Sexual Assault and Misconduct Report Form and sending it to Jana Sabo, Title IX Coordinator/Equity Officer, Florida SouthWestern State College, 8099 College Parkway, Fort Myers, FL 33191.

Individuals who choose to file anonymous reports are advised that it may be very difficult for the College to follow up or take action on anonymous reports, where corroborating information is limited. Anonymous reports may be used for Clery Act data collection purposes.

No member of the College community may discourage an individual from reporting alleged incidents of sexual misconduct. No employee is authorized to investigate or resolve complaints without the involvement of the College's Title IX Coordinator.

ARTICLE IV

PROCEDURES APPLICABLE TO ALL COMPLAINTS OF SEXUAL MISCONDUCT

Oversight. The Title IX Coordinator will be responsible for conducting and overseeing the prompt, fair, and impartial investigation and resolution of complaints filed with the College.

Conflicts. If any administrator designated by this guide to participate in the investigation or resolution of a complaint is the respondent in the case (including, but not limited to, the Title IX Coordinator), then the President will appoint another College administrator to perform such person's duties under this guide. (If the President is the respondent, then the Title IX Coordinator will appoint another College administrator to perform the duties under this guide.)

Timing. The College will make every reasonable effort to ensure that the investigation and resolution of a complaint occurs in as timely and efficient manner as possible. Once the decision has been made to investigate, the College's investigation and resolution of a complaint (not including an appeal) will generally be completed within 60 calendar days of the decision to investigate, absent extenuating circumstances. Hearings, if any, will take place after the conclusion of the investigation. The College may need to stop or delay the investigation during school breaks or between school years. Parallel criminal investigations may also necessitate a departure from investigation time frames. Both parties will be given periodic status updates throughout the process. If hearings have taken place, both the complainant and the respondent generally will receive a Final Outcome Letter within a reasonable time frames set by the Title IX Coordinator from the conclusion of the hearings.

Any party may request an extension of any deadline by providing the Title IX Coordinator with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request. The Title IX Coordinator may modify any deadlines contained in this guide as necessary and for good cause.

Counsel and Support Persons. At all related meetings or proceedings, both parties may be accompanied by legal counsel and no more than two support persons of their choice. Neither legal counsel nor support person(s) may participate in the meetings or proceedings and their role is limited to offering advice and support. A witness may not serve as a support person. Support persons may be asked to leave if they are disruptive to the process. Support person(s) must maintain confidentiality regarding any and all communications exchanged pursuant to this guide.

The College reserves the right to have the General Counsel participate at any portion of the proceedings-informal or formal.

Communication. The Title IX Coordinator will give the parties simultaneous and periodic updates on the status of the investigation, the outcome, the appeals procedure, any changes to the results that occur prior to final resolution, and the results when they become final.

Request Not to Pursue Complaint. A complainant (or alleged victim, if not the complainant) may determine after filing a complaint that he or she does not wish to pursue resolution of the complaint through the College. The College takes such requests seriously. However, such individuals are advised that such requests may limit the College's ability to take action in response to a complaint. Title IX requires the College to evaluate the request(s) that a complaint not be adjudicated in the context of the College's commitment to provide a reasonably safe and non-discriminatory environment. In order to make such an evaluation, the Title IX Coordinator may conduct a preliminary investigation into the alleged sexual misconduct and may weigh the request(s) against the following factors:

- The seriousness of the alleged sexual misconduct
- The complainant's and/or alleged victim's age
- Whether there have been other complaints of sexual misconduct against the respondent
- The respondent's right to receive information about the allegations if the information is maintained by the College as an "education record" under FERPA
- The applicability of any laws mandating disclosure

Even when the College is in receipt of a request not to pursue an investigation, Title IX requires the College to take reasonable action in response to the information known to it; therefore, the College may take such measures and impose such discipline as are deemed necessary by the Title IX Coordinator. The complaint may also be used as an anonymous report for data collection purposes under the Clery Act.

