



Board of Trustees Meeting

September 9, 2020

12:45 PM-1:15 PM

Or upon the conclusion of the previous committee meeting

**Florida Polytechnic University
WEBEX TELECONFERENCE MEETING**

Dial in: 1-415-655-0001 | Access code: 171 599 4704#

MEMBERS

Cliff Otto, Chair

Dr. Ala J. Alnaser

Connor Coddington

Mark Bostick, Vice Chair

Frank Martin

Don Wilson

Dr. W. Earl Sasser

Bob Stork

Gary C. Wendt

AGENDA

- | | |
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| I. Call to Order | Cliff Otto, Chair |
| II. Roll Call | Kristen Wharton |
| III. Public Comment | Cliff Otto, Chair |
| IV. Chairman's Remarks | Cliff Otto, Chair |
| V. President's Remarks | Randy K. Avent, President |
| VI. Revisions to FPU-1.005P Sexual Harassment | Gina DeIulio, Vice President and General Counsel |
| VII. Consent Agenda
Action Required | Cliff Otto, Chair |
| A. Academic & Student Affairs Committee | |
| 1. Approve Academic & Student Affairs Committee Charter | |
| 2. Approve the 2020 Textbook and Instructional Materials Report and the reapproval for the previously approved 2019 Textbook and Instructional Materials Report | |
| 3. Approve FPU-5.003 Textbook Adoption and Affordability - Amendment and Repeal of BOT Resolution 2017-001 | |
| 4. Approve FPU-BOT COVID19 MOU 2 | |
| B. Audit & Compliance Committee | |

1. Approve Audit & Compliance Committee Charter
 2. Approve Auditor General Operational Audit
 3. Approve UAC Annual Report – FYE 6/30/20
 4. Approve UAC Audit Plan and Risk Assessment - FYE 6/30/21
 5. Approve UAC Compliance and Ethics Program Plan - FYE 6/30/21
- C. Finance & Facilities Committee
1. Approve Carryforward and Fixed Capital Outlay Budgets
 2. Approve University Resources Used by the Foundation FY19-20 and to be Used FY20-21
 3. Approve Foundation Board Appointments
- D. Board of Trustees
1. Approve May 20, 2020 Board of Trustees Meeting Minutes

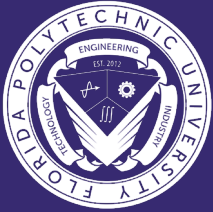
VIII. Committee Reports

- | | |
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| A. Executive Committee Report (June 12, 2020) | Cliff Otto, Chair |
| B. Academic & Student Affairs Committee | Dr. W. Earl Sasser, Chair |
| C. Audit & Compliance Committee | Bob Stork, Committee Chair |
| D. Strategic Planning Committee
Action Required
1. Approve 2019-2020 Florida Polytechnic University Equity Report | Gary Wendt, Committee Chair |
| E. Finance & Facilities Committee
Action Required
1. Approve Concept for a Proposed P3 for Building on Campus, Authorization for the Finance & Facilities Committee to Give Approval of the Final ITN, and Authorization for the President to Make Amendments to the ITN as Needed | Cliff Otto, Committee Chair |
| F. Governance Committee
Action Required
1. Approve Legislative Advocacy Plan | Mark Bostick, Committee Chair |

IX. [Board of Trustees Meeting Schedule](#)

Cliff Otto, Chair

- November 17-18, 2020
- February 16-17, 2021



- May 3, 2021 (*May 2: Commencement*)

X. [Board of Governors' Meetings](#)

Cliff Otto, Chair

- September 16, 2020 (*USF, Tampa*)
- **November 4-5, 2020 (*UNF, Jacksonville*)**
- January 20-21, 2021 (*NCF, Sarasota*)
- March 24-25, 2021 (*FAMU, Tallahassee*)
- June 22-24, 2021 (*USF, Tampa*)

XI. Closing Remarks and Adjournment

Cliff Otto, Chair



FLORIDA POLYTECHNIC
UNIVERSITY

Chairman's Remarks

Clifford K. Otto, Board Chair

September 9, 2020

Rear Admiral Philip Dur



Term of service:
3/24/16 – 6/30/20



Dr. Lou Saco



Term of service:
11/9/17 – 7/5/20



Henry McCance



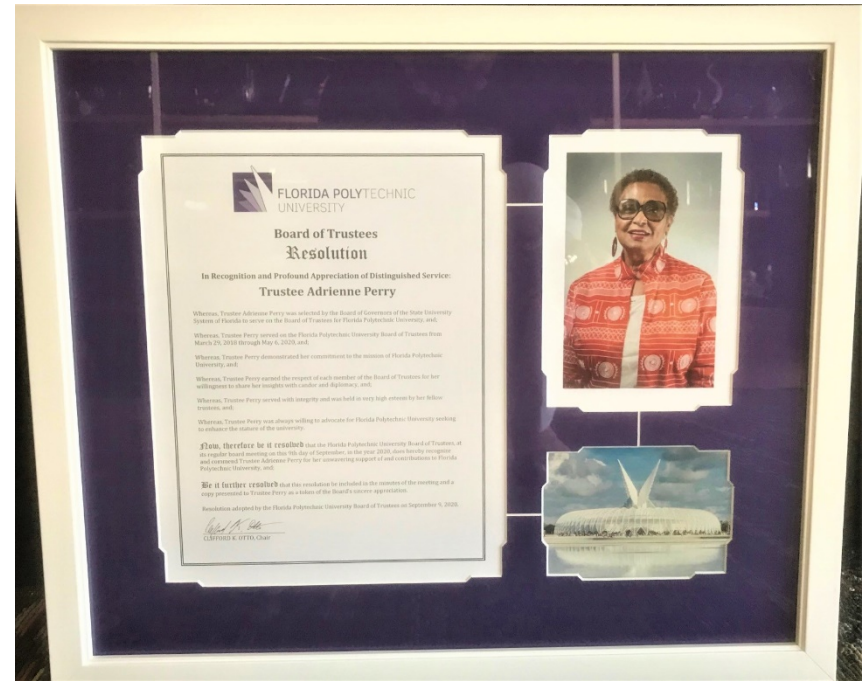
Term of service:
3/24/16 – 6/30/20



Adrienne Perry



Term of service:
3/29/18 – 5/5/20



**Florida Polytechnic University
Board of Trustees
September 5, 2018**

Subject: Revisions to FPU-1.005P Sexual Harassment

Proposed Committee Action

Information only – no action required.

