

## **RESOLUTION PROCEDURES FOR ALLEGED VIOLATIONS OF THE COLLEGE'S NONDISCRIMINATION AND EQUAL ACCESS POLICY**

The College takes seriously alleged violations of Policy No. 108 (Nondiscrimination and Equal Access). These procedures apply to all Informal and Formal Complaints received by the College alleging a violation of Policy No. 108. These procedures may also be used to address collateral misconduct arising from the investigation of, or occurring in conjunction with, harassing, discriminatory, or retaliatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by Policy No. 108 and these procedures will be addressed through the procedures identified in the Code of Conduct or appropriate Handbook applicable to the Respondent.

The Compliance Coordinator or their designee ("CC") shall be responsible for implementing the provisions of these procedures. The CC is as follows:

Dr. Jess Kobryn  
Assistant Dean of Students for Title IX & Equity and Director of Diversity,  
Equity, & Inclusion; Section 504 Coordinator; Title IX Coordinator  
148 Oviedo St.  
JKobryn@flagler.edu

Any individual who proceeds with an Informal or Formal Complaint under these procedures will be referred to as the Complainant. The individual alleged to have violated Policy No. 108 will be referred to as the Respondent.

If the Informal or Formal Complaint involves an appeal of the denial by the Flagler College Disability Resource Center of a requested accommodation, please see the paragraph below titled, "Appeal of the Denial of a Requested Accommodation for a Student with a Disability."

Employees and students must report violations of Policy No. 108 to the CC. Any other individual who believes Policy No. 108 has been violated may report such allegations to the CC.

Proceedings involving Informal and Formal Complaints are private matters and all individuals involved are expected to maintain the privacy of the proceedings. The College will treat all information submitted as confidential. Subject to FERPA and other applicable privacy laws, however, the College official investigating any Complaint under these procedures will inform individuals with a legitimate need to know of the Complaint and may provide them related information as necessary to allow the College official to conduct a meaningful and thorough investigation. The College official investigating the Complaint will inform all involved parties of the need to maintain the confidentiality of such information.

### **Informal Complaints**

Any individual who believes they have been subjected to unlawful harassment, discrimination, or retaliation in violation of Policy No. 108 may seek to resolve their concerns through an informal resolution process. To initiate the process, an individual may file a written Informal Complaint with the CC or notify the CC of the complaint orally. If the CC is the subject of the Informal Complaint, the individual may notify the Vice President and Chief Human Resources and Diversity, Equity, and Inclusion Officer.

The CC may elect to implement supportive actions designed to prevent the reoccurrence of the alleged policy violations during the resolution of the Informal Complaint. Examples of supportive actions may include, but are not necessarily limited to, changing a student's schedule, changing an employee's work location, and implementing a mutual no-contact order.

The informal resolution process is designed to promptly address the Complainant's concerns by facilitating an agreed upon resolution between the Complainant and Respondent. The CC, or an individual appointed by the CC, will work with the parties in an attempt to facilitate a resolution. Although there is no deadline to complete the informal resolution process, if the Informal Complaint is not resolved within thirty (30) days (absent extenuating circumstances), the informal resolution process will be terminated and the Complainant may elect to proceed with a Formal Complaint.

A Complainant is not required to file an Informal Complaint and may elect to proceed immediately with filing a Formal Complaint.

### **Formal Complaints**

Any individual who believes they have been subjected to unlawful harassment, discrimination, or retaliation in violation of Policy No. 108 may file a written Formal Complaint with the CC. If the CC is the subject of the Formal Complaint, the individual may file a written Formal Complaint with Vice President and Chief Human Resources and Diversity, Equity, and Inclusion Officer.

The Formal Complaint must include the following information:

- a. the identity of the Complainant and Respondent;
- b. the date or date(s) on which the alleged violation(s) of Policy No. 108 occurred;
- c. how the Respondent's conduct constitutes harassment, discrimination, and/or retaliation in violation of Policy No. 108;
- d. facts supporting the alleged violations;
- e. the identity of any witnesses; and,
- f. the Complainant's proposed remedy or relief sought.

#### **1. Initial Review the Formal Complaint**

The CC will review the Formal Complaint to determine whether it contains alleged violations of Policy No. 108. If not, the Formal Complaint may be dismissed or processed under a different College policy or procedure. If the Formal Complaint contains alleged violations of Policy No. 108, the Complainant and Respondent will receive written notice of the allegations.

If at any point during the resolution of a Formal Complaint, including during the investigation, the CC determines that reasonable cause does not support the conclusion that Policy No. 108 has been violated, the process will end, and the parties will be notified. The Complainant may request that the CC review the reasonable cause determination and/or re-open the investigation. This decision is in the sole discretion of the CC.

#### **2. Supportive Actions**

The CC may elect to implement supportive actions designed to prevent the reoccurrence of the alleged policy violations during the investigation and resolution of the Formal Complaint.

Examples of supportive actions may include, but are not necessarily limited to, changing a student's schedule, changing an employee's work location, and implementing a mutual no-contact order.