Complaints – A Step by Step Process

Complainant's Initial Meeting with the Title IX Coordinator. As soon as reasonably possible, the Title IX Coordinator will contact the complainant and/or victim to schedule an initial meeting. At the initial meeting the Title IX Coordinator will cover the following, as applicable:

- Provide the complainant a copy of this guide
- Provide the complainant with a Sexual Assault and Misconduct Report Form which the complainant may or may not choose to complete
- Explain avenues for formal resolution of the complaint, the steps involved in a sexual misconduct investigation, and discuss confidentiality standards and concerns with the complainant
- After discussion with the complainant, the Title IX Coordinator will determine whether the complainant wishes to pursue a resolution through the College or no resolution of any kind
- Refer the complainant to the Office of Counseling or other resources, as appropriate
- Discuss with the complainant, as appropriate, possible supportive measures that can be provided to the complainant during the investigative and resolution processes

Respondent's Initial Meeting with the Title IX Coordinator. If the alleged victim wishes to pursue a formal resolution through the College or if the College otherwise deems that a further investigation is warranted, the Title IX Coordinator will schedule an initial meeting with the respondent. During the initial meeting with the respondent, the Title IX Coordinator will, as applicable:

- Provide the respondent, in writing, sufficient information consistent with state and federal privacy laws and the complainant's and/or the alleged victim's request for confidentiality, to allow them to respond to the substance of the allegation—this may include the name of the complainant and the alleged victim (if different), the date, location and nature of the alleged sexual misconduct
- Provide the respondent a copy of this guide
- Explain the College's procedures for formal resolution of the complaint, the steps involved in a sexual misconduct investigation, and discuss confidentiality standards and concerns with the respondent
- Discuss non-retaliation requirements with the respondent
- Inform the respondent of any supportive measures already determined and being provided to the complainant and/or the alleged victim that directly affect the respondent (e.g., changing class schedule)
- Refer the respondent to the Office of Counseling or other resources, as appropriate
- Discuss with the respondent, as appropriate, possible supportive measures that can be provided to the respondent during the investigative and resolution processes.

Supportive Measures. Supportive measures are those services, accommodations, or other assistance that the College puts in place for complainant, survivor, and respondents after receiving notice of alleged sexual misconduct, but before any final outcomes – investigatory, disciplinary, or remedial – have been determined. The College may implement such measures if requested, appropriate, and reasonably available, whether a formal complaint has been filed or whether an investigation by either campus administrators or law enforcement agencies has commenced. The College wants students and employees to be safe, to receive appropriate medical attention, and to get the help they need to heal and to continue access their educational and workplace opportunities. Information concerning supportive measures will only be shared with people necessary for the implementation of such measures.

If at any point during the complaint, investigative or disciplinary processes, the Title IX Coordinator reasonably believes that a complainant, survivor or respondent who is a member of the College community poses a substantial threat of harm to any member of the campus community; threatens or endangers College property; or disrupts the stability and continuance of normal College operations and functions, the Title IX Coordinator may take actions such as requesting that the student or employee have restricted access to and/or movement on campus, employee be reassigned or placed on leave with or without pay, that a student be suspended from housing or classes, or any other measure that may be appropriate pending the outcome of the investigation. These actions may be appealed to the chief student affairs officer or the chief human resources officer whose decision regarding their imposition will be final.

Supportive measures may include, but are not limited to:

- Issuing no-contact orders to prevent any contact between the complainant, the survivor, the respondent, witnesses, and/or third parties
- Providing an escort to ensure that the student or employee can move safely between classes, work, and/or activities
- Changing on-campus housing, if any, to a different room assignment and providing assistance from College support staff in completing the relocation
- Temporary suspension or limitation of an individual's eligibility to enjoy certain privileges or participated in or attend certain event without the suspension or employment or enrollment
- Arranging to dissolve a campus housing contract and offering a pro-rated refund
- Changing work arrangements
- Rescheduling class work, assignments, and examinations
- Arranging for the student to take an incomplete in a class
- Moving the student from one class section to another
- Permitting a temporary withdrawal from the College
- Providing alternative course completion options
- Providing counseling services
- Providing academic support services

Following the initial meeting with the parties, the Title IX Coordinator will promptly determine the supportive measures to be provided. Such determination will be promptly communicated to the parties, as applicable.

A list of other resources is attached as Exhibit B.

Determination If Investigation is Required. The Title IX Coordinator will determine whether an investigation of the complaint should be conducted. The Title IX Coordinator will consider the following factors in determining whether it is reasonable to investigate the complaint:

- The source and nature of the information
- The seriousness of the alleged incident
- The specificity of the information
- The objectivity and credibility of the source of the information
- Whether the individuals allegedly subjected to the sexual misconduct can be identified
- Whether those individuals wish to pursue the matter

In the event that the Title IX Coordinator determines that an investigation of the complaint should not be conducted, the Title IX Coordinator will determine and document (in consultation, as necessary, with the alleged victim, the respondent, and other College administrators) the appropriate resolution of the complaint and inform the parties of the same.