Background Information

Effective August 14, 2020, the U.S. Department of Education adopted final regulations that govern sexual discrimination under Title IX that resulted in numerous changes to the way educational institutes address sexual discrimination, and more specifically sexual harassment, on campus. A summary of these changes is included in supporting documentation. The University has revised FPU-1.005P Sexual Harassment to comply with the new Title IX regulations.

Revisions include:

- Name of policy changed from "Sexual Harassment" to "Sexual Misconduct" to more accurately reflect the content and scope of the policy.
- Definitions added and revised to reflect terms as defined in the new Title IX regulations.
- Clarifies that except for students employed in Residential Life, OPS student employees are not required to report suspected sexual misconduct.
- Clarifies confidential reporting sources.
- Clarifies that allegations of sexual misconduct where the respondent is a student will be resolved using the Student Code of Conduct.
- Clarifies that allegations of sexual misconduct where the respondent is an employee, vendor, or contractor, will be resolved using the procedures outlined in FPU-1.005 Discrimination and Harassment Complaint and Investigation Procedures.
- Adds procedures that will be followed, in addition to the respective grievance process, for allegations of sexual harassment that are within the jurisdiction of Title IX. This includes procedures for filing a formal complaint, providing notice of the allegations, informal resolution, conducting a formal investigation, conducting a live hearing with cross examination conducted by a party's advisor, reaching and issuing a written determination, and appealing a determination.

Supporting Documentation:

Summary of New Title IX Regulation

Approved FPU-1.005 Sexual Misconduct
Track Changes FPU-1.005 Sexual Harassment

Prepared by: Melaine Schmiz, Assistant General Counsel

Summary of Major Provisions of the Department of Education’s Title IX Final Rule

Issue	The Title IX Final Rule: Addressing Sexual Harassment in Schools
<p><i>1. Notice to the School, College, University (“Schools”): Actual Knowledge</i></p>	<p>The Final Rule requires a K-12 school to respond whenever <i>any</i> employee has notice of sexual harassment, including allegations of sexual harassment. Many State laws also require all K-12 employees to be mandatory reporters of child abuse. For postsecondary institutions, the Final Rule allows the institution to choose whether to have mandatory reporting for all employees, or to designate some employees to be confidential resources for college students to discuss sexual harassment without automatically triggering a report to the Title IX office.</p> <p>For all schools, notice to a Title IX Coordinator, or to an official with authority to institute corrective measures on the recipient’s behalf, charges a school with actual knowledge and triggers the school’s response obligations.</p>
<p><i>2. Definition of Sexual Harassment for Title IX Purposes</i></p>	<p>The Final Rule defines sexual harassment broadly to include any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect: Any instance of <i>quid pro quo</i> harassment by a school’s employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).</p> <ul style="list-style-type: none"> - The Final Rule prohibits sex-based misconduct in a manner consistent with the First Amendment. <i>Quid pro quo</i> harassment and Clery Act/VAWA offenses are <u>not</u> evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such misconduct is sufficiently serious to deprive a person of equal access. - The Final Rule uses the Supreme Court’s <i>Davis</i> definition (<i>severe and pervasive and objectively offensive</i> conduct, effectively denying a person equal educational access) as one of the three categories of sexual harassment, so that where unwelcome sex-based conduct consists of speech or expressive conduct, schools balance Title IX enforcement with respect for free speech and academic freedom. - The Final Rule uses the Supreme Court’s Title IX-specific definition rather than the Supreme Court’s Title VII workplace standard (<i>severe or pervasive</i> conduct creating a hostile work environment). First Amendment concerns differ in educational environments and workplace environments, and the Title IX definition provides First Amendment protections appropriate for educational institutions where students are learning, and employees are teaching. Students, teachers, faculty, and others should enjoy free speech and academic freedom protections, even when speech or expression is offensive.

Summary of Major Provisions of the Department of Education’s Title IX Final Rule

<p><i>3. Sexual Harassment Occurring in a School’s “Education Program or Activity” and “in the United States”</i></p>	<p>The Title IX statute applies to persons in the United States with respect to education programs or activities that receive Federal financial assistance. Under the Final Rule, schools must respond when sexual harassment occurs in the school’s education program or activity, against a person in the United States.</p> <ul style="list-style-type: none"> - The Title IX statute and existing regulations contain broad definitions of a school’s “program or activity” and the Department will continue to look to these definitions for the scope of a school’s education program or activity. Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (such as a fraternity or sorority house). - Title IX applies to all of a school’s education programs or activities, whether such programs or activities occur on-campus or off-campus. A school may address sexual harassment affecting its students or employees that falls outside Title IX’s jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.
<p><i>4. Accessible Reporting to Title IX Coordinator</i></p>	<p>The Final Rule expands a school’s obligations to ensure its educational community knows how to report to the Title IX Coordinator.</p> <ul style="list-style-type: none"> - The employee designated by a recipient to coordinate its efforts to comply with Title IX responsibilities must be referred to as the “Title IX Coordinator.” - Instead of notifying only students and employees of the Title IX Coordinator’s contact information, the school must also notify applicants for admission and employment, parents or legal guardians of elementary and secondary school students, and all unions, of the name or title, office address, e-mail address, and telephone number of the Title IX Coordinator. - Schools must prominently display on their websites the required contact information for the Title IX Coordinator. - Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. - Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.
<p><i>5. School’s Mandatory Response Obligations: The Deliberate Indifference Standard</i></p>	<p>Schools must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in light of the known circumstances. Schools have the following mandatory response obligations:</p> <ul style="list-style-type: none"> - Schools must offer supportive measures to the person alleged to be the victim (referred to as the “complainant”).

