



# TITLE IX POLICY

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# F.I.R.S.T. INSTITUTE'S TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCEDURES

## TITLE IX STATUTE

Title IX of the Education Amendments of 1972 was amended by the Secretary of Education on May 19, 2020. Educational institutions receiving federal funding are expected to adhere to the updated statute. It prohibits discrimination on the basis of sex in education programs or activities for both students and employees. The new Title IX regulations went into effect August 14, 2020. It is enforced by the U.S. Department of Education's Office for Civil Rights. (85 FR 30026)

## NON-DISCRIMINATION STATEMENT

F.I.R.S.T. Institute does not discriminate regarding sex, gender, sexual orientation, age, race, color, ethnicity, disability, national origin, creed, or religion.

## SEXUAL HARASSMENT POLICY STATEMENT

F.I.R.S.T. Institute prohibits discrimination on the basis of sex in the school's educational programs or activities for current/future students and employees within the United States.

## POLICY SUMMARY

F.I.R.S.T. Institute must respond to all reports of sexual harassment once the school has actual knowledge of the incident(s) and document why the response was not deliberately indifferent. The sexual harassment must have occurred within F.I.R.S.T. Institute's education programs or activities and the United States. Anyone can make a report to the Title IX Coordinator (in person, by email, phone, or mail). F.I.R.S.T. Institute will investigate all formal complaints through the school's Title IX policy through a fair grievance process that treats both the complainant and respondent equally. Respondents are not considered responsible for the policy violation until the grievance process has concluded. If a report is found not to be a violation of this policy, then F.I.R.S.T. Institute has the right to address the issue through the school's regular disciplinary procedures. Supportive measures will be offered to all complainants even if no formal complaint is completed and respondents if a formal complaint has been filed. In the case of a respondent is found responsible for the reported policy violation, the school will take appropriate disciplinary measures.

## PROHIBITED CONDUCT AND DEFINITIONS

The following sexual misconduct is prohibited under the F.I.R.S.T. Institute's Title IX policy:

### Dating Violence

"[V]iolence committed by a person...who is or has been in a social relationship of a romantic or intimate nature with the victim...where the existence of such a relationship shall be determined based on a considering of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship." (34 U.S.C. 12291 [a][10])

### Domestic Violence

"[F]elony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, 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 jurisdiction." (34 U.S.C. 12291 [a][8])

### Sexual Assault

"[A]n offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation." (20 U.S.C. 1092 [f][6][A][v])

### Sexual Harassment

- "[A]n employee of the [school] conditioning the provision of an educational aid, benefit, or service on an individual's participation in unwelcome sexual conduct, which is commonly referred to as *quid pro quo* sexual harassment." (85 FR 30177)
- "[U]nwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity." (85 FR 30177)
- "[S]exual assault, dating violence, domestic violence, or stalking on the basis of sex..." (85 FR 30177)

### Stalking

"[E]ngaging in a course of conduct directed at a specific person that would cause a reasonable person to...fear for his or her safety or the safety of others; or...suffer substantial emotional distress." (34 U.S.C. 12291 [a][30])

## Other Terms of Importance

### Actual Knowledge

- "[N]otice to the recipient's Title IX Coordinator or to 'any official of the [the school] who has authority to institute corrective measures on behalf of [the school]'...triggers [the school's] response obligations." (85 FR 30039)
- "The actual knowledge requirement is not satisfied when the only official or employee of the recipient with actual knowledge of the harassment is the respondent, because the [school] will not have opportunity to appropriately respond if the only official or employee who knows is the respondent." (85 FR 30116)
- "The 'mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the [school.]" (85 FR 30113)

### Complainant

- "[A]ny individual who is alleged to be the victim of sexual harassment..." (85 FR 30030)

### Respondent

- "[A]ny individual who is reported to be the perpetrator of sexual harassment..." (85 FR 30030)

**Advisor**

- Both the complainant and respondent have a right to choose their own representation to assist in the grievance procedures. (85 FR 30066)

## PRIVACY AND CONFIDENTIALITY

### Confidential Resources

Florida Council Against Sexual Violence

- Statewide Hotline – 888-956-7273
- TTY/TTD accessibility – 711
- Website – <https://www.fcasv.org/>

National Domestic Violence Hotline

- Telephone Hotline – 1-800-799-7233
- TTY Hotline – 1-800-787-3224
- Website – <https://www.thehotline.org/>

National Sexual Assault Hotline

- Telephone Hotline – 1-800-656-HOPE (4673)
- Online Hotline – <https://hotline.rainn.org/online>
- Website – <https://www.rainn.org>

Victim Service Center of Central Florida, Inc.