Investigation. The investigation will include:

- Conducting interviews with the complainant, the alleged victim, the respondent, and third-party witnesses (including expert witnesses, where applicable) and summarizing such interviews in written form
- Visiting, inspecting, and taking photographs at relevant sites
- Collecting and preserving relevant evidence (in cases of corresponding criminal complaints, this step may be coordinated with law enforcement agencies)

Throughout the investigation, the Title IX Coordinator will remain neutral. The Title IX Coordinator will complete a written investigative report that includes items such as summaries of all interviews conducted, photographs, and descriptions of relevant evidence, summaries of relevant electronic records, a detailed report of the events in question (the “Investigative Report”) as well as a recommendation on possible sanctions, if sanctions are to be imposed. The Title IX Coordinator will distribute the report, concurrently, to the alleged victim and the respondent. All parties to whom the investigative report is distributed pursuant to this guide must maintain it in confidence.

Based on the results of the investigation, the Title IX Coordinator will determine whether reasonable grounds exist to believe that the conduct at issue constitutes material sexual misconduct. The Title IX Coordinator will direct that the case proceed unless it is clear from the complaint and the Investigative Report that no reasonable grounds exist for believing that the conduct at issue constitutes material sexual misconduct. The Title IX Coordinator will specify which allegations and related alleged misconduct will go forward for resolution under this guide.

If the Title IX Coordinator finds no reasonable grounds to believe that the conduct at issue constitutes material sexual misconduct, the Title IX Coordinator will determine (in consultation, as necessary, with the alleged victim, respondent, and other College administrators) and document the appropriate resolution of the complaint and will promptly notify the parties of that determination.

Right to Appeal. The alleged victim and/or the respondent may appeal the Title IX Coordinator’s decision in writing to the chief student affairs, administrative services or academic officer (as deemed appropriate by the Title IX Coordinator) and provide a copy of the appeal to the Title IX Coordinator within ten days of receipt of the notice of closure. The Title IX Coordinator will promptly inform the other party of the appeal. Following receipt of the appeal, the chief student affairs, administrative services or academic officer will make a determination as to whether the complaint should proceed or be closed and whether any additional or different remedial action is necessary. The Title IX Coordinator will notify the alleged victim and the respondent concurrently of his or her decision.

A complaint that is not closed pursuant to the Title IX Coordinator’s evaluation of the investigative report will proceed to formal resolution in accordance with Article V of this guide if the respondent is a student. If the respondent is an employee, formal resolution will be in accordance with College Procedures governing employee misconduct. The following sanctions may be employed by the College in its efforts to correct inappropriate employee behavior.

Counseling
Verbal Reprimand

Written Warning
Suspension/Probation

Dismissal/Termination

ARTICLE V

FORMAL RESOLUTION OF COMPLAINTS INVOLVING A STUDENT RESPONDENT

*At no time is mediation appropriate in sexual misconduct cases involving student respondents.
The standard of proof in all hearings is preponderance of evidence.*

Respondent's Acknowledgement of Responsibility Prior to Hearing. At any time prior to the date of their designated hearing, the respondent may elect to acknowledge their actions and take responsibility for the alleged sexual misconduct. In such a situation, the Title IX Coordinator will propose sanction(s). If the victim and the respondent agree to such proposed sanction(s), then the complaint will be resolved without a hearing and without any further rights of appeal by any party. If either the victim or the respondent objects to such proposed sanction(s), then a hearing panel will convene for the exclusive purpose of determining a sanction, which determination may be subject to appeal pursuant to the appeal process listed below. If the chief student affairs, administrative services or academic officer is the respondent, then the Title IX Coordinator will appoint another College administrator to stand in their place in performing his or her duties under this guide.

Formal Resolution – A Step by Step Process

The Formal Resolution Process. In the case of formal resolution, a hearing panel will conduct a series of hearings in which it will interview and question the complainant, the alleged victim (if different), the respondent, and any witnesses or other third parties whose testimony the hearing panel deems relevant. The standard of proof for the hearing is whether the evidence establishes that from the preponderance of the evidence it is more likely than not that the respondent committed material sexual misconduct.