Summary of Major Provisions of the Department of Education’s Title IX Final Rule

	<ul style="list-style-type: none"> - The Title IX Coordinator must promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. - Schools must follow a grievance process that complies with the Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. - Schools must not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, when complying with Title IX. - The Final Rule requires a school to investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant, or signed by a Title IX Coordinator. - The Final Rule affirms that a complainant’s wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances. - If the allegations in a formal complaint do not meet the definition of sexual harassment in the Final Rule, or did not occur in the school’s education program or activity against a person in the United States, the Final Rule clarifies that the school must dismiss such allegations <i>for purposes of Title IX</i> but may still address the allegations in any manner the school deems appropriate under the school’s own code of conduct.
<p>6. School’s Mandatory Response Obligations: <i>Defining</i> <i>“Complainant,”</i> <i>“Respondent,”</i> <i>“Formal Complaint,”</i> <i>“Supportive Measures”</i></p>	<p>When responding to sexual harassment (e.g., by offering supportive measures to a complainant and refraining from disciplining a respondent without following a Title IX grievance process, which includes investigating formal complaints of sexual harassment), the Final Rule provides clear definitions of complainant, respondent, formal complaint, and supportive measures so that recipients, students, and employees clearly understand how a school must respond to sexual harassment incidents in a way that supports the alleged victim and treats both parties fairly.</p> <p>The Final Rule defines “complainant” as an individual <i>who is alleged to be the victim</i> of conduct that could constitute sexual harassment.</p> <ul style="list-style-type: none"> - This clarifies that any third party as well as the complainant may report sexual harassment. - While parents and guardians do not become complainants (or respondents), the Final Rule expressly recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters. <p>The Final Rule defines “respondent” as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.</p>

Summary of Major Provisions of the Department of Education’s Title IX Final Rule

	<p>The Final Rule defines “formal complaint” as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment and states:</p> <ul style="list-style-type: none"> - At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed. - A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under the Final Rule, and by any additional method designated by the school. - The phrase “document filed by a complainant” means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the school) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. - Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process, and must comply with requirements for Title IX personnel to be free from conflicts and bias. <p>The Final Rule defines “supportive measures” as individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.</p> <ul style="list-style-type: none"> - The Final Rule evaluates a school’s selection of supportive measures and remedies based on what is not clearly unreasonable in light of the known circumstances, and does not second guess a school’s disciplinary decisions, but requires the school to offer supportive measures, and provide remedies to a complainant whenever a respondent is found responsible.
<p>7. <i>Grievance Process, General Requirements</i></p>	<p>The Final Rule prescribes a consistent, transparent grievance process for resolving formal complaints of sexual harassment. Aside from hearings (see Issue #9 below), the grievance process prescribed by the Final Rule applies to all schools equally including K-12 schools and postsecondary institutions. The Final Rule states that a school’s grievance process must:</p> <ul style="list-style-type: none"> - Treat complainants equitably by providing remedies any time a respondent is found responsible, and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process prescribed in the Final Rule. - Remedies, which are required to be provided to a complainant when a respondent is found responsible, must be designed to maintain the complainant’s equal access to education and may include the same individualized services described in the Final Rule as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. - Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person’s status as a complainant, respondent, or witness.

Summary of Major Provisions of the Department of Education's Title IX Final Rule

- Require Title IX personnel (Title IX Coordinators, investigators, decision-makers, people who facilitate any informal resolution process) to be free from conflicts of interest or bias for or against complainants or respondents.
- Training of Title IX personnel must include training on the definition of sexual harassment in the Final Rule, the scope of the school's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- A school must ensure that decision-makers receive training on any technology to be used at a live hearing.
- A school's decision-makers and investigators must receive training on issues of relevance, including how to apply the rape shield protections provided only for complainants.
- Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Recipients must post materials used to train Title IX personnel on their websites, if any, or make materials available for members of the public to inspect.
- Include reasonably prompt time frames for conclusion of the grievance process, including appeals and informal resolutions, with allowance for short-term, good cause delays or extensions of the time frames.
- Describe the range, or list, the possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent, following determinations of responsibility.
- State whether the school has chosen to use the preponderance of the evidence standard, or the clear and convincing evidence standard, for all formal complaints of sexual harassment (including where employees and faculty are respondents).
- Describe the school's appeal procedures, and the range of supportive measures available to complainants and respondents.
- A school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- Any provisions, rules, or practices other than those required by the Final Rule that a school adopts as part of its grievance process for handling formal complaints of sexual harassment, must apply equally to both parties.