- 24-Hour Crisis Line – 407-500-HEAL
- Online Contact Form – <https://www.victimservicecenter.org/contact-us/>
- Email – [vsc@ocfl.net](mailto:vsc@ocfl.net)
- Website – <https://www.victimservicecenter.org>

### Privacy and Use of Discretion

- F.I.R.S.T. Institute will “keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute or regulations, 30 U.S.C. 1232g and 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.” (85 FR 30444)
- One exception is if “the complainant’s identity is necessary to provide supportive measures for the complainant (e.g., where a no-contact order is appropriate and the respondent would need to know the identity of the complainant in order to comply...or campus security is informed about the no-contact order in order to help enforce its terms).” (85 FR 30132)
- Another exception is if the complainant and/or respondent is a minor, in which case “a parent or guardian has the legal right to act on behalf of the individual.” (85 FR 30030)
- F.I.R.S.T. Institute will do its best to use discretion with grievance procedures in order to protect the privacy of the individuals involved. However, “[i]nvestigations almost always require some intrusion [of] privacy.” (85 FR 30107)

### Release of Information

- The parties must provide voluntary, written consent for the school to use any legally protected information, such as with a medical professional, priest, legal representation, spouse, or otherwise, during the grievance procedures.
- F.I.R.S.T. Institute will “follow relevant State and Federal health care privacy laws throughout the grievance process.” (85 FR 30286)

## REPORTING A POLICY VIOLATION

### Emergency Situations

- Contact local law enforcement at 911 immediately. Then contact the Title IX Coordinator.
- Under the new Title IX regulations, F.I.R.S.T. Institute is allowed “to remove a respondent from the [school’s] educational programs or activities on an emergency basis, with or without a grievance process pending, as long as post-deprivation notice and opportunity to challenge the removal is given to the respondent.” (85 FR 30046)

### Non-Emergency Situations

- If this policy is believed to be violated, anyone in the F.I.R.S.T. Institute community can submit a formal complaint to the Title IX Coordinator. F.I.R.S.T. Institute employees must do so. Please contact the Title IX Coordinator (in person, by email, phone, or mail) or fill out the Sexual Harassment Formal Complaint Form.

### [Sexual Harassment Formal Complaint Form](#)

### Title IX Coordinator Contact Information

- F.I.R.S.T. Institute’s Director of Compliance is also the Title IX Coordinator for the school. All formal complaints regarding this policy should be reported (in person, by email, phone, or mail) to the Title IX Coordinator, whose contact information is found below:
  - Justina Fiocco, 407.316.8310 ext 1304 423 S Keller Rd Orlando, FL 32810  
[justina.fiocco@first.edu](mailto:justina.fiocco@first.edu)
- F.I.R.S.T. Institute also has chosen staff to assist in the grievance procedures explained within this policy. This Title IX team includes potential Title IX Advisors, Investigators, Adjudicators, and Appeal Officers. Please note that the adjudicator (decision-maker) is not the same person as the Title IX Coordinator.
- The Title IX Coordinator and the rest of the Title IX team have received the training materials found [here](#), as well as F.I.R.S.T. Institute’s Title IX Sexual Harassment and Grievance Procedures policy.
  - “Title IX Coordinators, investigators, decision-makers [adjudicators], and persons who facilitate informal resolutions [are required] to be free from conflicts of interest and bias and trained to serve impartially without prejudging the facts at issue.” (85 FR 30053)

### Title IX Advisor Team Members

#### Investigators

- Director of Education
- Director of Financial Aid

#### Adjudicators (Decision Makers)

- Director
- Director of Operations

#### Appeals Officer

- Director of Marketing

### Local Law Enforcement Contact Information

- o Maitland Police Department
  - a. Addresses: 1837 Fennell St Maitland, FL 32751
  - b. Phone Numbers
    - i. Emergency: 911
    - ii. Non-emergency: 407-539-6261
    - iii. General: 407-539-6261
  - c. Email [dmanuel@maitlandpd.org](mailto:dmanuel@maitlandpd.org) (Not for criminal complaints)

### U.S. Department of Education, Office for Civil Rights Contact Information

Lyndon Baines Johnson Department of Education Building, 400 Maryland Avenue SW, Washington, DC 20202-110. 800-421-3481. [OCR@ed.gov](mailto:OCR@ed.gov)

### Reporting Options

Any concerns over F.I.R.S.T. Institute’s Title IX policy may be submitted to the Title IX Coordinator and/or the U.S. Department of Education, Office for Civil Rights.

