TITLE IX GRIEVANCE POLICY AND PROCESS

Franklin Pierce University

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TITLE IX GRIEVANCE POLICY

I. Policy Statement

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition of sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence);
- Addresses how Franklin Pierce University ("Franklin Pierce" or "the University") must respond to reports of misconduct falling within that definition of sexual harassment; and
- Mandates a grievance process that the University must follow to comply with the laws in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

See 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Title IX Final Rule and its extensive Preamble are available here: http://bit.ly/TitleIXReg

Based on the Title IX Final Rule, the University will implement the following Title IX Grievance Policy ("Policy") and accompanying Process ("Process"), effective August 14, 2020.

As an institution of Higher Education based in the liberal arts tradition, Franklin Pierce is

committed to creating a community of living and learning that is free from discrimination, harassment, and violence. Franklin Pierce University prohibits discrimination and harassment on the basis of race, color, nation origin, sex, ethnicity, pregnancy or parenting status, sexual orientation, gender identity or expression, religion, disability, age, or other characteristics protected under applicable federal or state law. The University does not discriminate in its educational programs or activities and as a community is committed to equal opportunity and affirmative action. Sexual misconduct, as defined by University policies and/or State and Federal laws, will not be tolerated at Franklin Pierce University.

The University remains committed to addressing any violations of its policies, including violations of the University's Title IX Grievance Policy and violations and violations not meeting the narrow standards defined under the Title IX Final Rule.

All members of the Franklin Pierce community share a responsibility for upholding this policy as we strive to reach our goal of creating a violence-free community.

This Policy is intended to provide the University Community with clearly defined behavioral standards, definitions, and prohibited conduct. The procedures described below apply to all complaints involving Students, Staff, and Faculty, as well as any other members of the University Community.

II. Definition of Terms in Policy

Complainant: For the purposes of this Policy, "Complainant" means any individual who has reported being or is alleged to be the victim of conduct that could constitute Covered Sexual Harassment under this policy.

Consent: Consent is the affirmative, unambiguous, and voluntary agreement to engage in specific sexual activity during a sexual encounter. Consent requires an outward demonstration, through mutually understandable words or actions, indicating that an individual has freely chosen to engage in sexual activity.

Consent to one form of sexual activity does not constitute consent to all forms of sexual activity, and consent to sexual activity with one person does not equal consent to engage in sexual activity with anyone else. Each party must clearly consent to each act during sexual encounters. Consent may be withdrawn at any time and if it is, sexual activity of any kind must stop. Consent cannot be inferred from silence.

Consent is not voluntary if it is induced by force, threat, coercion, or deception. Consent cannot be obtained by taking advantage of the incapacitation of another, such as someone who is incapacitated by drugs or alcohol, who is asleep, unconscious, or otherwise physically or mentally incapacitated.

Education Program or Activity**:** For the purposes of this Policy, education programs and activities include:

A. Any program or activity that occurs on University property.

B. Any program or activity that does not occur on University property but which the University, has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.

C. Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of The University's programs and activities over which the Franklin Pierce has substantial control.

D. "Substantial Control" in this context refers to a situation in which the University has control over both the Respondent and the context in which the Covered Sexual Harassment occurred.

Incapacitation: Incapacitation is a state beyond drunkenness or intoxication. Incapacitation is a state of intoxication or impairment that is so severe that it interferes with an individual's capacity to make informed and knowing decisions. Incapacitation means that a person lacks the ability to voluntarily consent to sexual activity because the person is asleep, unconscious, under the influence of a substance such that the person does not have control over their body, is otherwise unaware that sexual activity is occurring, or is unable to appreciate the nature and quality of the activity. In evaluating whether a party obtained consent for sexual activity in cases involving incapacitation, the University will consider the totality of the circumstances to determine: (1) did the Respondent know the Complainant was incapacitated; or, if not, (2) would a sober, reasonable person in a similar set of circumstances as the Respondent have known that Complainant was incapacitated?

Reporting Party: A student or employee who reports having experienced an incident of sexual misconduct to the University.

Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute Covered Sexual Harassment under this policy.

Responsible Employee: An Employee that has the authority to institute corrective measures. Once this individual is aware of a report of Covered Sexual Harassment the University will be considered to have actual notice of the report.

Sexual Act or Sexual Activity: The terms "sexual act" and "sexual activity" mean:

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

- Oral or anal sexual intercourse with another person, forcibly, and/or without consent, or not forcibly or without consent in instances in which the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or without consent, or not forcibly or without consent in instances in which the person is incapable of giving consent

because of age or because of temporary or permanent mental or physical incapacity.

- The touching of the private body parts of another person for the purposes of sexual gratification without the consent of that person, including instances where that person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- Sexual intercourse with a person who is under the statutory age of consent.

Students: All persons taking courses at the University, both full-time and part-time. Persons who are not officially enrolled for a particular term but who have a continuing relationship with the University are considered students.

Supportive Measures: Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

Title IX Coordinator: Administrator responsible for coordinating the University's efforts to comply with and carry out its responsibilities under Title IX. The Title IX Coordinator oversees the University's central review, investigation, and resolution of reports of Covered Sexual Harassment under this Policy. The Title IX Coordinator may delegate portions of their responsibilities to other individuals; for purposes of this Policy, references to the Title IX Coordinator include such designees.

University Community: Board of Trustees, Faculty, Staff, students, volunteers, as well as anyone doing business with or for the University.

III. To Whom the Policy Applies

This Policy applies to all Franklin Pierce University campuses within the United States, including Rindge, New Hampshire; Manchester, New Hampshire; Lebanon, New Hampshire; Goodyear, Arizona; and those engaging in coursework/the University Community online.

This Policy applies to all members of the Franklin Pierce University Community, which includes Board of Trustees, Faculty, Staff, students (whether matriculated or not, whether taking courses on-campus or off) and volunteers, as well as anyone doing business with or for the University. This Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator: (1) The conduct is alleged to have occurred on or after August 14, 2020; (2) The conduct is alleged to have occurred in the United States; (3) The conduct is alleged to have occurred in Franklin Pierce's Education Program or Activity; and (4) The alleged conduct, if true, would constitute Covered Sexual Harassment as defined in this policy.