The Hearing Panel. The Title IX Coordinator will appoint the members of the hearing panel which will include at least three faculty and/or staff members. The Title IX Coordinator will designate one member of the hearing panel as the Chair. The Title IX Coordinator will share the complaint and the investigative report with the hearing panel. If only a portion of the alleged misconduct in the complaint justifies continuing to the hearing process, the Title IX Coordinator will specify which part(s) of the alleged misconduct will be the subject of the hearings.

Notice of the Composition of the Hearing Panel. Promptly after appointing the members of the hearing panel, the Title IX Coordinator will provide concurrent written notice to the alleged victim and the respondent, setting forth the names of the individuals selected to serve on and chair the hearing panel. If only a portion of the alleged misconduct justifies continuing to the hearing process, the Title IX Coordinator will also specify in the notice which part(s) of the alleged misconduct will be the subject of the hearings. The parties may challenge the participation of any member of the hearing panel by submitting a written objection to the Title IX Coordinator within three days of receiving the notice of the composition of the hearing panel. Such objection must state the specific reason(s) for the objection. The Title IX Coordinator will evaluate the objection and determine whether to alter the composition of the hearing panel. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the composition of the hearing panel. Any changes in the composition of the hearing panel will be provided in writing to both parties prior to the date of the first hearing.

Hearing Policies and Procedures.

Submission of Written Materials by the Parties. Within five days of receiving of the Notice of Composition of the Hearing Panel, the alleged victim and the respondent may provide the Chair of the hearing panel with (1) a list of witnesses, if any, that they propose that the hearing panel call and a brief description of each proposed witness's connection to and/or knowledge of the issues in dispute, and (2) a written statement.

Notice of the Hearings. Within a reasonable time after delivery of notice of the composition of the hearing panel to the parties, the hearing panel will provide a separate notice to the alleged victim, the respondent, and any witnesses of other third parties whose testimony the hearing panel deems relevant, requesting such individuals to appear before the hearing panel. The notice should set forth, as applicable, the date, time, and location of the relevant individual's hearing. In its notices to the alleged victim and the respondent, the hearing panel will provide the names of the witnesses or other third parties that the hearing panel plans to call.

Failure to Appear. If the alleged victim or the respondent fails to appear before the hearing panel (if requested to do so) and such party was provided proper notice of the hearing as set forth above, then absent extenuating circumstances, the hearing panel will proceed to determine the resolution of the complaint.

Counsel and Support Persons. Either party may be accompanied by legal counsel and not more than two support persons of their choice, however neither legal counsel nor support person(s) may participate in the proceedings and their role is limited to offering advice and support. The Chair of the hearing panel may disallow the attendance of such support person if such support person is also a witness or if, in the discretion of the Chair of the hearing panel, such support person's presence would be obstructive to the hearing or otherwise warrant his or her removal from the hearing. Counsel and a support person(s) may communicate with a party privately, but they may not address the hearing panel, cross-examine witnesses, or have any other speaking role. Support person(s) must maintain confidentiality regarding any and all communications exchanged pursuant to this guide.

Evidentiary Matters. The alleged victim and the respondent will have an equal opportunity to present evidence during their respective hearings.

Formal rules of evidence will not be observed during the hearings. Evidence of the past sexual histories of the alleged victim and the respondent will not be permitted at the hearings, with the following exceptions:

- Evidence is permitted to show that the alleged victim has in the past been formally disciplined by the College for falsely filing complaints alleging sexual misconduct
- Evidence is permitted to show that the respondent has in the past been either convicted in a criminal proceeding or formally disciplined by the College for sexual misconduct and
- Evidence regarding the past sexual activity of the respondent (regardless of whether the respondent was formally charged with a violation of the Policy with respect to such conduct) may be permitted to show that the respondent has engaged in a pattern of behavior similar to the alleged sexual misconduct at issue before the hearing panel, provided that (1) the respondent has not been found "not responsible" by the College in a proceeding related to such sexual activity and (2) the Chair of the hearing panel has made written findings both that the evidence is reliable and trustworthy and that the conduct is sufficiently and substantially similar to the conduct at issue before the hearing panel to suggest a pattern of behavior

Conduct of the Hearings.

Generally. The hearings will be conducted in an inquisitorial manner, the hearing panel will be responsible for asking questions of the parties and the witnesses and developing evidence through testimony. The Chair of the hearing panel will resolve any questions concerning procedure or the admission of evidence or testimony (including the relevancy and reliability of the evidence and testimony). All participants are expected to provide truthful testimony.