The following are options that can be taken either individually or simultaneously:

#### Title IX Coordinator

- d. Under new Title IX regulations, F.I.R.S.T. Institute is required to “initiate a grievance process when a complainant files, or a Title IX Coordinator signs, a formal complaint, so that the Title IX Coordinator takes into account the wishes of a complainant and only initiates a grievance process against the complainant’s wishes if doing so is not clearly unreasonable in light of the known circumstances.” (85 FR 30045)

#### Local Law Enforcement

- e. If a report includes criminal activity, F.I.R.S.T. Institute has the right to report to local law enforcement.

#### U.S. Department of Education, Office for Civil Rights

### Anonymous Reporting

- o A non-formal complaint report of a possible Title IX policy violation can be submitted anonymously. However, when “a complainant desires to initiate a grievance process, the complainant cannot remain anonymous or prevent the complainant’s identity from being disclosed to the respondent (via the written notice of allegations).” (85 FR 30133)
- o While there are some supportive measures that can be provided while keeping the complainant’s identity confidential from the respondent, there are some supportive measures that cannot be provided unless the complainant’s identity is revealed. (85 FR 30134)

### Withdrawing a Formal Complaint

- o The complainant must send written notice to the Title IX Coordinator in order to withdraw a formal complaint. (85 FR 30290)

## PRELIMINARY INVESTIGATION

When F.I.R.S.T. Institute receives a report of a possible violation of this policy, and while the formal investigation process is pending, the school's response will be as follows:

- Prompt (85 FR 30044)
- "[N]ot clearly unreasonable in light of known circumstances." (85 FR 30210)
- "[C]onsist of offering supportive measures to a complainant" (85 FR 30044)
- "[E]nsure that the Title IX Coordinator contacts each complainants (i.e., person who is alleged to be the victim of sexual harassment) to discuss supportive measures" (85 FR 30044)
- "[C]onsider the complainant's wishes regarding supportive measures" (85 FR 30044)
- "[I]nform the complainant of the availability of supportive measures with or without the filing of a formal complaint" (85 FR 30044)
- "[E]xplain to the complainant the process for filing a formal complaint" (85 FR 30044)
- "[T]reat complainants and respondents equitably, meaning that for a complainant, the [school] must offer supportive measures, and for a respondent, the [school] must follow a grievance process...before imposing disciplinary sanctions." (85 FR 30044)
- "[Presume] the non-responsibility of respondents until conclusion of the grievance process" (85 FR 30053)
- "[Consolidate] formal complains when allegations of sexual harassment arise out of the same facts or circumstances and involve more than one complainant, more than one respondent, or what amount to counter-complaints by one party against the other." (85 FR 30292).
- Offer an informal resolution only if a formal complaint has been filed. (85 FR 30578) Please see the Informal Resolution Process section for further details.
- "If the [school] does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances." (85 FR 30578)

### Supportive Measures

- "Supportive measures [are] designed to restore or preserve a complainant's equal educational access without treating a respondent as responsible until after a fair grievance process." (85 FR 30034)
- "[S]upportive measures cannot be punitive or disciplinary against any party" (85 FR 30045)
- These will be "tailored to the specific situation." (85 FR 30046)
- The Title IX Coordinator will "engage in an interactive discussion with the complainant to determine appropriate supportive measures." (85 FR 30277)
- The following is a range of some, but not all, possible supportive measures (if they are not burdensome to the parties) that F.I.R.S.T. Institute may put into place for the complainant and respondent while the grievance procedures are still in process:
  - Emotional support through the Student Services Department
  - Connection to further resources through the Student Services Department
  - Agreement with instructor to keep complainant and respondent separate in class assignments if in the same class
  - Changing class schedule
  - Academic accommodations such as rescheduling an assignment or exam and/or tutoring at no extra cost
  - Providing an escort for complainant to move around campus safely when participating in the school's educational programs or activities
  - Parking arrangements to ensure safety
  - Leave of absence



- “[P]lace a non-student employee respondent on administrative leave during a grievance process.” (85 FR 30182)
- A “No contact” notice to both parties that they must not have communication between them through verbal, electronic, written, or third party means when involved during educational programs or activities.
- Please note that while there are some supportive measures that can be provided while keeping the complainant’s identity confidential from the respondent, there are some supportive measures that cannot be provided unless the complainant’s identity is revealed. (85 FR 30134)
- Please note that F.I.R.S.T. Institute is not obligated to continue supportive measures if the determination of the formal complaint is non-responsibility. (85 FR 30182)

## VIOLATIONS OF OTHER SCHOOL POLICIES

Any reports that are either found not to constitute Title IX sexual harassment as defined in this policy, or to have violated other school policies, will be addressed through F.I.R.S.T. Institute’s regular disciplinary procedures.