There is no time limit for making a report to Franklin Pierce University; however, if the Respondent is no longer a student or employee, the University's authority to pursue disciplinary

action may be limited.

IV. Effective Date

This Policy will become effective on August 14, 2020, and will only apply to Formal Complaints of sexual harassment brought on or after August 14, 2020. Complainants brought prior to August 14, 2022, will be addressed under the appropriate Title IX policy or non-discrimination policy effective at the time of the alleged conduct.

This Policy was amended on September 6, 2022.

V. Intersection Between Title IX Grievance Policy and Other University Policies

In recent years, "Title IX" cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Title IX Final Rule, Franklin Pierce must narrow both the geographic scope of its authority to act under Title IX and the types of "sexual harassment" that it must subject to its Title IX investigation and adjudication process. Only incidents falling within the Title IX Final Rule's definition of sexual harassment (Covered Sexual Harassment) will be investigated under this Policy and, if appropriate, brought to a live hearing with cross-examination through the related Process outlined below.

Franklin Pierce remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule. Specifically, our University has a Code of Conduct that defines certain behavior as a violation of campus policy, and separate Sexual Misconduct and Non-Discrimination and Harassment Policies that address the types of sex-based offenses constituting a violation of campus policy, and the procedures for investigating and adjudicating those sex-based offenses.

To the extent that alleged misconduct falls outside the scope of this Policy, or misconduct falling outside the scope of the Policy is discovered in the course of investigating misconduct covered by this Policy, the University retains authority to investigate and adjudicate the allegations using other University policies and procedures through a separate grievance proceeding.

VI. General Rules of Application

A. Revocation by Operation of Law

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Policy be revoked in this manner, any conduct covered under the Policy shall be investigated and adjudicated under Franklin Pierce's existing Sexual Misconduct Policy.

B. Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. Concerns about the University's application of Title IX may contact the Department of Education's Office for Civil Rights using contact information available at https://ocrcas.ed.gov/contact-ocr.

C. Disability Accommodations

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodation for disclosed disabilities to the Title IX Coordinator, Center for Academic Excellence (CAE) for student matters or Human Resources (for employee matters) at any point before or during the Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodation that has not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other University programs and activities.

VII. Prohibited Conduct Under this Policy

Conduct that is the subject of this Policy ("Covered Sexual Harassment") is prohibited. Covered Sexual Harassment includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct. (i.e. quid pro quo).

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.

3. Sexual assault, as defined by the Clery Act, which is any sexual act directed against another person without the consent of that person, including instances in which that person is incapable of giving consent.

4. Dating Violence, as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act, which includes any violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; (B)The existence of such a relationship shall be determined based on: (i) of the length of the relationship, (ii) the type of relationship, (iii) the frequency of interaction between the persons involved in the relationship.

5. Domestic Violence, as defined in the VAWA amendments to the Clery Act, which includes any felony or misdemeanor crimes of violence committed: by a current or former spouse or intimate partner of the Complainant; by a person with whom the Complainant shares a child in common; by a person who is cohabitating with, or has cohabitated with, the

Complainant as a spouse or intimate partner; by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

6. Stalking, as defined in the VAWA amendments to the Clery Act, is engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for the person's safety or the safety of others; or (b) 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. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the Complainant. "Substantial emotional distress" means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

VIII. Reporting of Offenses

Any student, employee or other member of the University Community who has experienced or witnessed prohibited conduct under this Policy, including any form of Covered Sexual Harassment, is encouraged to make a report to law enforcement and/or to designated Responsible Employees at the University. Individuals may also report to any University employee not specifically designated as a Responsible Employee. An employee who receives such a report is obligated to share this information with the Title IX Coordinator to ensure the effected party receives notification of available University resources and resolution options.

The University encourages all Community members to take action to prevent or stop an act of sexual misconduct, including direct intervention when safe to do so, requesting assistance of friends or individuals of authority, contacting law enforcement, and/or reporting the incident to campus officials.

The University recognizes that not every individual is prepared to move forward with a Formal Complaint under this Policy. Supportive Measures are available for those who are seeking assistance, but do not necessarily wish to make a report to the University.

A. Designated University Officials

The following are key staff members to whom a report may be made via email, phone or in person:

Title IX Coordinator
Zauyah Waite, Ph.D.
waitez@franklinpierce.edu 603-899-4162
2nd Floor, Peterson Manor

B. **Responsible Employees**

Individuals may also choose to report incidents of prohibited conduct to University employees not specifically designated above. The following is a list of Responsible Employees who are trained to receive reports of sexual misconduct. These employees are a "responsible employee" under Title IX because they have the authority to institute corrective measures. Once these individuals are aware of a report of sexual harassment the University will be considered to have actual notice:

- President;
- Senior Officers (Vice Presidents and Upper level administrators);
- Human Resources Administrators;
- Dean of Students and Assistant Dean of Student Affairs;
- Residential Life Professional Staff;
- Campus Safety and Security Staff;
- Coaches, including Assistant Athletic Directors and Assistant Coaches;
- Academic Deans and Program Directors;
- Other Deans, Associate Deans, Directors and Administrators with supervisory responsibilities; and
- Residential Life Senior Community Assistants, and Community Assistants.

The above-listed categories of employees are obligated to report incidents to the University's Title IX Coordinator, who will determine the most appropriate course of action. This legal obligation is based on the Title IX requirement that the University take immediate and corrective action once a Responsible Employee is aware of an incident of sexual or gender-based harassment or assault.

For those obligated to report, failure to report allegations of violation of the Policy or other forms of sexual or gender-based harassment not covered under this policy, may result in disciplinary action up to and including termination and/or dismissal from the University.

C. Confidential Reporting

While steps are taken to protect the privacy of all involved, individuals should understand that a report to any University employee listed as a responsible employee above will necessarily trigger this Policy's review process. If an individual would like the details of an incident to be kept confidential, they may choose to speak with the following resources or submit the report anonymously: Franklin Pierce University Sexual Misconduct Reporting Form (maxient.com)

- Counseling and Outreach Staff;
- Health Services Staff; and
- Athletic Trainers.