Testimony of the Parties. Both parties may choose not to testify or appear before the hearing panel; however, their exercise of that option will not preclude the hearing panel from making a determination regarding the complaint filed.

Outcome. Following the conclusion of the hearings, the hearing panel will confer and by majority vote determine whether the preponderance of the evidence (including the information provided in and by the investigative report, the parties' written statements, if any, the evidence presented at the hearings, and the testimony of the parties and witnesses) establishes that it is more likely than not that the respondent committed material sexual misconduct.

Sanctions. If the hearing panel determines that a student has committed material sexual misconduct, a wide range of sanctions may be imposed:

These sanctions are:

- Warning: A notice in writing to the student that the student is violating or has violated institutional regulations.
- Probation: A written reprimand for violation of specified regulations. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to be violating any institutional regulation during the probationary period.
- Referral to an outside program: Referral to a tobacco intervention program, the Student Assistance Program, or mental health counseling.
- Educational Activities: Attendance at educational programs, interviews with appropriate officials, planning and implementing educational programs, or other educational activities.
- Loss of Privileges: Denial of specified privileges for a designated period of time.
- Restitution: Compensation for loss, damage or injury. This may take the form of appropriate service and/or monetary or material replacement.
- Prohibited Contact: Prohibition of contact with a specified person within the college community.
- Removal from Classroom/Course: Removal from the classroom and/or the course, including but not limited to, dismissal from the course or reassignment to another section.
- Counseling Assessment and Compliance: Referral for assessment (at the student's expense) to a licensed mental health professional or counseling center for general mental health or other counseling issues. Students found responsible for alcohol, drug or behavioral violations may be referred to an on campus licensed mental health counselor or to an outside agency or counselor based on the seriousness of the violation. Students must comply with all recommendations established as a result of any assessment resulting from the imposition of this sanction.
- Suspension: Separation of the student from Florida SouthWestern State for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
- Dismissal: Separation from the College for an indefinite period of time. Readmission may be possible, based on meeting all readmission criteria and obtaining clearance from the Chief Student Affairs Officer or designee.
- Expulsion: Permanent separation of the student from Florida SouthWestern State. All recommendations of expulsion must be reviewed and approved by the College President or designee.

- **Failure to Complete Sanctions:** A student who fails to adhere to or complete sanctions will have a disciplinary hold placed on his or her record. This hold will affect the student's ability to register for classes and the student may receive additional charges under the Student Code of Conduct. Disciplinary holds will not be removed until the sanctions are completed.
- **Change in Housing Assignment:** Removal or reassignment of the student to another location in College Housing.
- **Exclusion or Removal from College Housing:** Exclusion or removal may be permanent or for a specified period of time. If the student is excluded or removed from Housing, the Housing Agreement will be cancelled. The Terms and Conditions of the Housing Agreement regarding cancellation fees and proration of rental fees will apply.

The hearing panel will determine sanctions, considering whether the sanctions will:

- Address the severity and remedy the effects of the incident(s)
- Bring an end to the violation(s) in question
- Prevent (reasonably) a recurrence of a similar violation

The hearing panel will forward its determination regarding sanctions to the Title IX Coordinator.

Implementation. Sanctions imposed are not effective until the resolution of any timely appeal pursuant to the appeal rights listed below. However, the hearing panel (or other decision making body, if applicable) may recommend that any sanctions be effective immediately and continue in effect until such time as the appeal process is exhausted in order to protect the welfare of the victim or the College community. The Title IX Coordinator will make the final determination.

Final Accommodations and Corrective Action. In addition to any sanctions imposed on the respondent, promptly following the conclusion of the hearings and the hearing panel's issuance of a determination of responsibility, the Title IX Coordinator will determine the final accommodations to be provided, if any, and the Title IX Coordinator will communicate such decision to the appropriate parties.

The Title IX Coordinator will also take steps, where necessary, to prevent the further harassment of or Retaliation against the parties, such as informing them about how to report subsequent problems, following up with them to ensure that there are no subsequent problems, providing trainings for the College community, and providing sexual misconduct or other counseling for the parties. Furthermore, the Title IX Coordinator will take prompt corrective action if the parties' experience retaliation or is subjected to further sexual misconduct or if the original sanctions imposed on the respondent are ineffective to protect the safety and well-being of the complainant, the victim, or other members of the College community.