- The Title IX Coordinator will notify the corresponding Director of the program and/or department relating to the complainant and respondent.
- The complainant, respondent, and witnesses will be asked to fill out an incident report, the copies of which will go into the student(s) and/or employee(s) files.
- Appropriate disciplinary sanctions will be taken (if applicable) and any necessary supportive measures offered.
- In the case of any criminal activity that can or will cause harm to someone else, F.I.R.S.T. Institute has the right to contact law enforcement and any other individual required by the Duty to Warn law to be informed. The same applies for any serious threat to harm someone else or self.

## DISMISSAL

When a formal complaint is dismissed, both parties will be notified simultaneously in writing no later than two weeks from the date the formal complaint was submitted and received.

The following are mandated reasons why F.I.R.S.T. Institute would need to dismiss a formal complaint:

- If the reported allegations wouldn’t meet the Title IX definition of sexual harassment even if proved. (85 FR 30161)
- If the reported allegations did not occur in F.I.R.S.T. Institute’s educational program or activity. (85 FR 30201)
- If the reported allegations did not occur in the United States. (85 FR 30206)

The following are other reasons why F.I.R.S.T. Institute may dismiss a formal complaint:

- If “[a] complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein.” (85 FR 30576)
- If “a complainant refuses to participate in the grievance process (but also has not decided to send written notice stating that the complainant wishes to withdraw the formal complaint)” (85 FR 30290)
- If “the respondent is no longer a student or employee” of the school (85 FR 30290)
- If “the respondent is not under the authority of the [school] (for instance because the respondent is a non-student, non-employee individual who came onto campus and allegedly sexually harassed a [complainant]), and the [school] has no way to gather evidence sufficient to make a determination.” (85 FR 30290)

- If “specific circumstances prevent [the school] from meeting the [school’s] burden to collect evidence sufficient to reach a determination regarding responsibility” (85 FR 30290)

Please note that “this provision is *not* the equivalent of [the school] deciding that the evidence gathered has not met a probable or reasonable cause threshold or other measure of the quality or weight of the evidence, but rather is intended to apply narrowly to situations where specific circumstances prevent [the school] from meeting its burden...to gather sufficient evidence to reach a determination.” (85 FR 30290)

Please also note that F.I.R.S.T. Institute retains the right to address reported allegations under the school’s regular disciplinary procedures even if a formal complaint is dismissed in regards to the Title IX formal grievance procedures.

## INFORMAL RESOLUTION PROCESS

F.I.R.S.T. Institute “may not require the parties to participate in an informal resolution process...and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the [school] may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.” (85 FR 30578)

An informal resolution process can be done if the [school]:

- “Provides to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.” (85 FR 30578)
- “Obtains the parties’ voluntary, written consent to the informal resolution process” (85 FR 30578)
- “Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student” (85 FR 30578)

The informal resolution process should take no longer than 60 days.

If an informal resolution process is agreed upon, F.I.R.S.T. Institute will follow the regular disciplinary procedures outlined under the “Violations of Other School Policies” section of this policy.

## FORMAL INVESTIGATION AND GRIEVANCE PROCEDURE

### Purpose

- The purpose of a formal investigation and grievance procedure is to find whether a respondent is responsible for the reported policy violation so F.I.R.S.T. Institute may put into place any remedy efforts for said policy violation.

### Determination of a Formal Investigation

- When a possible policy violation is reported, the Title IX Coordinator will contact the complainant to discuss the policy, option to file a formal complaint, possible supportive measures, and resources. If a formal complaint is filed, the respondent will be informed of the allegations, as well as possible supportive measures and resources.

- If the Title IX Coordinator must dismiss the formal complaint as aforementioned, then the formal investigation and grievance procedure will not be completed. However, the school retains the right to respond through the school's usual disciplinary measures.
- In addition, the Title IX Coordinator may "consolidate formal complains when allegations of sexual harassment arise out of the same facts or circumstances and involve more than one complainant, more than one respondent, or what amount to counter-complaints by one party against the other." (85 FR 30292).