The above on-campus confidential reporting resources are staffed by medical and psychological professionals who are bound by state confidentiality laws and will not share a report with other members of the University except in extreme cases of immediate threat or danger or where required by law. These employees may submit an anonymous report on behalf of the Complainant to aggregate statistical information for Clery Act reporting purposes.

Confidential Resource Advisor (CRA)

Nicole Newell, Senior Director of Student Wellness and Outreach Education (Counseling and Health Services), University designated Confidential Resource Advisor
Office Location: Wellness Center, ground floor of Granite Hall
Phone: (603) 899-4135
Newelln@franklinpierce.edu

The CRA will be made available to all students or employees that report a complaint related to Title IX or individuals looking for information regarding reporting or Supportive Measures. The CRA shall provide resources regarding the following:

- Reporting options
- Counseling Services and local rape crisis center information
- Medical and health services available on and off campus
- Available academic and co-curricular accommodations
- Referral to Student Financial Services regarding loan counseling related to temporary leave of absence or withdrawal
- Opportunities for campus security escorts
- Overview of investigatory and adjudication process
- Referral to local crisis center or local police contact regarding legal process

D. Off-Campus Resources

Individuals may also choose to contact off-campus support services and resources. More information regarding organizations that can provide crisis intervention services, counseling, medical attention and assistance in interfacing with the criminal justice system can be found here: https://www.franklinpierce.edu/student-experience/student-affairs/conduct/sexual-misconduct.html

E. Privacy and Confidentiality in Reporting

Consistent with the Policy, references made to confidentiality refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or University officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to privacy mean University offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues.

The University is committed to maintaining the privacy of all parties involved and every effort will be made to protect privacy interests in a manner consistent with the need for a thorough review.

Information provided to non-confidential campus employees will be relayed only as necessary to assist the Title IX Coordinator in the active review, investigation and/or resolution of the report. While not bound by confidentiality, the individuals with this knowledge will be kept as limited as possible to preserve a Complainant's and Respondent's rights and privacy. It is reasonable for the University's Sexual Assault Response Team to be aware of a report.

IX. Amnesty

The University encourages the reporting of potential violations of this Policy. Sometimes, parties or witnesses are hesitant to report to University officials or participate in the Process because they fear that they themselves may be in violation of certain policies (e.g., underage drinking or use of illicit drugs at the time of the incident). To encourage reporting and full participation in the Process, the University maintains a policy of offering students amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident that is the subject of the report or matter being investigated.

X. Retaliation

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations. Retaliation against anyone who in good faith makes a report or complaint about a violation of the policy or participates in an inquiry or investigation related to processes as outlined within this policy is strictly prohibited. A person engaging in retaliatory action may be subject to disciplinary action.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Policy. This includes any charges filed against an individual for Code of Conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts and circumstances as a report or complaint of Covered Sexual Harassment.

Complaints alleging retaliation may be filed using the procedures found in the Student Code of Conduct (for students) or with Human Resources (for employees).

XI. Obligation to Provide Truthful Information

All individuals are expected to provide truthful information when participating in any aspect of this Policy or the related Process. Providing false information in bad faith is prohibited and subject to action under the [which employee and student policies would apply].

XII. Training

The Title IX Coordinator, Investigator, Hearing Chair/Decision Maker, Hearing Board Members, and any individual participating in the Process, shall receive annual training on issues relating to sexual misconduct, including all topics mandated by federal and/or state law. Full details of training can be seen at this link: Title IX Trainings

XIII. Community Resources

Additional information about community resources that may be available for individuals reporting conduct pursuant to this Policy may be found here: Community Resources Link

XIV. Applicable Process Under this Policy

The process and procedures for responding to reports of Covered Sexual Harassment are found in Appendix A: Title IX Grievance Process.

APPENDIX A

TITLE IX GRIEVANCE PROCESS

This resolution Process is guided by principles of fairness and respect for all parties. Both on-campus and off-campus resources and support are available for both students and employees, whether as Complainants or Respondents, to provide guidance throughout the investigation and resolution of Formal Complaints.

The Process will be concluded within a reasonably prompt manner after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's Advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

A. Definitions

Code of Conduct: The written policies adopted by the University governing student behavior, rights, and responsibilities while such students are matriculated at the University. A copy of the current Code of Conduct is found here: Code of Conduct Link

Support Person: An individual, selected by the Complainant or Respondent, who may or may not be a confidential individual, who provides support to the party at any meeting or proceeding related to the Process. An individual serving as a support person for a Complainant or Respondent cannot then serve as an Advisor within the same Process and therefore can serve no active role in a meeting or proceeding. Anyone previously designated as an Advisor within a Process cannot serve as a support person within the same Process.

Confidential Resource Advisor (CRA): An individual designated by the University, to effectively provide victim services related to sexual misconduct. A CRA shall not disclose confidential information without the prior written consent of the student or employee who shared the information. A CRA shall not be required to report an incident to the University or a law enforcement agency unless otherwise required to do so by state or federal law and shall provide confidential services to Complainants. A CRA may attend an administrative or institution-based adjudication proceeding as the advisor or support person of the Complainant's choice. A CRA shall not provide services to more than one party in an incident and shall ensure confidentiality is maintained. A CRA shall not act as a counselor or therapist unless the confidential resource advisor is licensed as a counselor in this state and the reporting party engages the confidential resource advisor in that capacity.

Notice to a CRA of an alleged act of sexual misconduct shall not be considered actual or constructive notice of such an alleged act to the University.

Formal Complaint: A document filed in person, by mail, or by email and signed by the Complainant or Title IX Coordinator alleging Covered Sexual Harassment against a Respondent and requesting that the University investigate the allegation. A Formal Complaint must include a physical or digital signature. If the Title IX Coordinator signs the Formal Complaint, they are not considered a Complainant or party to the investigation. Rather, as defined above, the subject of the alleged conduct is considered to be the Complainant.