In cases involving sexual harassment, the Title IX Coordinator will also take reasonable steps to eliminate any hostile environment that has been created, such as conducting trainings and disseminating informational materials. In taking the above-outlined steps, the Title IX Coordinator will make every reasonable effort to minimize the burden on the complainant and/or alleged victim.

Final Outcome Letter. Within a reasonable time following the conclusion of the hearings, the hearing panel will issue a written decision letter (the "Final Outcome Letter") concurrently to the respondent, the complainant, and the alleged victim (if different). The Final Outcome Letter will set forth (1) the name of the respondent, (2) the violation(s) of this guide for which the respondent was found responsible, if any, and the rationale (3) sanctions imposed on the respondent, if any. However, when the respondent is a student, in order to comply with FERPA, the letter will not include information considered part of a respondent's "education record" (as that term is defined by FERPA), such as information about sanctions that do not relate to the victim.

Confidentiality and Disclosure. In order to comply with FERPA and Title IX and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, documents prepared in anticipation of the hearings (including the complaint, the investigative report, the notices of hearing, and the pre-hearing submissions referenced above) and documents, testimony, or other information introduced at the hearings may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law. If it is determined, however, that the respondent committed material sexual misconduct, College policy does not prohibit the further disclosure of the Final Outcome Letter by either the victim or the respondent.

Appeals. The alleged victim or the respondent may appeal the decision of the hearing panel and/or the sanction imposed on the respondent within 14 calendar days from the date of the Final Outcome Letter. The decision of the hearing panel and the sanction imposed on the respondent may, if desired, be appealed simultaneously.

Appeals of the Decision of the Hearing Panel Regarding Responsibility for Sexual Misconduct. The permissible grounds for an appeal are (1) availability of germane new evidence not available at the time of the hearing that could significantly impact the outcome of the hearings and/or (2) procedural errors during the hearings that significantly impacted the outcome of the hearings.

Appeals of the decision of the hearing panel must be made in writing to the chief student affairs officer. Appellants must provide a copy of their written appeal to the Title IX Coordinator. The Title IX Coordinator will promptly inform the other party (i.e., the alleged victim or the respondent) of the filing of the appeal.

The chief student affairs officer will make a determination (1) that the decision of the hearing panel should stand; (2) that the decision of the hearing panel should be overturned; or (3) that additional hearings should occur or evidence should be obtained before making an appellate determination.

In the event that it is determined that the decision of the hearing panel should be overturned or that additional hearings should occur or additional evidence should be obtained, he or she will specify, after consultation with the Title IX Coordinator and other College administrators, as necessary, the appropriate steps to be taken to come to a final resolution of the complaint (which may or may not include an additional hearing or set of hearings before a different hearing panel or the chief student affairs officer). The chief student affairs officer will notify the alleged victim and the respondent concurrently of the decision or action.

Appeals of Sanctions. The sanctions imposed on the respondent may be appealed on grounds that the severity of the sanction imposed is incommensurate with the gravity of the sexual misconduct for which the respondent was found responsible. Appeals must be made in writing to the chief student affairs officer. Appellants must provide a copy of their written appeal to the Title IX Coordinator. The Title IX Coordinator will promptly inform the other party (i.e., the alleged victim or the respondent) of the filing of the appeal.

The chief student affairs officer will make a determination (1) that the decision of the hearing panel should stand, (2) that the decision of the hearing panel should be overturned, or (3) that additional hearings should occur or evidence should be obtained before making an appellate determination.

In the event that the chief student affairs officer determines that the decision of the hearing panel should be overturned or that additional hearings should occur or additional evidence should be obtained, they will specify (after consultation with the Title IX Coordinator and other College administrators, as necessary) either (1) the final sanctions to be imposed on the respondent, which will not be subject to further appeal or (2) that another hearing will be convened before the hearing panel or the chief student affairs officer for the sole purpose of considering sanctions, in which case the final sanctions set by the hearing panel or chief student affairs officer will not be subject to further appeal. The chief student affairs officer will notify the alleged victim and the respondent concurrently of the decision or action.

Documentation. The College will retain documentation (including but not limited to the written complaint, notifications, the investigative report, any written findings of fact, petitions for appeal, and any written communication between the parties), in accordance with Florida Law. Documentation pertaining to terminations, expulsions or educational sanctions may be retained indefinitely.