Summary of Major Provisions of the Department of Education’s Title IX Final Rule

<p><i>8. Investigations</i></p>	<p>The Final Rule states that the school must investigate the allegations in any formal complaint and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint. During the grievance process and when investigating:</p> <ul style="list-style-type: none"> - The burden of gathering evidence and burden of proof must remain on schools, not on the parties. - Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence. - Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”). - Parties must have the same opportunity to select an advisor of the party’s choice who may be, but need not be, an attorney. - Schools must send written notice of any investigative interviews, meetings, or hearings. - Schools must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence. - Schools must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond. - Schools must dismiss allegations of conduct that do not meet the Final Rule’s definition of sexual harassment or did not occur in a school’s education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate. - Schools may, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination. - Schools must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal. - Schools may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts. - The Final Rule protects the privacy of a party’s medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party’s voluntary, written consent to do so.
<p><i>9. Hearings:</i></p>	<p>The Final Rule adds provisions to the “live hearing with cross-examination” requirement for postsecondary institutions and clarifies that hearings are optional for K-12 schools (and any other recipient that is not a postsecondary institution).</p>

Summary of Major Provisions of the Department of Education’s Title IX Final Rule

<p>(a) <i>Live Hearings & Cross-Examination (for Postsecondary Institutions)</i></p>	<p>(a) For postsecondary institutions, the school’s grievance process must provide for a live hearing:</p> <ul style="list-style-type: none"> - At the live hearing, the decision-maker(s) must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. - Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s advisor of choice and never by a party personally. - At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other. - Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party’s advisor asking cross-examination questions any decision to exclude a question as not relevant. - If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school’s choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party. - If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions. - Live hearings may be conducted with all parties physically present in the same geographic location or, at the school’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. - Schools must create an audio or audiovisual recording, or transcript, of any live hearing.
<p>(b) <i>Hearings are Optional, Written Questions Required (for K-12 Schools)</i></p>	<p>(b) For recipients that are K-12 schools, and other recipients that are not postsecondary institutions, the recipient’s grievance process may, <i>but need not</i>, provide for a hearing:</p> <ul style="list-style-type: none"> - With or without a hearing, after the school has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
<p>(c) <i>Rape Shield Protections for Complainants</i></p>	<p>(c) The Final Rule provides rape shield protections for complainants (as to all recipients whether postsecondary institutions, K-12 schools, or others), deeming irrelevant questions and evidence about a complainant’s prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.</p>

Summary of Major Provisions of the Department of Education’s Title IX Final Rule

<p><i>10. Standard of Evidence & Written Determination</i></p>	<p>The Final Rule requires the school’s grievance process to state whether the standard of evidence to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard. The Final Rule makes each school’s grievance process consistent by requiring each school to apply the same standard of evidence for all formal complaints of sexual harassment whether the respondent is a student or an employee (including faculty member).</p> <ul style="list-style-type: none"> - The decision-maker (who cannot be the same person as the Title IX Coordinator or the investigator) must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant. - The written determination must be sent simultaneously to the parties along with information about how to file an appeal.
<p><i>11. Appeals</i></p>	<p>The Final Rule states that a school must offer both parties an appeal from a determination regarding responsibility, and from a school’s dismissal of a formal complaint or any allegations therein, on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.</p> <ul style="list-style-type: none"> - A school may offer an appeal equally to both parties on additional bases.
<p><i>12. Informal Resolution</i></p>	<p>The Final Rule allows a school, in its discretion, to choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person who facilitates an informal resolution must be well trained. The Final Rule adds:</p> <ul style="list-style-type: none"> - A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, a school may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. - At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. - Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Summary of Major Provisions of the Department of Education's Title IX Final Rule

<p><i>13. Retaliation Prohibited</i></p>	<p>The Final Rule expressly prohibits retaliation.</p> <ul style="list-style-type: none">- Charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.- The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.- Complaints alleging retaliation may be filed according to a school's prompt and equitable grievance procedures.- The exercise of rights protected under the First Amendment does not constitute retaliation.- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.
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FLORIDA	OFFICIAL
POLYTECHNIC	UNIVERSITY
UNIVERSITY	POLICY

Subject/Title: Sexual Misconduct
FPU Policy Number: FPU-1.005P
<input type="checkbox"/> New Policy <input checked="" type="checkbox"/> Major Revision of Policy <input type="checkbox"/> Minor Technical Revision of Policy
Date First Adopted: October 30, 2013
Date Revised: February 27, 2015; August 14, 2020
Responsible Division/Department: Office of the President
Initiating Authority: President

A. APPLICABILITY/ACCOUNTABILITY:

Florida Polytechnic University is committed to ensuring that each member of the University Community is permitted to work, study, live and interact with each other in a dignified learning environment, free from any form of unlawful sexual misconduct. This policy provides guidance regarding conduct that constitutes sexual misconduct, reporting responsibilities regarding such behavior, and specific information on where to go to seek supportive measures or file a complaint of sexual misconduct. Complaints of sexual misconduct will be handled following the procedures listed within this policy and/or, as appropriate, the procedures in FPU-1.005 Discrimination and Harassment Complaint and Investigation Procedures. In instances where the Respondent is a student, the procedures in FPU-3.006 Student Code of Conduct will also be followed. If this policy and another University regulation or policy conflict, this policy controls.

B. POLICY STATEMENT:

Sexual misconduct violates University policy, federal and state laws and may also be subject to criminal prosecution. The University is committed to fostering an environment that promotes prompt reporting of all types of sexual harassment and timely and fair resolution of sexual misconduct complaints.

The University does not discriminate on the basis of sex in its educational programs and activities. Title IX of the Higher Education Amendments of 1972, 20 USC 1681 et seq. and The Violence Against Women Act of 1994 (VAWA), prohibits such misconduct, in any form, including sexual harassment. The University has designated a Title IX Coordinator (see contact information below) to handle all complaints alleging sexual misconduct and to conduct investigations of such complaints in a manner that ensures a prompt and equitable resolution. Additionally, as an employer, the University is required to comply with Title VII of the Civil Rights Act of 1964 and other federal and state laws regarding sexual harassment.