### 3. Voluntary, Mutually-Agreed Upon Informal Resolution

If both the Complainant and Respondent voluntarily and mutually agree, they may seek to resolve the Formal Complaint through an informal resolution process at any time prior to the issuance of a Written Determination. The informal resolution process is designed to promptly address the Complainant's concerns by facilitating an agreed upon resolution between the Complainant and Respondent. The CC, or an individual appointed by the CC, will work with the parties in an attempt to facilitate a resolution. During the informal resolution process, all other actions, with the exception of supportive actions, will be stayed. Although there is no deadline to complete the informal resolution process, if the Formal Complaint is not resolved within ten (10) days (absent extenuating circumstances), the informal resolution process will be terminated.

### 4. Investigation

The CC shall serve as or appoint a neutral Investigator to investigate the allegations in a Formal Complaint. The investigation will be thorough, reliable, and impartial. Investigations are completed expeditiously; however, there is no set timeline for an investigation to be completed. Investigations may take weeks or even months. The length of an investigation is dependent on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The College may undertake a short delay in its investigation when criminal charges related to the matters addressed in the Formal Complaint are being investigated by law enforcement. The College will promptly resume its investigation and resolution process once notified by law enforcement that the initial evidence collection process is complete.

College action(s) are not typically altered or precluded because civil or criminal charges involving the underlying incident(s) have been filed or because criminal charges have been dismissed or reduced.

The Investigator is responsible for gathering all relevant information in relation to the Formal Complaint. The Investigation may include, but is not limited to, interviewing the parties and witnesses, obtaining documentation, and identifying sources of expert information.

Once the investigation is complete, the Investigator will prepare a written report ("Investigative Report"). The Investigative Report will include a summary of all evidence, witness statements, and other information gathered and reviewed by the Investigator during the investigation. The Investigator will also include recommendations as to whether they believe, based on a preponderance of the evidence, that Respondent violated Policy No. 108. The preponderance of evidence standard is met when the Investigator believes that there is a greater than 50% chance that Respondent violated Policy No. 108 as alleged in the Formal Complaint. The Investigative Report must also include any proposed sanctions for such violations.

The Investigator will provide the Investigative Report to the appropriate administrator ("Decisionmaker"). The Decisionmaker is determined based on the Respondent's status

within the College as follows:

Students: Dean of Students or designee  
Employees: Human Resources Director or designee  
Contractor, Vendor, Rental: Vice President of Business Services or designee

5. Written Determination

The Decisionmaker is responsible for determining whether the Respondent violated Policy No. 108 and, if so, the appropriate sanctions and responsive actions to be taken. The Decisionmaker's determination will be made based on the preponderance of the evidence. The preponderance of evidence standard is met when the Decisionmaker believes based on the information included in the Investigative Report that there is a greater than 50% chance that the allegations in the Formal Complaint are true.

Within ten (10) business days of receipt of the Investigative Report, absent extenuating circumstances, the Decisionmaker will issue a Written Determination or notify the CC that further investigation is necessary due to an incomplete record or because more information is needed to reach a determination.

The Written Determination will include a determination as to whether the allegations in the Formal Complaint are substantiated. When a Respondent is found to have violated Policy No. 108, the Written Determination must be promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community. The Decisionmaker may consider impact statements from the parties when determining the nature and extent of appropriate sanction(s), if any.

If the Decisionmaker determines that the record is incomplete or that more information is needed to come to a conclusion, the Decisionmaker may direct a re-opening of the investigation or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

The Complainant will be informed of this outcome consistent with applicable federal and state laws.

6. Respondent's Acceptance of Responsibility or Admission of Conduct

A Respondent may accept responsibility for or admit to the allegations in a Formal Complaint. In cases where a Respondent accepts responsibility or admits the alleged violations in a Formal Complaint, the resolution process will end when the Decisionmaker issues a Written Determination.

If the Respondent accepts responsibility for some of the alleged policy violations, the Decisionmaker will determine appropriate sanction(s) and/or responsive actions for those violations. The remaining allegations will continue to be investigated and resolved until a Written Determination is issued.

7. Sanctions

Factors considered when determining any sanction(s)/responsive action(s) may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation;
- An individual's disciplinary history;
- Previous allegations or allegations involving similar conduct;
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation;
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation;
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community;
- The impact on the parties; and,
- Any other information deemed relevant.

The sanction(s) will be implemented as soon as is feasible. The sanctions described herein are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by outside authorities.

For students and student organizations, sanctions may include, but are not limited to, a warning, probation, suspension, dismissal, expulsion, or organizational sanctions, as well as all other sanctions listed in the Student Handbook.

For employees, sanctions may range from a warning up to and including termination from employment, as well as all other sanctions listed in the applicable employee handbook(s).

For vendors and others, sanctions may range from a warning up to and including a permanent separation from the College.