Preponderance of the Evidence: The standard of proof used for the determination of responsibility under this Policy. The preponderance of the evidence standard may also be characterized as "more likely than not" or "fifty- percent and a feather."

Sexual Assault Response Team (SART): A group of staff members charged with monitoring sexual harassment and assault cases to ensure that Complainants and Respondents receive the supportive measures they need to succeed. And is responsible for the general education of the campus community around sexual harassment, violence, consent, and bystander intervention.

B. Use of External Professionals

The University reserves the right to contract outside experienced professionals, as necessary, to serve in any role necessary to implement the Policy and Process, including but not limited to

investigators, decision makers, hearing board members or chairs, appellate decision makers, advisors, informal resolution facilitators, or support persons.

C. Statement of Rights

It is the goal of Franklin Pierce University to ensure that all community members have access to needed resources, services, and information. The University assures all parties the following:

- To be treated with respect by University officials.
- To decide to file a Formal Complaint alleging the Respondent violated the Policy. This decision shall rest solely with the Complainant. There may be circumstances, however, depending on the status of the Respondent and the seriousness of the offense, in which the University must take action to protect the Complainant or other members of the University community.
- To be notified in writing of available personal counseling, mental health, medical or student services, advocates, both on campus and in the community.
- To receive notification in writing of options for and available assistance in changing academic, transportation and living situations after an alleged incident of Covered Sexual Harassment, if so requested and if such changes are reasonably available.
- To be notified in writing of option to notify law enforcement and be provided assistance by campus authorities in notifying law enforcement if the individual chooses.
- The University shall not publicly disclose the identity of the parties, except as necessary to carry out a disciplinary process or as permitted under state or federal law.
- To be notified in writing of the right to request a no-contact order.
- To be notified in writing of the option to report the incident to the University.
- To have an Advisor of Choice and support person present at any meeting (i.e., meeting, interview, or conduct hearing). A party can change their Advisor of Choice at any time, a change in advisor does not impact the timeline of the process (investigation, hearing, appeal, etc.).
- To be presumed not responsible until a formal finding of responsibility.
- To be informed of the outcome and sanction of any Title IX Grievance Process in writing (Complainant and Respondent will be notified simultaneously).
- To have only relevant evidence considered in a Title IX hearing.
- To choose not to have reports of Title IX resolved through the informal resolution.
- To have reports of Title IX responded to in accordance with the Title IX Grievance

Process.

- The right to request witnesses and provide evidence which, if determined relevant, will be considered within the investigation and hearing.

XV. Filing a Formal Complaint

Upon receipt of a report of any allegation of potential Covered Sexual Harassment, the University shall ensure that Complainants are advised of their right to:

- notify proper law enforcement authorities (local police);
- be assisted by campus authorities in notifying law enforcement authorities if the Complainant so chooses;
- decline to notify such authorities; and/or
- file a Formal Complaint with the University.

The University will also inform the Complainant of their right to be protected from retaliation for reporting an incident.

Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of Franklin Pierce, including as an employee. For Complainants who do not meet this criteria, the University will utilize its Sexual Misconduct Policy and/or Code of Conduct for matters where the Respondent is a student; for matters where a Respondent is an employee, the University will utilize the Internal Complaint Procedure (Human Resources, Internal Complaint).

A Complainant has the right, and can expect, to have a Formal Complaint taken seriously by the University when notified, and to have these incidents investigated and adjudicated in an impartial, timely, and thorough manner by trained individuals.

A Complainant may withdraw a complaint or report from the University at any time.

A. Complainant's Request Not to Pursue an Investigation

If an individual discloses an incident to a responsible employee but wishes to maintain confidentiality or request that no investigation into a particular incident be conducted or disciplinary action taken, the University must weigh that request against the University's obligation to provide a safe, non-discriminatory environment. There are times when the University may not be able to honor the Complainant's request to remain confidential in order to provide a safe, non-discriminatory environment.

If the University honors the request for confidentiality, a Complainant must understand that the University cannot investigate or otherwise resolve the report using this Policy, though the Complainant may be provided Supportive Resources.

Janie Evans, Senior Director of Human Resources, (jevans@franklinpierce.edu; 603-899-1076) and Dr. Zauyah Waite, Title IX Coordinator (waitez@franklinpierce.edu; 603-899-4162), or a designee, is designated to evaluate requests for Complainants that are employees to remain confidential, once a responsible employee has received notice of alleged Covered Sexual Harassment.

Dr. Zauyah Waite, Title IX Coordinator, (waitez@franklinpierce.edu; 603-899-4162), or a designee, is designated to evaluate requests for Complaints that are students to remain confidential, once a responsible employee has received notice of alleged Covered Sexual Harassment.

When weighing a Complainant's request for confidentiality or that no investigation or discipline be pursued, the Senior Director of Human Resources or the Title IX Coordinator, or their designee, will consider a range of factors, including the following:

- The increased risk that the Respondent will commit additional acts of sexual or other violence such as:
    - Whether there have been other misconduct complaints about the same Respondent;
    - Whether the Respondent has a history of arrests or records from prior school indicating a history of misconduct;
    - Whether the Respondent threatens further sexual misconduct or other violence against the Complainant or others;
    - Whether the sexual harassment or assault was committed by multiple Respondents;
    - Whether the sexual violence was perpetrated with a weapon;
    - Whether the Complainant is a minor;
    - Whether the University has other means to obtain relevant evidence of the sexual misconduct;
    - Whether the Complainant's report reveals a pattern of perpetration at a given location or by a particular group.

The presence of one or more of these factors could lead the University to investigate and, if appropriate, pursue disciplinary actions. If none of these factors is present, the University will likely respect the Complainant's request for confidentiality.

If the University determines that it cannot maintain a Complainant's confidentiality, the University will inform the Complainant in writing prior to starting an investigation. In such circumstances, the Title IX Coordinator may file a Formal Complaint if the Complainant does not elect to do so. When filing a Formal Complaint, the Title IX Coordinator does not become a party to the matter. The Complainant need not participate in the process further but will receive all

notices issued under this Policy and Process.