C. DEFINITIONS:

1. **Advisor.** A person chosen by either party who may assist and/or accompany the individual throughout the process. An advisor may be a family member, friend, faculty member, staff member, or other advisor/support. An advisor may be an attorney but may not act as legal counsel during the grievance process. An advisor cannot directly

participate in the grievance process nor speak on behalf of the party except for administering cross examination questions during a live hearing if the conduct alleged is within the jurisdiction of Title IX. An advisor is not permitted to submit any written requests (including appeals) on behalf of a party. The advisor cannot serve as a witness during the grievance process. A University representative may remove any advisor that does not adhere to these expectations or other established decorum rules during the formal hearing.

2. **Complainant.** An individual who is alleged to be the victim of conduct that could constitute sexual misconduct under this policy.
3. **Consent.** An understandable exchange of affirmative actions or words that indicate an active, knowing, and voluntary agreement to engage in mutually agreed upon sexual activity.
 - a. Silence or previous history does not indicate consent. Consent must be given for every instance of every act.
 - b. Consent can be withdrawn at any time.
 - c. A person cannot consent if the person is incapacitated from alcohol or drugs, asleep, or is otherwise mentally or physically unable to consent to sexual activity. A person must reasonably know or should have known the person was incapacitated for there to be a lack of consent.
 - d. A person cannot consent if the person is under the age of consent pursuant to Florida law.
 - e. Consent must be freely given and cannot be granted under psychological, emotional, or physical force, manipulation, coercion, persuasion or threats.
4. **Dating Violence.** As defined in the Violence Against Women Act of 1994, violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
5. **Domestic Violence.** As defined in the Violence Against Women Act of 1994, any felony or misdemeanor crime of violence committed:
 - a. By a current or former spouse or intimate partner of the victim;
 - b. By a person with whom the victim shares a child in common;
 - c. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - d. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
 - e. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
6. **Formal Complaint.** A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment.
7. **Preponderance of the Evidence.** Information, considered as a whole, that indicates the

facts sought to be proved are more likely than not. This is the burden of proof that must be met in determining whether conduct is a violation of this policy.

8. **Reporter.** A person who reports a violation of this policy to the Title IX Coordinator or their supervisor/manager.
9. **Respondent.** An individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct under this policy.
10. **Sexual Assault.** As defined in the Violence Against Women Act of 1994 is any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent. This includes, but is not limited to, attempted sexual assault and the following:
 - a. Rape. The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - b. Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 - c. Incest. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - d. Statutory Rape. Sexual intercourse with a person who is under the statutory age of consent.
11. **Sexual Harassment.** As defined in Title IX, conduct on the basis of sex that satisfies one or more of the following:
 - a. A University employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
 - b. 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; or
 - i. For instances where the conduct is outside the scope of Title IX but is within the purview of the University jurisdiction or Title VII as it pertains to employment law, the definition of sexual harassment is severe, pervasive, or objectively offensive.
 - c. Sexual assault, dating violence, domestic violence, or stalking as defined herein and consistent with federal law.
12. **Sexual Misconduct.** An umbrella term used to refer to a broad range of sexually inappropriate behaviors that includes sexual violence (rape/sexual battery/sexual assault); sexual harassment; intimate partner violence (domestic violence, dating violence, relationship violence); stalking; sexual exploitation; and other forms of sexually exploitative behavior that can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by any person and can occur between people of the same or different sex, sexual orientation, and gender identity or gender expression.
13. **Stalking.** As defined in the Violence Against Women Act of 1994, 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.

- c. For the purposes of this definition:
 - i. 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.
 - ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
 - iii. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

14. Student.

- a. Persons taking courses at the University (full-time or part-time) in undergraduate, graduate, or professional studies;
- b. Persons who withdraw from the University after allegedly violating this policy;
- c. Persons who were previously enrolled but are not officially enrolled for a particular term and have a continuing relationship with the University;
- d. Persons who have been notified of their acceptance for admission to the University

15. 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. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment.

16. University Community. For purposes of this policy, includes individuals applying for enrollment at or employment with the University, University students, University employees, visitors, and contracted agents and vendors.

D. SEEKING GUIDANCE OR FILING A COMPLAINT:

Any member of the University Community who believes that they have been subjected to sexual misconduct, retaliation related to an allegation of sexual misconduct, or any member of the University Community who believes that others have been subjected to sexual misconduct in violation of this policy may seek guidance, supportive measures, or file a complaint by contacting:

Title IX Coordinator
4700 Research Way
Lakeland, Florida 33805-8531
(863) 874-8484
titleixcoordinator@floridapoly.edu
Online Report Form – www.floridapoly.edu/titleix

Allegations of a violation of this policy, including complaints of retaliation, will be addressed by the Title IX Coordinator, in accordance with the applicable regulations, policies and procedures. Members of the University Community may contact the Title IX Coordinator to seek assistance in informally resolving the complaint or in a formal investigation. Allegations

of sexual misconduct reported to the University's Title IX Coordinator in no way affect the right of the complainant to file a criminal complaint, even in the event an internal University investigation has already commenced.