## 8. Long-Term Remedies

Following resolution of a Formal Complaint, and in addition to any sanctions implemented, the Decisionmaker may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Education to the community
- Permanent alteration of housing assignments
- Permanent alteration of class arrangements
- Provision of campus safety escorts
- Policy modification
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Decisionmaker, long-term remedies may also be provided even if no policy violation is found.

## **Appeal of a Written Determination**

Students and employees may appeal the Written Determination. An appeal must be submitted in writing to the CC within five (5) business days of receipt of the Written Determination. When any party requests an appeal, the CC will share the appeal request with other appropriate persons such as the Complainant.

The Appeal Decisionmaker will be as follows:

For Students: Vice President for Student Affairs  
For Employees: Vice President and Chief Human Resources Officer

Appeals are limited to the following grounds:

- a. A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g., substantiated bias, material deviation from established procedures).
- b. To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- c. There was a conflict of interest between or a bias for or against a party from a College administrator involved in the process.
- d. The severity of the sanction imposed is extraordinarily disproportionate to the gravity for which the Respondent was found responsible.

When the Appeal Decisionmaker finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

- Decisions by the Appeal Decisionmaker are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is compelling justification to do so.
- Appeals are not intended to be full re-hearings of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the Appeal Decisionmaker to substitute their judgment for that of the original decision merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be returned to the Investigator for reconsideration. Other appeals can be investigated at the discretion of the Appeal Decisionmaker.
- Sanctions imposed as the result of Written Determination are implemented after the appellate process has completed unless the CC calls for immediate implementation, pending the outcome of the appeal.
  - Graduation, study abroad, internships/ externships, travel, etc., do not constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- All parties will be informed in writing within five (5) business days of the outcome of the appeal without significant time delay between notifications.
- Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand.
- In cases in which the appeal results in Respondent's reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be

irreparable in the short term.

### **Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/responsive/corrective action(s), including suspension, expulsion, and/or termination from the College and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Dean of Students and/or the Human Resources Director.

### **Adjustment of Deadlines**

The CC may change any deadlines set forth herein for good cause, such as semester or summer breaks. Likewise, if the application of time deadlines creates a hardship due to the urgency of the matter or the proximity of an event, the CC, at the request of either party, will determine if an expedited procedure can be created.

### **Disability Accommodations During the Resolution Process**

The College is committed to providing reasonable accommodations and support to qualified students or others with disabilities to ensure equal access to the resolution process. Anyone needing such accommodations or support should contact the Director of the Disability Resource Center, who will review the request and, in consultation with the person requesting the accommodation, and the Appropriate Administrator, determine which accommodations are appropriate and necessary for full participation in the process.

### **Recordkeeping**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept for 7 years, or as required by state or federal law or institutional policy, in the case database.

### **Prohibition on Retaliation**

The College prohibits retaliation against any individual who reports discrimination, harassment, or retaliation, or who participates in an investigation of such reports. Retaliation is a serious violation of College policies and, like harassment or discrimination itself, will be subject to disciplinary action. No adverse action will be taken against an individual for making a good faith report of harassment, discrimination, or retaliation or alleged harassment, discrimination, or retaliation. Impermissible harassment can constitute retaliation.

### **Appeal of the Denial of a Requested Accommodation for a Student with a Disability**

Any student with a disability who has been denied an accommodation by the Flagler College

Disability Resource Center (“DRC”) may appeal the denial in accordance with the grievance procedures adopted by the DRC. The grievance procedures are available at the following link: <https://www.flagler.edu/student-support-services/disability-resource-center/>.

**Other Available Remedies**

These procedures are designed to provide individuals with an opportunity to have their complaints alleging violations of Policy No. 108 addressed informally or formally through the College. Importantly, however, nothing contained in these procedures is intended to interfere with the rights of any individual to pursue a complaint of unlawful harassment, discrimination or retaliation with the U.S. Department of Education's Office for Civil Rights ("OCR"), the Florida Commission on Human Relations ("FCHR"), the Equal Employment Opportunity Commission ("EEOC"), or any other appropriate state or federal agency.

Contact information for the OCR, FCHR, and EEOC is as follows:

<b><u>OCR</u></b>	<b><u>FCHR</u></b>	<b><u>EEOC</u></b>
Atlanta Office Office for Civil Rights U.S. Department of Education 61 Forsyth St. S.W. Suite 19T10 Atlanta, GA 30303-8927  Tel: 404-974-9406 Fax: 404-974-9471; TDD: 800-877-8339 Email: OCR.Atlanta@ed.gov	4075 Esplanade Way, Room 110 Tallahassee, FL 32399  Tel: 850-488-7082 Toll-Free: 1-800-342-8170 Fax : 850-487-1007  The Florida Relay Service Voice (statewide) 711 TDD ASCII (800) 955-1339 TDD Baudot (800) 955 – 8771	Miami Tower 100 SE 2 <sup>nd</sup> Street, Suite 1500 Miami, FL 33131  Tel: 1-800-669-4000 Fax: 305-808-1758 TTY: 1-800-669-6820  ASL Video Phone 844-234-5122

*Adopted \_\_\_\_\_ , 2022*