#### Grievance Process Timeline

- F.I.R.S.T. Institute will do its best to complete the grievance process within 90 days of the formal complaint's submission to the Title IX Coordinator. However, should the school need to have a limited, short-term, and temporary extension of the process for a good cause, both parties will be notified in writing. (85 FR 30270)
- A good cause may include:
  - "[A]bsence of a party, a party's advisor, or a witness" (85 FR 30576)
  - "[C]oncurrent law enforcement activity" (85 FR 30271)
  - "[T]he need for language assistance or accommodation of disabilities" (85 FR 30576)
  - School "inefficiencies or mismanagement of [school] resources, but not necessarily circumstances outside the [school's] control (e.g., if technology relied on to conduct a live hearing is interrupted due to a power outage)." (85 FR 30273)
- Extensions should be no longer than 15 days from the originally scheduled date.

#### Allegation Notices

- Both the complainant and respondent will receive written notice of the allegations, the right to choose an advisor, and when the parties are required to appear at an interview, meeting, or live hearing. (85 FR 30053)
- The written notice will include "essential details of allegations under investigation, and of important rights available to both parties under the grievance process." (85 FR 30130)  
Therefore, the following will be included in the notice:
  - The formal complaint process and informal resolution option
  - "[T]he identity of the parties *if known*." (85 FR 30133)
  - The specific allegations of sexual harassment
  - Date and location of the allegation (if known)
  - A statement of the "presumption of non-responsibility" towards the respondent until the conclusion of the grievance process as required. (85 FR 30258)
  - A statement about both parties' rights, such as to an advisor and to review, inspect, and provide evidence.
  - A statement that if either party knowingly submits false statements/information, the school will take disciplinary measures.
  - A statement that says retaliation is strictly prohibited.
  - A statement informing the parties that they have up to two weeks after the date they receive the written notice to prepare a response before investigative interviews begin.
- Written notice will be provided within two weeks:
  - From the date a formal complaint is submitted for allegations and the right to choose an advisor.
  - Before the date of an interview, meeting, or live hearing, including the information for the "date, time, and nature" of the requested appearance. (85 FR 30299) It will also include the participants and purposes of said meeting.
- An updated written notice will be sent if further allegations are found during the investigation that were not included in the original written notice. The same type of

information will be provided as in the original written notice. (85 FR 30284) These will be sent out no later than two weeks from the date F.I.R.S.T. Institute is notified of further allegations.

- Any requests to reschedule an interview, meeting, or live hearing must be submitted in writing to the Title IX Coordinator and received no later than 5 business days before the date of the requested appearance so there is enough time to reschedule.
- Please note that a "respondent (or other party, advisor, or witness) would not be able to indefinitely delay a Title IX proceeding by refusing to cooperate." F.I.R.S.T. Institute will try to accommodate schedules "in order to provide parties with a meaningful opportunity to exercise the rights granted to parties." However, the school must adhere to its time frames and "can proceed to conclusion [in the grievance procedure] even in the absence of a party or witness" in accordance with the updated Title IX regulations. (85 FR 30270)

### **Right to an Advisor**

- Both the complainant and respondent have the right to an advisor. Each party can choose their own advisor (i.e. parent, friend, attorney, etc.) to assist them during the investigation process, including cross-examinations in the hearing. The school will provide an advisor in the absence of one.

### **Assigning Investigators**

- In the event of a formal investigation, trained investigators will be assigned to review all relevant evidence objectively. The investigators must also be free of a conflict of interest or bias towards (whether for or against) the complainant and/or respondent. No single investigator model is allowed.

### **Cooperation**

- Anyone associated with the school is expected to cooperate throughout these grievance procedures.

### **Participation**

- Due to presumption of non-responsibility towards the respondent, the burden of proof and responsibility to evaluate relevant evidence falls on F.I.R.S.T. Institute. However, both the complainant and respondent have the right to provide, review, and respond to directly relevant evidence throughout the investigation process. This applies even if the school chooses not to use some of that evidence. Evidence can be both facts and witnesses (even expert ones), as well as be inculpatory (accusing) or exculpatory (absolving). Directly related evidence can also be used for cross-examination.
- The parties are not restricted in discussing allegations or gathering information as is necessary due to the nature of the grievance procedures. (85 FR 30259)
- Directly relevant evidence will be sent to both the party and party's advisor in an electronic format at least 10 days before a hearing. Hard copies will only be available upon request. (85 FR 30422)

### **Determination of Evidence**

- For both formal complaints against students and employees, the preponderance of the evidence standard will be used to objectively evaluate relevant evidence. Evidence can be both facts and witnesses, as well as be inculpatory (accusing) or exculpatory

(absolving). This will be used for all formal complaints, regardless if the respondent is a student, employee, or faculty member.