E. ACTIONS THAT DO NOT CONSTITUTE SEXUAL MISCONDUCT:

The University educational environment is unique in that there must be the freedom to express ideas and to foster communication on subjects that enhance the University's educational mission. Accordingly, while the University is committed to providing a learning environment that is free from sexual harassment, the purpose of this policy is not intended to abridge academic freedom or to interfere with speech, as guaranteed by the First Amendment. As such, pursuant to this policy, sexual misconduct does not include:

1. The expression of ideas in an academic context to provoke thought or discussion on topics germane to the course and advancement of the University's educational mission.
2. Engagement in debate or discourse over issues that society may find to be unpopular, offensive, or disagreeable.
3. Discussing, using, or displaying views, words, symbols or thoughts in an academic setting, which are germane to the course and which some persons may find to be offensive.

F. VIOLATIONS:

In determining whether alleged conduct constitutes sexual misconduct, and a violation of this policy, the conduct will be evaluated from the perspective of a reasonable person, considering the totality of the circumstances, such as the nature of the alleged conduct and the context in which the alleged conduct occurred. A determination on the allegations is made from the facts on a case-by-case basis, using the preponderance of the evidence standard. In an academic setting, consideration will be given to free speech and academic freedom. Those members of the University Community who are found to have violated this policy may be subject to disciplinary sanctions, including but not limited to:

1. Students: Alteration of class schedule, alternation of housing assignment, restriction from entering specific buildings/areas, loss of privilege, restitution, University probation, educational sanctions, removal from on-campus housing, suspension, dismissal, and expulsion.
2. Employees: Reassignment of duties, mandatory training, verbal reminders, written reprimand, suspension, and termination.

G. RESPONSIBILITY TO REPORT SEXUAL MISCONDUCT:

To maintain an environment free from sexual misconduct, the responsibility for reporting incidents of sexual misconduct rests with all members of the University Community. Any employee, student, applicant or other member of the University Community who believes another member is being subjected to sexual misconduct in violation of this policy is strongly encouraged, if not required, to report the matter to their supervisor, manager, or directly to the Title IX Coordinator. Once the Title IX Coordinator receives the report the University is deemed to have actual knowledge.

1. **Supervisors and Managers.** All supervisors and managers, defined as persons supervising one or more employees, are required to promptly report to the Title IX Coordinator (either verbally or through written communications) allegations, reports or

- instances of alleged sexual misconduct by or against any person covered by this policy.
2. **Faculty Members.** All faculty members are required to promptly report to the Title IX Coordinator or, alternatively, to their department chair, dean, or applicable academic administrator any and all allegations, reports, or instances of alleged sexual misconduct by or against a student in violation of this policy. Persons to whom alleged acts of sexual misconduct are reported by faculty, must promptly report the matter to the Title IX Coordinator (either verbally or through written communications).
 3. **Student Employees.** Except for students who are employed in Residential Life, students who are employed by the University in an OPS position are strongly encouraged, but not required, to report suspected sexual misconduct in violation of this policy to their supervisor, manager, or directly to the Title IX Coordinator. Students who are employed in Residential Life are required to promptly report to their supervisor, manager, or directly to the Title IX Coordinator (either verbally or through written communications) allegations, reports or instances of alleged sexual misconduct by or against any person covered by this policy.
 4. **Members of the University Community.** An individual who feels uncomfortable and/or harmed by offensive behavior should try to remove themselves from the offending situation and seek help as quickly as possible by reporting the offending conduct to an individual designated in this policy. However, failure for an individual to take affirmative steps to stop sexual misconduct, in no way, bars the individual from seeking relief through filing a claim under this policy.
 5. **Confidential Employees.** Employees, vendors, and contractors working in counseling services, medical services, and the University Ombudsperson are confidential resources and are not required to report any information regarding an incident of sexual misconduct. These individuals should:
 - a. Inform an individual of their right to file a complaint with the University and/or a complaint with campus or local law enforcement;
 - b. Inform the student or employee about available resources for counseling, medical, academic, and other supports;
 - c. Indicate that they are available to assist an individual in filing a complaint; and
 - d. Explain that University policies and regulations include protections against retaliation.

H. GRIEVANCE PROCESS:

1. **Responsibility of Title IX Coordinator.** The Title IX Coordinator is responsible for administering the grievance process for sexual misconduct. Reports or allegations covered in this policy will be processed upon receiving the report. The Title IX Coordinator makes an initial assessment of whether the complaint falls within the scope of this policy and/or Title IX.
2. **Respondent is an Employee, Vendor, or Contractor.** If the Respondent is an employee, a vendor, or a contractor, the complaint will be resolved using the procedures outlined in FPU-1.005 Discrimination and Harassment Complaint and Investigation Procedures.
3. **Respondent is a University Student.** If the Respondent is a student, the complaint will be resolved using the procedures outlined in FPU-3.006 Student Code of Conduct.
4. **Title IX Grievance Process.** Complaints that allege conduct that is within the scope of

Title IX will also follow the additional provisions in section (9) below.

I. ADDITIONAL GRIEVANCE PROCESS PROVISIONS FOR TITLE IX:

Title IX of the Higher Education Amendments of 1972, 20 USC 1681 et seq., a Federal civil rights law, prohibits sex discrimination, in any form, including sexual harassment, sexual assault, dating violence, domestic violence and stalking. The following provisions apply to allegations that conduct constitutes Sexual Harassment under Title IX.