The University may not require any individual to take part in any part of the process outlined in this Policy.

Because the University is under a continuing obligation to address the issue of sexual harassment or assault University wide, reports of sexual harassment or assault (including anonymous reports) will also prompt the University to consider broader remedial action—such as increased monitoring; supervision or security at location where the reported sexual harassment or assault occurred; increasing education and prevention efforts, included to targeted population groups; conducting climate assessment surveys; and /or revisiting its policies and practices.

B. Concurrent Investigations

If a Complainant chooses to file a report with the local law enforcement, upon request, the University will assist the Complainant in doing so. Any criminal investigation performed by law enforcement will be separate from the investigation performed by the University.

Disciplinary action may proceed concurrently with these civil and/or criminal proceedings and will not be subject to challenge on the grounds that civil or criminal charges involving the same incident have been dismissed or reduced. The University's Title IX process and timeline will not typically be altered by the filing of civil or criminal charges of the incident which was reported. The University may undertake a short delay in its investigation or resolution process, to comply with a law enforcement request for cooperation (e.g. to allow for criminal evidence collection). The determination of whether a delay is appropriate will be made on a case by case basis under the advisement of the Title IX Coordinator.

C. Multi-Party and Consolidated Complaints

The University may consolidate Formal Complaints alleging Covered Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Covered Sexual Harassment arise out of the same facts or circumstances.

XVI. Initial Assessment

Following receipt of notice or a report of sexual harassment or assault, the Title IX Coordinator will reach out to the Complainant to discuss their options. Once a Formal Complaint is received the Title IX Coordinator will conduct an initial Title IX assessment. This assessment will consider the nature and circumstances of the allegations and determine if the University's Policy and Process should apply to a Formal Complaint, the safety of both the individual and wider campus Community, and the Complainant's preference for resolution.

The Title IX Coordinator will determine if the instant Policy and Process should apply to a Formal Complaint by assessing whether the conduct alleged meets the jurisdictional requirements of this Policy. If one or more of the jurisdictional elements is not met, the Title IX Coordinator will notify the parties that the Formal Complaint does not meet the requirements of the Policy. If

the reported misconduct, even if substantiated, would not constitute Covered Sexual Harassment, then the Formal Complaint must be dismissed under Title IX, and may be referred to the appropriate student, faculty, or staff disciplinary process, if appropriate. Parties may appeal this dismissal using the Appeal process outlined below.

A full investigation will proceed if there is reasonable cause to believe Covered Sexual Harassment may have occurred. The University will make every effort to successfully resolve all reports in a timely manner.

Concurrent conduct is alleged conduct that does not involve Covered Sexual Harassment that arises out of the fact finding and investigation of a Formal Complaint of Covered Sexual Harassment. Concurrent conduct may be addressed in pursuant to the Process. The Title IX Coordinator will determine if the conduct is to be addressed in conjunction or referred to another process within the University.

If the alleged conduct, if true, includes conduct that would constitute Covered Sexual Harassment and conduct that would not constitute Covered Sexual Harassment, the Process may be applied to investigation and adjudication of the Covered Sexual Harassment in addition to the alleged violations of other University policies. The determination of whether these policies will be adjudicated separately or together is at the discretion of the Title IX Coordinator.

XVII. Supportive Measures

Complainants who report allegations that could constitute Covered Sexual Harassment under this policy have the right to receive Supportive Measures from Franklin Pierce regardless of whether they desire to file a Formal Complaint. Supportive Measures are non-disciplinary and non-punitive. Supportive Measures may include but are not limited to:

- Referral to counseling and health services;
- Referral to the Employee Assistance Program;
- Community education and resources;
- Altering the housing situation of the Respondent (resident student or resident employee) or the Complainant, if desired;
- Altering work arrangements for employees;
- Implementing contact limitations between the parties (No Contact Order);
- Offering academic adjustments;
- Leaves of absence; and/or
- Increased security and monitoring of certain areas of the campus.

The University may issue a No Contact Order to both parties, whereby continued intentional

contact or communication by either party, either directly or through a third party in any form (e.g., all social media, text, phone or any other form of communication), could constitute a violation of the Student Code of Conduct or other University policies. No Contact Orders are University documents that do not have the legal effect of orders of protection, which are obtained through a court. The no-contact order is not punitive; it is a supportive measure.

Any party who obtains a court-issued protective order should notify the Title IX Coordinator and provide the Title IX Coordinator with a copy of the order. The party may meet with the Title IX Coordinator to develop a safety action plan and put into place any necessary Supportive Measures.

Supportive Measures may be ongoing and will be periodically reviewed by the Title IX Coordinator to meet the needs of the parties. The University encourages any party seeking Supportive Measures or seeking to make changes to Supportive Measures to contact the Title IX Coordinator.

The University can assist a Complainant in receiving Supportive Measures from local resources such as the local crisis center or local police department. The following Supportive Measures can be requested from those parties:

- Information regarding NH Victims Compensation Program (https://www.doj.nh.gov/grants-management/victims-compensation-program/)
- Requesting an Order of Protection https://nhlegalaid.org/protective-orders
- Emergency Shelter (local crisis center)
- Assistance with transportation related to medical care or other support services (local crisis center)

XVIII. Emergency Removal

Franklin Pierce retains the authority to remove a student Respondent from the University's educational program or activity on an emergency basis, to ensure the safety and well-being of members of the University community, where the University (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Covered Sexual Harassment justifies a removal. The Title IX Coordinator has sole discretion to implement or stay an Emergency Removal under the Process, and to determine its conditions and duration. If Franklin Pierce determines such removal is necessary, the Respondent will be provided notice and an opportunity to challenge the decision within 45 hours following the removal.

During the Interim Suspension, a student is denied access to the residence halls and/or to university premises and/or all other university activities or privileges for which the student might otherwise be eligible, as the Title IX Coordinator and/or Assistant Dean of Student Affairs or their designee may determine to be appropriate. Typically, a student will be allowed to continue academic coursework electronically, but this is permitted at the discretion of the Title IX Coordinator

and/or Assistant Dean of Student Affairs.