- “Determinations of credibility, including of the respondent, must be based on objective evaluation of relevant evidence – not on inferences based on party status.” (85 FR 30247)
- Both parties also have the “right to consent to the use of the party’s own medical, psychological, and similar treatment records” for these records to be used as evidence. (85 FR 30053)
- “[P]arties have at least ten days to submit a written response to the evidence that is directly related to the allegations raised in a formal complaint.” (85 FR 30433)

### Investigative Report

- F.I.R.S.T. Institute will provide both the complainant and respondent with the “investigative report summarizing the relevant evidence, prior to reaching a determination regarding responsibility.” (85 FR 30053)
- This will be submitted to the parties “at least ten days prior to the hearing” to allow them time to respond. (85 FR 30433)

### Live Hearing

#### Format

- Hearings will always be held live either physically in person or virtually in real time where participants can hear and see each other. All those who will be present include the complainant, respondent, advisors, any witnesses, and adjudicator (decision-maker). The hearing may be in separate rooms with the use of technology for the adjudicator to hear and see both parties simultaneously upon request of either party.

#### Cross-Examination and Relevancy

- Only party advisors can directly cross-examine the other party and the other party’s witnesses. Cross-examination cannot be done by the parties themselves.
- Advisors must act professionally or be asked to step out of the room until they are ready to return with proper behavior.
- Advisors cannot inappropriately ask the complainant about prior sexual history due to rape shield protections. Likewise, only relevant evidence will be considered during the grievance procedures.
- The adjudicator (decision-maker) has the right to determine the relevancy of a question and can explain why a non-relevant question is excluded before a party or witness answers it.
- The adjudicator (decision-maker) “who must not rely on the statement of a party who has not appeared or submitted to cross-examination not to draw any inference about the determination regarding responsibility based on the party’s absence or refusal to be cross-examined (or refusal to answer other questions, such as those posed by the decision-maker).” (85 FR 30352)
- Please note that a complainant’s sexual history is not considered relevant evidence. The following are the only exceptions under the updated regulations:
  - a. “[T]he first exception applies to the narrow circumstance where a respondent contends that someone other than the respondent committed the misconduct.” (85 FR 30353)
  - b. “[T]he second applies narrowly to allow sexual behavior questions or evidence concerning incidents between the complainant and respondent if offered to prove consent. The second exception does not

admit sexual history evidence of a complainant's sexual behavior with someone other than the respondent." (85 FR 30353)

#### **Appointment of an Advisor**

- Since the complainant and respondent cannot cross-examine each other, the school will provide an advisor for the party(ies) at no cost if there is no advisor present at the hearing.

#### **Recording**

- All live hearings will be recorded audio visually as required. These are available to the complainant and respondent upon request.

#### **Responsibility Determination**

- The adjudicator (the decision-maker) is responsible for evaluating all the information presented during the hearing and making a responsibility determination. The adjudicator cannot be the investigators or the Title IX Coordinator.
- The adjudicator (decision-maker) will apply the preponderance of the evidence standard to directly relevant evidence in order to make a determination of responsibility.

#### **Record Keeping**

- All records involved in the grievance procedures will be kept for the required seven-year period. These records include, but are not limited to, the following:
  - The formal complaint
  - "[A]ny supportive measures, taken in response to a report or formal complaint of sexual harassment." (85 FR 30578)
  - Documentation for the school's "basis for its conclusion [on a formal complaint] that its response was not deliberately indifferent" (85 FR 30578)
  - Documentation that the school "has taken measures designed to restore or preserve equal access to the [school's] education program or activity." (85 FR 30578)
  - "If the [school] does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances." (85 FR 30578)
  - Investigative report
  - Live hearing audio/audiovisual recording or transcript
  - Written determination
  - Disciplinary sanctions for respondent (if applicable)
  - "[A]ny remedies provided to the complainant designed to restore or preserve equal access to the [school's] education program or activity." (85 FR 30578)
  - "Any appeal and the result therefrom" (85 FR 30578)
  - "Any informal resolution and the result therefrom" (85 FR 30578)
  - Any "additional explanations or detailing additional measures taken." (85 FR 30578)
  - "All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process." These will also be available publicly on the school's website as required. (85 FR 30578)

#### **False Charges, Evidence Tampering, and Retaliation**

- If either party knowingly submits false statements/information, the school will take disciplinary measures. Just because a report is found not to be a violation of the policy

doesn't mean that it was necessarily done in bad faith. Retaliation remains strictly prohibited.