EXHIBIT A - Definitions

Complainant. A “Complainant” is an individual who reports or files a complaint. A complainant may be someone other than the person who may have been subjected to the sexual misconduct.

Complaint. A “Complaint” is an allegation of sexual misconduct asserted against another party and reported to or filed with the College.

Consent. The express communication or mutually understandable actions or words of the parties who are, or have been, involved.

- A sexual encounter is considered consensual when individual(s) willingly and knowingly engage in sexual activity.
- Consent cannot be procured by the use of physical force, compelling threats, intimidating behavior, or coercion: The use of coercion can involve the use of pressure, manipulation, substances, and/or force. Ignoring the objections of another person or pressuring them is a form of coercion. Consent may never be given by a minor even if the other participant did not know the minor’s age.
- Knowingly engaging in sexual activity with someone who is incapacitated by alcohol or drug use, unconsciousness, disability, involuntary physical constraint, sleep, or other forms of helplessness does not constitute consent. Incapacitation is a state where a person cannot make a rational, reasonable decision because the person lacks the ability to understand his or her decision.
- The use of alcohol or drugs does not diminish one’s responsibility to obtain consent and does not excuse conduct that constitutes sexual misconduct under Florida SouthWestern State College’s rules, regulations and policies. If at any time during a sexual act confusion or ambiguity regarding consent arises, each individual involved in the activity should stop and clarify the other’s willingness to continue. Neither person should make assumptions about the other’s willingness to continue.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Previous relationships or previous consent for sexual activity cannot imply consent to sexual activity on a different occasion.
- Silence, passivity, or lack of resistance cannot be interpreted as consent.
- Consent can be withdrawn at any time.

Dating Violence. “Dating Violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; AND

The existence of such a relationship shall be determined based on a 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 purpose 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.

Day. A “day” is a business day, unless otherwise specified.

Domestic Violence. “Domestic Violence” includes felony or misdemeanor crime of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Florida, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the State of Florida.

FERPA. The Family Educational Rights and Privacy Act (“FERPA”) is a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 CFR Part 99. FERPA protects the privacy of student education records. FERPA grants to parents or eligible students the right to access, inspect, and review education records, the right to challenge the content of education records, and the right to consent to the disclosure of education records.

Hostile Environment. Includes any situation which there is harassing conduct that is sufficiently severe, persistent, or pervasive that it alters the conditions of employment or limits, interferes with or denies educational benefits or opportunities from both the victim’s and a reasonable person’s viewpoint.

Material Sexual Misconduct. “Material Sexual Misconduct” is sexual misconduct that, taking into account the totality of the circumstances, is sufficiently serious and significant to warrant adjudication under, and discipline pursuant to, this guide.

Specifically, to determine whether sexual misconduct rises to the level of material sexual misconduct, consideration will be given to the following criteria:

- The type, frequency and duration of the conduct (the more severe the conduct, the less the need to show a repetitive series of incidents, particularly if the harassment is physical)
- The identity of and relationship between the alleged harasser and the alleged victim
- The number of individuals involved
- The age and sex of the alleged harasser and the alleged victim
- The location of the incidents and the context in which they occurred
- Whether there have been similar incidents.

Personally Identifiable Information. Personally Identifiable Information (as that term is defined by FERPA) includes, but is not limited to

- A Student’s name
- The name of a Student’s parent(s) or other family members
- The address of a Student or a Student’s family
- A personal identifier, such as a Student’s social security number, student number, or biometric record
- Other indirect identifiers, such as a Student’s date of birth, place of birth, or mother’s maiden name
- Other information that, alone or in combination, is linked or linkable to a specific Student and that would allow a reasonable person in the College community, who does not have personal knowledge of the relevant circumstances, to identify the Student with reasonable certainty; or
- Information requested by a person whom the College reasonably believes knows the identity of the Student to whom the education record relates.

Rape. Rape is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Respondent. A “Respondent” is an individual who has been accused of committing sexual misconduct by the report or filing of a formal or informal complaint.

Retaliation. “Retaliation” means any adverse action threatened or taken against a person because he or she has filed, supported, or provided information in connection with a complaint of sexual misconduct, including but not limited to direct and indirect intimidation, threats, and harassment.

Sexual Assault. “Sexual Assault” means any actual, attempted, or threatened sexual act with another person without that person’s consent.