XIX. Administrative Leave for Employees

Franklin Pierce retains the authority to place an employee Respondent on administrative leave during the Process.

XX. Dismissal

The Title IX Coordinator shall dismiss a Formal Complaint, or any specific allegations within a Formal Complaint, at any point in the Process:

- If the conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in § 106.30 even if proved,
- If the alleged conduct did not occur on or after August 14, 2020;
- If the conduct did not occur in the recipient's education program or activity;
- If the conduct did not occur against a person in the United States; or
- If at the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the recipient.

The Title IX Coordinator may dismiss a Formal Complaint, or any specific allegations within a Formal Complaint, at any point in the Process:

- if a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- if the Respondent is no longer enrolled or employed by the University; or
- If specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Dismissal will be issued in writing to the parties to include justification for dismissal and if the complaint will be referred to any other University processes. All parties have the right to appeal the dismissal utilizing the appeal process referenced below.

XXI. Use of Advisors

The University will provide the parties equal access to advisors and support persons throughout the resolution process; any restrictions on advisor participation will be equally applied.

A. Advisor of Choice

Complainants or Respondents in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice

is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of the University. The University may adopt further guidance regarding the appropriate participation of advisors.

The University will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for the Complainant or Respondent is not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

The University's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other University policies apply to matters governed under this Policy, and the University cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee.

An Advisor of Choice must be declared by a Complainant or Respondent in writing, accompanied by an active email address, phone number, and mailing address, to the Title IX Coordinator prior to any involvement by the advisor. Choosing an advisor who is also a witness in the process creates potential for bias and conflict-of-interest.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

B. Appointed Advisor

If a party does not select an Advisor of Choice to participate during the hearing, the University will select an Advisor to serve in this role for the limited purpose of conducting cross-examination at the hearing, at no fee or charge to the party. This person may be, but is not required to be, an attorney.

XXII. Notice of Investigation

If the Initial Assessment concludes that a Formal Complaint raises allegations of potential Covered Sexual Harassment the University will initiate the resolution process.

All parties will receive a Notice of Investigation which shall include information regarding the Process, informal resolution options, the allegations of the Covered Sexual Harassment (including sufficient details known at the time the Notice is issued such as, identities of parties, date, time, location, etc.), a statement that the Respondent is presumed not responsible until a formal outcome has been issued, information regarding advisors and support persons, how to request accommodations, and a reminder of the code provision for furnishing false information and the University retaliation policy.

The written Notice of Investigation will include the appointment of a designated investigator(s). The Notice of Investigation will provide an opportunity for either party to challenge appointment of the investigator(s) for bias or actual conflict of interest prior to the start of the investigation.

Any new alleged violations that come about during the investigatory process will result in a new/updated Notice of Investigation to all parties. The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional alleged violations.

The University will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

XXIII. Informal Resolution Procedure

The informal resolution procedure may be considered with the consent of the parties. Some incidents can be resolved through mediation or other interventions as long as both parties agree to take part voluntarily. These resolutions may include, but are not limited to, referral to counseling and health services, altering housing situations, academic adjustments, educational programming or training, and supported direct confrontation of the Respondent.

The University will offer mediation for appropriate cases but will not compel a party to engage in mediation, to directly confront the other party, or to participate in any form of voluntary resolution. Either party may change their mind at any point in time and choose to pursue a formal resolution. In the event informal resolution is unsuccessful, the parties shall agree that information obtained or stated in the informal resolution process is not admissible in any subsequent investigation or hearing.

The following offices/individuals can conduct informal resolutions: Senior Director of Human Resources and/or designee(s); Assistant Dean of Student Affairs and/or designee(s).

To review options available to parties for informal resolution please reference the SART website: Sexual Assault Response Team (SART)

If reported misconduct is resolved via informal resolution, the Title IX Coordinator will inform the Complainant and Respondent of the final determination through the issuance of an Outcome Letter, setting forth the informal measures implemented. No appeal process will be afforded to parties that resolve complaints via an informal resolution process. In student cases, this Outcome Letter may be a part of the Respondent's educational and student conduct record.

Failure to abide by the terms of an informal resolution Outcome Letter could constitute a violation of the Student Code of Conduct or other University policies.

XXIV. Formal Procedure

A. Investigation

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute Covered Sexual Harassment after issuing the Notice of Investigation.

The University, and not the parties, has the burden of proof and the burden of gathering

evidence, i.e., the responsibility of showing a violation of this Policy occurred. This burden does not rest with either party and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the University and the University may not draw an adverse inference from a party's lack of participation.

The investigation may include interviews with the Complainant and Respondent separately and any identified witnesses. The investigator will also gather any available physical, digital, or electronic evidence, including, but not limited to, documents, communications between the parties, and other electronic records. The investigator will conduct the investigation in a manner appropriate to the circumstances of the case with sensitivity and respect, mindful of individual privacy concerns.

The investigator will consider only relevant evidence when conducting the investigation. Relevant evidence and questions refer to information that tends to make an allegation of Covered Sexual Harassment more or less likely to be true. Relevant evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of the Process:

- Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior unless:
    - They are offered to prove that someone other than the respondent committed the conduct alleged by the Complainant, or
    - They concern specific incidents of the Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

Evidence regarding previous behavior of the parties may also be included in the investigation if the behavior is determined relevant to the alleged violations within the investigation.

B. Investigative Report and Evidence Review

At the conclusion of the investigation, the investigator will prepare a written report that fairly summarizes the information gathered, both exculpatory and inculpatory evidence, the areas of agreement and disagreement between the parties, any supporting information or accounts, and if able a credibility assessment of all parties. This document analyzes relevant facts that will be used in reaching a determination. The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence. Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the investigative report.

The Title IX Coordinator will provide the parties and their advisors with notice of their right to review the investigation report and accompanying evidence and instructions for inspection and review of these materials (either virtual or in-person). The evidence made available for review by the parties will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the University in making a determination regarding responsibility;

2. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

Each party will have 10 business days to review and provide a response in writing to the investigation report and evidence. These responses, which may include new evidence, clarification of statements, raise concerns regarding information included, etc. will be added to a final investigation packet (including the investigation report, evidence, and party responses). Any new evidence submitted by a party after the allotted 10 business days will not be considered by the investigator without good cause. It is at the Title IX Coordinator's discretion if new evidence submitted after the allotted 10 business will be considered by the investigator.