- There will also be disciplinary measures taken if either the complainant or respondent are found to have tampered with evidence regardless of the reason why.
- Any retaliation against a person who reports a potential policy violation in good faith is not only strictly forbidden by F.I.R.S.T. Institute's policy, but may also be punishable by state and/or federal laws. If a report is found not to be a violation of the policy, that doesn't necessarily mean it was done in bad faith. Retaliation is also prohibited against any individual involved in the grievance procedures.

### **Outcomes Notice**

- Upon completion of the grievance procedures, the adjudicator (decision-maker) will provide both the complainant and respondent in writing about the responsibility determination simultaneously.
- This notice will include:
  - "Identification of the allegations alleged to constitute sexual harassment as defined in" the Title IX policy. (85 FR 30390)
  - "A description of the procedural steps taken from receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held." These steps include the notifications the parties received, interviews conducted and with whom, site visits, how evidence was gathered, and what hearings were held. (85 FR 30577)
  - "[F]indings of fact supporting the determination" (85 FR 30390)
  - "[C]onclusions regarding the application of the [school's Title IX policy] to the facts of the conduct allegedly constituting Title IX sexual harassment" (85 FR 30390)
  - "[A] determination regarding responsibility for each allegation and the decision-maker's rationale for the result" (85 FR 30390)
  - "[A]ny disciplinary sanctions the [school] imposes on the respondent and whether the [school] will provide remedies to the complainant." (85 FR 30390)
  - "[I]nformation regarding the appeals process and the [school's] procedures and permissible bases for the complainant and respondent to appeal." (85 FR 30390)
- If applicable, this also includes the notice that supportive measures and remedies will be provided to the complainant that preserves equal educational access. However, the specific nature of said supportive measures and remedies for the complainant will not appear on the written determination. (85 FR 30391)
- The responsibility determination and outcomes notice will be submitted to both parties no later than two weeks after the date of the live hearing.

### **Possible Disciplinary Sanctions and Remedies**

- Disciplinary sanctions will only be taken if the respondent is found responsible for the violation of this policy. Please note that these "need not be non-disciplinary or non-punitive and need not avoid burdening the respondent." (85 FR 30274)
- The following is a range of some, but not all, possible disciplinary sanctions that F.I.R.S.T. Institute may put into place if a respondent is found to have violated this policy:
  - Formal written warning
  - Change of class schedule, cohort, or start, which may include a leave of absence
  - Probation
  - Expulsion
  - Dismissal of F.I.R.S.T. Institute employment

- A “No contact” notice to both parties that they must not have communication between them through verbal, electronic, written, or third party means when involved during educational programs or activities.

### **Additional Supportive Measures and Remedies**

- The Title IX Coordinator will “engage in an interactive discussion with the complainant to determine appropriate supportive measures.” (85 FR 30277)
- “[S]upportive measures cannot be punitive or disciplinary against any party” (85 FR 30045)
- These will be “tailored to the specific situation.” (85 FR 30046)
- The following is the range of some, but not all, possible supportive measures (if they are not burdensome to the parties) that F.I.R.S.T. Institute may offer the complainant and respondent. These include the aforementioned:
  - Emotional support through the Student Services Department
  - Connection to further resources through the Student Services Department
  - Agreement with instructor to keep complainant and respondent separate in class assignments if in the same class
  - Changing class schedule (if it’s not burdensome to the complainant)
  - Academic accommodations such as rescheduling an assignment or exam and/or tutoring at no extra cost
  - Providing an escort for complainant to move around campus safely when participating in the school’s educational programs or activities
  - Parking arrangements to ensure safety
  - Leave of absence (if it’s not burdensome to the complainant)
  - A “No contact” notice to both parties that they must not have communication between them through verbal, electronic, written, or third party means when involved during educational programs or activities.

### **Appeals Process**

- Both the complainant and respondent have the right to appeal the decision made by the adjudicator. Neither a complainant nor respondent can file an appeal based solely on the fact that they disagree with the decision. These are the only circumstances in which an appeal can be filed:
  - “Procedural irregularity that affected the outcome of the matter” (85 FR 30577)
  - “New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter” (85 FR 30577)
  - “The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.” (85 FR 30577)
- If a complainant and/or respondent would like to appeal the final decision of a formal complaint in order to revisit it, the party(ies) must “submit written statements supporting or challenging the outcome” to the Title IX Coordinator. (85 FR 30396)
- Both parties have one week from the date they receive the written notice of the responsibility determination and outcomes of the live hearing to submit an appeal request.
- A trained Appeals Officer – who is not the adjudicator (decision-maker) or the Title IX Coordinator – will be assigned to review the appeals request and will do as follows:
  - “Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties” (85 FR 30578)