Sexual Assault includes but is not limited to:

- Rape and attempted rape
- Intentional and unwelcome sexual touching (including disrobing or exposure), however slight, with any body part or any object, by a man or a woman upon a man or a woman, without effective consent, of a person’s breasts, buttocks, groin, or genitals (or clothing covering such areas), or coercing, forcing, or attempting to coerce or force another to touch you, themselves, or a third party with any of these body parts or areas when such touching would be reasonably and objectively offensive
- Any sexual act in which there is force, violence, or use of duress or deception upon the victim
- Any sexual act perpetrated when the victim is unable to give consent
- Sexual intimidation, which includes but is not limited to:
 - 1) Threatening, expressly or impliedly, to commit a sexual act upon another person without his or her consent
 - 2) Stalking or cyber-stalking
- Engaging in indecent exposure.

Sexual Exploitation. “Sexual Exploitation” means any act of taking non-consensual, unjust or abusive sexual advantage of another person for one’s own advantage or benefit or to benefit or advantage anyone other than the person being exploited.

Sexual Exploitation includes, but is not limited to:

- Causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such person
- Prostituting another person (i.e., personally gaining money, privilege or power from the sexual activities of another)
- Non-Consensual videotaping, photographing, or audio-taping of sexual activity and/or distribution of these materials via media such as, but not limited to, the Internet
- Exceeding the boundaries of consent (e.g., allowing another person to observe consensual sex without the knowledge of or consent from all participants)
- Voyeurism and
- Knowingly or recklessly transmitting a sexually transmitted disease (including HIV) to another individual

Sexual Harassment. “Sexual Harassment” is any unwelcome verbal, nonverbal, written, electronic or physical conduct of a sexual nature. Sexual harassment also includes acts of intimidation, bullying, aggression or hostility based on gender or gender-stereotyping, even if the acts do not involve conduct of a sexual nature.

Examples of sexual harassment include instances in which:

- Submission or consent to the behavior is reasonably believed to carry consequences for the individual's education, employment, on-campus living environment, or participation in a College activity. Examples of this type of sexual harassment include: pressuring an individual to engage in sexual behavior for some educational or employment benefit, or making a real or perceived threat that rejecting sexual behavior will carry a negative educational or employment consequence for the individual.
- The behavior is so severe or pervasive that it has the effect of substantially interfering with the individual's work or educational performance by creating an intimidating, hostile, or demeaning environment for employment, education, on-campus living, or participation in a College activity.

Examples of this type of sexual harassment include:

- One or more instances of sexual assault
- Persistent unwelcome efforts to develop a romantic or sexual relationship
- Unwelcome sexual advances or requests for sexual favors
- Unwelcome commentary about an individual's body or sexual activities
- Repeated and unwelcome sexually-oriented teasing, joking, or flirting and
- Verbal abuse of a sexual nature.

Sexual Misconduct. “Sexual Misconduct” means any unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated against an individual without consent. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can be committed by men or by women, and it can occur between people of the same or different sex. The College encourages reporting of all sexual misconduct.

Sexual misconduct includes but is not limited to:

- Dating Violence
- Domestic Violence
- Non-forcible sex acts, which are unlawful sexual acts where consent is not relevant, such as sexual contact with an individual under the statutory age of consent, as defined by State law, or between persons who are related to each other within degrees wherein marriage is prohibited by law
- Sexual Assault
- Sexual Exploitation
- Sexual Harassment and
- Stalking

Stalking. “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: **1)** fear for his or her safety or the safety of others; or **2)** suffer substantial emotional distress.

For the purposes of this definition –

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

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

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

Student. A “Student” is any student who is registered at the College or enrolled at the College (1) at the time of the alleged sexual misconduct and (2) at the time a complaint is filed.

Title IX Coordinator. The College’s “Title IX Coordinator” is Jana Sabo, whose office is located in Building G Room 219B and who may be contacted by phone at 239-489-9051 or by email at equity@fsw.edu. The Title IX Coordinator has ultimate oversight responsibility for handling Title IX–related complaints and for identifying and addressing any patterns or systemic problems involving sexual misconduct. The Title IX Coordinator is available to meet with individuals who are involved with or concerned about issues or College processes, incidents, patterns or problems related to sexual misconduct on campus or in College programs. All allegations involving sexual misconduct should be directed to the Title IX Coordinator or other designated College individuals or offices as outlined in the Sexual Misconduct Guide.