The parties and their advisors must not disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Process.

Once the final investigation packet is completed, the investigator will refer the final investigation packet to the Title IX Coordinator. The Title IX Coordinator will be responsible for referring the final investigation packet to the Hearing Chair/Decision Maker.

XXV. Administrative Hearings

Administrative hearings are used for incidents involving Covered Sexual Harassment. Franklin Pierce will not issue a disciplinary sanction arising from an allegation of Covered Sexual Harassment without holding a live hearing unless otherwise resolved through an informal resolution process. The parties cannot waive the right to a live hearing.

A. Hearing Chair and Hearing Board Members

The Title IX Coordinator will select a Hearing Chair, who will also be the Decision Maker for the hearing. The Title IX Coordinator may, but is not required to, also select up to three trained Hearing Board Members to participate in the hearing. The Hearing Chair and Hearing Board Members will not have been previously involved with the investigation.

The parties will have an opportunity to raise any objections regarding any Chair or Member of the Hearing Board's actual or perceived conflicts of interest or bias before the commencement of the live hearing.

The University reserves the right to have its own attorney present during the hearing.

B. Notification of Hearing

At least 10 business days prior to the Hearing, the Title IX Coordinator will send a Notice of Hearing to the parties containing:

- A description of the alleged violation(s) and a description of the applicable procedures.
- The time, date, and location of the Hearing.
- The identity of the Hearing Chair/Decision Maker and, if applicable, Hearing Board Members, and the process for challenging the participation of these individuals.
- Reminder of parties' right to have an Advisor of Choice and support person present during the hearing and that the University will appoint an advisor for parties participating without an Advisor of Choice.
- Reminder of code provision for furnishing false statements.
- A statement that the Respondent is presumed not responsible until formal outcome notification.
- Option to opt into an informal resolution process if appropriate.
- Reminder of University retaliation policy.
- For compelling reasons, the Title IX Coordinator may reschedule the Hearing.

C. Newly-Discovered Evidence

As a general rule, no new evidence or witnesses may be submitted during the live hearing.

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The Hearing Chair/Decision Maker will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the Hearing Chair/Decision Maker answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

D. Hearing Procedures

The live hearing may be conducted with all parties physically present in the same geographic location, or, at Franklin Pierce's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through Zoom or another similar online conferencing platform. This technology will enable participants simultaneously to see and hear each other. At its discretion, the University may delay or adjourn a hearing based on technological errors not within a party's control.

Best efforts will be made to complete the entire process (up to the final appeal) in a timely manner. Extenuating circumstances may arise that require the extension of time frame. These circumstances may include the complexity and scope of the allegations, the number of witnesses involved, the availability of the Complainant, Respondent or witnesses, the effect of a concurrent criminal investigation, any intervening school break or other unforeseen circumstances. The University may determine that multiple sessions or a continuance (i.e. pause on the continuation of the hearing until a later date or time) is needed to complete a hearing.

Any evidence subject to inspection and review will be made available to parties, advisors, the Hearing Chair, and any Hearing Board Members at any hearing, for review and for use in cross-examination.

Parties and witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from retaliation. The Hearing Chair cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.

The Hearing Chair/Decision Maker has the authority to determine the format of the hearing, consistent with this Policy. The University may also develop supplemental guidelines or rules of decorum for hearings.

Both parties will typically have the right to give an opening and closing statement, be questioned by the Hearing Chair and/or Hearing Board Members, cross examined by the other party's Advisor, cross examine the other party and any witnesses through their Advisor.

Cross-examination will be conducted by a party's Advisor, and not the parties themselves. Questions posed to a party or witness must be relevant and meet the standards of expectation set by the Hearing Chair. Before any cross-examination question is answered, the Hearing Chair will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked (including by the Hearing Board or Hearing Chair) may be deemed irrelevant if they have already been asked and answered.

If a party does not select an Advisor, the University will select an Advisor to serve in this role for the limited purpose of conducting cross-examination at the hearing, at no fee or charge to the party. If a party does not attend the live hearing, the party's Advisor may appear and conduct cross-examination on their behalf. If neither a party nor their Advisor appear at the hearing, the University will provide an Advisor to appear on behalf of the non-appearing party.

The hearing will be recorded using audio or audiovisual recording software and saved

recordings will be made available to parties for inspection and review upon request following the hearing.

When deciding the outcome, the Hearing Chair will weigh the credibility of all statements, parties and witnesses, as necessary for reaching a determination. While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Hearing Chair.

The Hearing Chair shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

The Final Rule requires that Franklin Pierce allow parties to call "expert witnesses" for direct and cross examination. The University is not obligated to provide expert witnesses on behalf of any party.

XXVI. Determination Regarding Responsibility

Following the hearing, the Hearing Chair will determine whether there was sufficient evidence to find the Respondent responsible for the alleged misconduct. The Hearing Board Members may make recommendations to the Hearing Chair regarding responsibility and appropriate sanctions.

Franklin Pierce uses the preponderance of the evidence standard for determinations regarding Formal Complaints alleging misconduct covered under this Policy. This means that the investigation and hearing determines whether it is more likely than not that a violation of the Policy occurred.

The Hearing Board Chair will be responsible for issuing the outcome letter via email to both parties.

A. Sanctions and Remedies

If a finding of responsibility is made, the Hearing Chair may impose one or more disciplinary sanctions, which are designed to: (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation on the Complainant and the University Community. In determining appropriate sanctions, the Hearing Chair may consider any record of past violations, as well as the nature and severity of such past violations. The Hearing Chair may also provide remedies to the Complainant designed to restore or preserve equal access to the University's education program or activity.

Any sanction or remedy imposed will be explained or supported in the Notice of Outcome. In determining an appropriate sanction or remedy, the Hearing Chair and/or Hearing Board may consult with other University officials.