- “Ensure that the decision-maker(s) for the appeal complies with the standards” of the policy. (85 FR 30578)
- “Issue a written decision describing the result of the appeal and the rationale for the result” (85 FR 30578)
- “Provide the written decision simultaneously to both parties” (85 FR 30578)
- Both parties will be notified of the approved appeal results within two weeks of the appeal’s submission date.
- If the appeal is approved, the school “has the opportunity to correct the outcome” using the aforementioned sanctions/supportive measures. (85 FR 30397)
- In the event that an Appeals Officer is found to have a conflict of or bias, a substitute Appeals Officer will be provided.
- Please note that appeals cannot be appealed.

## ACCOMMODATIONS

- b. If needed, reasonable accommodations can be requested through the Student Services Department. Please do so if you believe you may have a disability or language barrier that affects your ability to make a report or participate in the grievance procedures outlined in this policy.
  - Student Services Department contact information
    - Alfonso Alvarez, Director of Student Services, 407-316-8310 ext. 1112, [alfonso.alvarez@first.edu](mailto:alfonso.alvarez@first.edu)

## RESOURCES

- c. Florida Council Against Sexual Violence
  - Statewide Hotline – 888-956-7273
  - TTY/TTD accessibility – 711
  - Website – <https://www.fcasv.org/>
- d. Florida Department of Law Enforcement (FDLE) sexual predator and sexual offender registry website and toll-free telephone numbers.
  - Toll-Free Number – 1-888-357-7332
  - Local Number – 1-850-410-8572
  - Email – [sexpred@fdle.state.fl.us](mailto:sexpred@fdle.state.fl.us)
  - Website – <https://offender.fdle.state.fl.us/offender/sops/home.jsf>
- e. National Domestic Violence Hotline
  - Telephone Hotline – 1-800-799-7233
  - TTY Hotline – 1-800-787-3224
  - Website – <https://www.thehotline.org/>
- f. National Sexual Assault Hotline
  - Telephone Hotline – 1-800-656-HOPE (4673)
  - Online Hotline – <https://hotline.rainn.org/online>
  - Website – <https://www.rainn.org>
- g. Victim Service Center of Central Florida, Inc.
  - 24-Hour Crisis Line – 407-500-HEAL
  - Online Contact Form – <https://www.victimservicecenter.org/contact-us/>
  - Email – [vsc@ocfl.net](mailto:vsc@ocfl.net)
  - Website – <https://www.victimservicecenter.org>

## RIGHTS OF THE PARTIES

- h. Both the complainant and respondent have a right to the following:

- Policy information
  - Have all reports of possible policy violations to be taken seriously
  - Equal treatment and access to education
  - A prompt response to any formal complaint
  - Contact law enforcement authorities
  - Due process of the grievance procedures
  - Accommodations for a disability or language barrier
  - Full cooperation from school staff in grievance procedures and supportive measures
  - Supportive measures
  - Withdrawal from the informal resolution process before a resolution is reached (if applicable)
  - An advisor (i.e. friend, family, attorney, etc.)
  - Have the burden of proof be on the school
  - Opportunity to provide and review relevant evidence
  - A prompt resolution of the applicable grievance process
  - Not to have "any inferences about the determination regarding responsibility based on a party's failure to appear at the hearing or answer cross-examinations or other questions." (85 FR 30267 - 30268)
  - Appeals (under aforementioned provisions)
  - Connection to resources
  - Any and all other rights within the U.S. Constitution (85 FR 30267)
- i. In addition, if the complainant and/or respondent is a minor, "a parent or guardian has the legal right to act on behalf of the individual." (85 FR 30030)
- j. A complainant also has the right to withdraw a formal complaint in writing to the Title IX Coordinator.

## TITLE IX LOCAL ATTORNEYS

### Jordan Law

Address: 545 Delaney Ave, Building 3, Orlando, FL 32801

Toll Free: 1-855-849-8326

Phone: 407-906-5529

Fax: 407-205-0027

Website: <https://www.jordanlawfl.com/what-we-do/great-academic-hearing-lawyers-in-orlando/lawyers-helping-with-academic-hearings-in-central-florida/>

### Lindsey & Ferry, P.A.

Address: 1150 Louisiana Avenue, Suite 2, Winter Park, FL 32789

Toll Free: 877-301-2280

Phone: 407-278-7692

Fax: 407-599-2207

Website: <https://www.criminaldefenselawyersinorlando.com/student-offenses/title-ix-violations-defense/>