Student sanctions may include, but are not limited to:

- Written Warning consists of formal notification that the student has violated the Student Code and advises that repetition will result in a more severe sanction. A written record of the warning is made.

- Educational Sanction is usually imposed in conjunction with another sanction. Educational sanctions may include, but are not limited to, evaluation/counseling, change in residence hall, participation in an educational program, writing a research paper, a supervised work project, etc. The educational sanction must be completed within the manner and time stated as part of the sanction. Participation in certain programs may be withheld or restricted until educational sanctions are completed (e.g. participation in room selection).

- Restitution is full payment for the cost of damage(s), as determined by the University, of materials and labor for repair or replacement of damaged, destroyed, or stolen University property.

- Fines may be assessed by the University for certain actions such as (but not limited to) false activation of a fire alarm.

- Conduct Probation is a serious reprimand for a violation of a specific University policy. The loss of specified privileges may also be involved. Conduct Probation is for a specified period of time, and more severe disciplinary sanction(s) will be imposed should the student further violate any University policy.

- Ban from a space on campus separates a student from the space they are restricted from for a certain time period.

- Residence Hall Suspension separates a student from the residence halls for a specified period of time, or until specified conditions are met. A student suspended from the residence halls may continue to attend classes and utilize the University's dining hall. However, the student shall not enter, nor be in the immediate vicinity of, any residence hall; this includes lawn areas, sidewalks, parking lots near the residence halls, etc.

- Residence Hall Expulsion is a permanent separation of the student from the residence halls. A student expelled from the residence halls shall also lose all future visitation privileges and utilization of the University's dining hall; the rational for this is that a student permanently separated from the residence halls and group activities shall also lose the privilege of gathering in the dining hall with other students. The student may not enter, nor be in the immediate vicinity of any residence halls.

- Suspension from Non-Academic Activities is a separation of the student from all nonacademic activities and functions (e.g. visitation to the residence halls, student activities and programs, sport events, intramural/recreation programs, recreation facilities, athletics, etc.) for a specified period of time.

- Expulsion from Non-Academic Activities is a permanent separation of the student from all non-academic activities and functions (e.g. visitation to the residence halls, student

activities and programs, sport events, intramural/recreation programs, recreation facilities, athletics, etc.).

- University Suspension is a separation of the student from the University and all University premises, for a specified period of time and/or until certain predetermined conditions are met. Readmission after University suspension is not automatic and must have the approval of the Dean of Students.

- University Expulsion is the permanent separation of the student from the University, and all University premises. The expulsion will be noted on the student's academic transcript as follows "Expelled per Student Code of Conduct," and the effective date of the expulsion will be noted. This notation will be a permanent part of the student's academic transcript.

- Individuals who receive University Suspension or University Expulsion will be banned from returning to any University premise or participating in any University events, programs, or activities. If an individual is found on or within any University property they will be subject to arrest for criminal trespass. If a suspended student does not apply for or is not granted readmission, the stipulations of the University Suspension will stay in place permanently (e.g., ban).

Employee sanctions may include, but are not limited to:

- Written warning consists of formal notification that the employee has violated the Title IX Policy and advises that repetition will result in a more severe sanction. A written record of the warning is made.

- Change of job consists of removing an employee from being in a position to retaliate or further affect the Complainant.

- Mandated Counseling

- Mandatory attendance to appropriate educational workshop or training (this may be at the expense of the Respondent).

- Relevant community service.

- Suspension (with or without pay).

- Termination of employment.

B. Notice of Outcome

The written decision of Administrative Hearing Board will be communicated to both parties via email, concurrently. This letter will be sent within seven business days after the Hearing has concluded, barring any exigent circumstances that may cause reasonable delay. The final outcome letter will include:

- Identification of the allegations potentially constituting Covered Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including notification to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence and hearings held;
- Findings of fact supporting the determination;
- Conclusions as to whether there has been a policy violation;
- The rationale for the result;
- A brief summary of the evidence on which the decision is based;
- The sanction and rationale for the sanction;
- A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant;
- The right to appeal on limited grounds and timeline for submission of appeal.

XXVII. Appeal to Title IX Appeal Officer/Board

All requests for a final appeal must be submitted in writing to the Title IX Coordinator within five business days of the delivery of the written findings of the Administrative Hearing Board. Either party may appeal, but appeals are limited to the following grounds:

1. procedural irregularity that affected the outcome of the matter;
2. 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; or
3. 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.

Dissatisfaction with the Hearing Chair's decision is not grounds for appeal.

The appeal will be considered in an impartial manner by the Title IX Appeal Officer/Board, who will be free of conflict of interest and bias, and who will not serve as investigator, Title IX Coordinator, Hearing Chair/Decision Maker, and/or Hearing Board Member in the same matter. A party opposing an appeal will be provided an opportunity to respond to the appeal.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive Measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the University will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal. The original finding and sanctions will stand if the appeal is not timely filed or is not based on the grounds listed above.

Appeals are not intended to be full re-hearings of the case but are confined to a review of the written record of the original Hearing and pertinent documentation regarding the grounds for appeal.

The original findings and sanctions are presumed to have been decided reasonably and appropriately. The Title IX Appeal Officer/Board can affirm the original findings, alter the findings where there is clear error, and/or alter the sanctions, or remand to the original Administrative Hearing Board depending on the basis of the requested appeal. Appeals granted based on new evidence should normally be remanded to the original Administrative Hearing Board unless otherwise directed by the Title IX Appeal Officer/Board.

The Title IX Appeal Officer/Board will issue a written decision via email and letter to all parties within reasonable time frame upon the receipt of the appeal from the Title IX Coordinator.

The decision of the Title IX Appeal Officer/Board is final and may not be appealed.

XXVIII. Resources

Franklin Pierce University supports this policy through educational prevention, counseling, and medical support services. Educational programs at Franklin Pierce University include, but are not limited to, guest speakers, awareness programs, individual counseling, various victim support services and other programs presented by various departments.

More information regarding on-campus and off-campus support services available for the Complainant, Respondent, and witnesses can be found here: Support Services Link