1. **Title IX Coordinator and Jurisdiction.** The University has designated a Title IX Coordinator to address complaints alleging sexual harassment in a manner that ensures a prompt and equitable resolution. The Title IX Coordinator will assess each report received to determine whether the reported incident is within the jurisdiction of Title IX.
 - a. To be considered under the jurisdiction of Title IX jurisdiction, the alleged Sexual Harassment must have occurred to persons participating or attempting to participate in the University's education program or activity in the United States.
 - i. Education program or activity includes locations, events, or circumstances over which the University has exercised substantial control over both the Respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University.
 - b. The University must have jurisdiction over the Respondent and the Complainant during the time of reporting, this includes both students and employees.
2. **Supportive Measures.** The Complainant and Respondent may request and receive supportive measures without filing a formal complaint and at any time during the grievance process.
3. **Formal Complaint.** The Complainant or Title IX Coordinator must sign a document acknowledging the process moving forward with an informal resolution or formal investigation. There is a presumption of innocence that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
 - a. If a formal complaint has been signed, the Complainant can choose an Informal Resolution or Formal Investigation.
4. **Notice of Allegations.** A Notice of Allegation will be sent to the both parties, if a Formal Complaint has been filed. The notice will provide sufficient time to prepare a response before the initial meetings. The Notice of Allegation will include, but not limited to:
 - a. The identity of the Complainant and Respondent;
 - b. An explanation of the Grievance Process;
 - c. Information regarding the allegations of sexual misconduct, providing sufficient details known at the time, time and location if available.
 - d. Right to have an Advisor of the party's choice to accompany them through the grievance process (can, but does not need to be an attorney)
 - e. A statement that knowingly making false statements or submitting false information is prohibit.
 - f. Right to present witnesses, including fact and expert witnesses, and other evidence and to review all evidence collected.
5. **Informal Resolution.** Informal Resolution is a process that will allow for both parties to work on a resolution outside of an investigation. This can include mediation, restorative

justice, or an alternative format agreed upon by both parties. Informal Resolution will not result in a policy violation but rather an agreed upon resolution by both parties.

- a. This process can be used at any time before or during an investigation of a complaint and allows parties to resolve a complaint through informal means such as mediation or restorative justice.
 - b. In order to resolve complaints through Informal Resolution, both parties must agree to resolve the complaint through Informal Resolution.
 - c. A Complainant or Respondent may, at any time, end the Informal Resolution process.
 - d. If a complaint is not resolved through Informal Resolution, the Grievance Process, as described in this policy, will continue.
 - e. Informal Resolution cannot be used in sexual harassment allegations that involve an employee sexually harassing a student.
 - f. Once an Informal Resolution has been reached and both parties sign the agreed upon terms, the Grievance Process is complete.
 - g. However, if a party violates the agreed upon terms, the parties have the option to re-enter Informal Resolution or continue with a Formal Investigation. The party that violates the terms, may receive additional charges under University policies.
6. **Formal Investigation and Investigative Report.** Prior to completion of the Formal Investigative Report, the Complainant and Respondent are both provided an equal opportunity to inspect and review any evidence obtained as part of the Formal Investigation that is directly related to the allegations raised in the Formal Complaint so that each party can meaningfully respond to the evidence prior to conclusion of the Formal Investigation.
- a. This includes evidence that is not intended to be relied upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. This means evidence that favors both the Complainant (inculpatory) and Respondent (exculpatory).
 - b. The evidence subject to inspection and review is provided to each party and their advisors in an electronic format or a hard copy. Each party has ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report.
 - c. The Investigative Report fairly summarizes relevant evidence determined by the Investigator and, is provided to each party and the party's advisor in electronic format or hard copy at least ten (10) business days prior to the live hearing for their review and written response.
7. **Live Hearing.** A live hearing must be conducted for all Formal Complaints unless the Formal Complaint has been dismissed or resolved through the Informal Resolution process. This includes allegations between employees, employees and students, and students. For Formal Complaints where the Respondent is a student, the following provisions also apply to the Formal Hearing process in FPU-3.006 Student Code of Conduct.
- a. **Remote Participation.** Live hearings may be conducted virtually, with technology enabling participants simultaneously to see and hear each other.
 - b. **Hearing Body.** The Hearing Body is comprised of up to three (3) staff and/or faculty members that have been trained to be a part of this process and are appointed by the

- President or President's designee. The Title IX Coordinator, investigator, or other person who participated in the informal resolution process, if any, may not be a member of the Hearing Body.
- i. The parties may opt to waive a Hearing Body for a single Hearing Officer. Both parties must agree and a written request must be made outlining the reason.
 - ii. Both parties may have an advisor of their choice at the live hearing. An Advisor may conduct cross examination only. An Advisor may not participate in any other part of the live hearing.
 - iii. During the Live Hearing, if either party does not have an advisor with them, the University will provide an advisor of the University's choosing at no cost to the party.
- c. **Cross Examination.**
- i. Before a Complainant, Respondent, or Witness answers a cross-examination or other question from the respective Advisor, the Hearing Body must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
 - ii. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
 - iii. Repetitive questions to the Complainant, Respondent, or Witness may be deemed not relevant if the questions have already been answered throughout the Hearing.
 - iv. If a Complainant, Respondent, or Witness does not participate in cross examination, the Hearing Body will not be able to use any of the statements or information that the individual previously provided. This includes statements made to the investigator, documentation provided by the party, and police reports that include the specific individual's statements alone.
- d. **Conduct of Live Hearing.**
- i. Reading of charge(s) by Hearing Body.
 - ii. Respondent's response of "responsible" or "not responsible."
 - iii. Hearing Body presents information regarding the charges.
 - iv. Complainant's opening statement and presentation of information.
 - v. Respondent's opening statement and presentation of information.
 - vi. Hearing Body questions the Complainant, Respondent, and/or witnesses.
 - vii. Complainant's advisor questions the Complainant, Respondent, and/or witnesses.
 - viii. Respondent's advisor questions the Complainant, Respondent, and/or witnesses.
 - ix. Hearing Body's final questions of the Complainant, Respondent, and/or witnesses.
 - x. Complainant's closing remarks.
 - xi. Respondent's closing remarks.
 - xii. Hearing is brought to a close.
8. **Determination of Responsibility and Written Determination.** The Hearing Body determines whether alleged conduct constitutes a policy violation and will determine sanction(s) as appropriate. The conduct will be evaluated based on the facts gathered

from the live hearing on a case-by-case basis. The Hearing Body will consider the totality of the circumstances and use the preponderance of the evidence standard in its determination. The Hearing Body must issue a written determination regarding responsibility. The written determination must include:

- a. Identification of the allegations potentially constituting sexual harassment;
 - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of FPU-3.006 Student Code of Conduct to the facts if the Respondent is a student;
 - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and
 - f. The procedures and permissible bases for the Complainant and Respondent to appeal.
9. **Appeal.** A Complainant or Respondent may appeal the findings and sanction(s) after receiving the Notice of the Determination or a dismissal of the Final Complaint or any allegations in a Formal Complaint.
- a. An appeal must be submitted to the Title IX Office, in writing, within ten (10) business days of receipt of the issued findings and sanction(s) and must specify the basis of the appeal.
 - b. Appeals must be based on one or more of the following provisions and that had an effect on the outcome of the matter:
 - i. Procedural irregularity;
 - ii. New evidence that was not reasonably available at the time of the Live Hearing or when the determination regarding responsibility or dismissal was made; and
 - iii. 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.
 - c. Written notice of an appeal is provided to the other party. The Complainant or Respondent may submit a written response to an appeal to the Title IX Office. Such response will be attached to the final report and maintained in the same file.
 - d. The President or designee may designate a person with appropriate training to serve as an appellate officer to review the appeal and issue a written decision that describes the result of the appeal and the rationale for the result. A person that reached the determination regarding responsibility (Hearing Body) or dismissal, the investigator(s), nor the Title IX Coordinator can be an appellate officer.
 - e. The written decision is provided to both parties simultaneously.

J. RETALIATION PROHIBITED:

Retaliation, or otherwise taking adverse employment or educational action, against a member of the University Community because the member, in good faith, reported an allegation of

sexual harassment, participated in an investigation or review regarding a complaint, participated in the resolution process, supported a Complainant or Respondent, or assisted in providing information relevant to an investigation is strictly prohibited and a violation of this policy. Retaliation includes adverse action, harassment, intimidation, threats or coercion in any employment, educational, program or activity.

K. FRIVOLOUS OR MALICIOUS COMPLAINTS:

In the event that a claim of sexual misconduct is found to be frivolous or malicious, the person making the frivolous or malicious complaint may be subject to disciplinary and other action.

L. EDUCATION AND NOTIFICATION:

Copies of this policy are widely disseminated to the University Community so that all members are aware of acts which constitute sexual misconduct and shall recognize that the University regards sexual misconduct to be a serious offense and will not be tolerated. Periodic workshops and other educational programs are offered to University personnel regarding the topic of sexual misconduct.

For Title IX purposes, those that are part of the process must be appropriately trained. This may include the Title IX Coordinator, investigators, decision makers, appellate officers, and advisors. All trainings for these individuals are located on the Title IX Webpage.

POLICY APPROVAL	
Policy No.: FPU-1.005P <u>Mave</u>	<u>8.13.2020</u>
Initiating Authority <u>[Signature]</u>	Date <u>8/13/20</u>
Policies & Procedures Review Committee Chair <u>Mave</u>	Date <u>8.13.2020</u>
President/Designee	Date
Approved by FPU BOT, if required	Date

**EXECUTED SIGNATURE PAGES ARE AVAILABLE IN THE
OFFICE OF THE GENERAL COUNSEL**

FLORIDA	OFFICIAL
POLYTECHNIC	UNIVERSITY
UNIVERSITY	POLICY

Subject/Title: Sexual Harassment Misconduct
FPU Policy Number: FPU-1.005P
_____ New Policy _____ <input checked="" type="checkbox"/> Major Revision of Policy -X- Minor Technical
Date First Adopted: October 30, 2013
Date Revised: February 27, 2015
Responsible Division/Department: Chief Operating Officer Office of the President
Initiating Authority: General Counsel President

A. (1) APPLICABILITY/ACCOUNTABILITY:

Florida Polytechnic University ("~~FPU~~") is committed to ensuring that each member of the University Community ~~shall be~~ permitted to work, study, live and interact with each other in a dignified learning environment, free from any form of unlawful sexual ~~harassment~~ misconduct. This policy provides guidance regarding conduct that constitutes sexual ~~harassment~~ misconduct, reporting responsibilities regarding such behavior, and specific information on where to go to seek ~~guidance~~ supportive measures, or file a complaint of sexual ~~harassment~~ misconduct. ~~All complaints~~ Complaints of sexual ~~harassment~~ misconduct will be handled ~~in accordance with following~~ the University's ~~grievance and disciplinary~~ procedures ~~listed within this policy and/or, as appropriate, the procedures in FPU-1.005 Discrimination and Harassment Complaint and Investigation Procedures. In instances where the Respondent is a student, the procedures in FPU-3.006 Student Code of Conduct will also be followed. If this policy and another University regulation or policy conflict, this policy controls.~~

B. (2) POLICY STATEMENT:

Sexual ~~harassment~~ misconduct violates University policy, federal and state laws and may also be subject to criminal prosecution. The University is committed to fostering an environment that promotes prompt reporting of all types of sexual harassment and timely and fair resolution of sexual ~~harassment~~ misconduct complaints.

~~FPU~~ The University does not discriminate on the basis of sex in its educational programs and activities. Title IX of the Higher Education Amendments of 1972, 20 USC 1681 ~~et seq., a Federal civil rights law,~~ and The Violence Against Women Act of 1994 (VAWA), prohibits such ~~discrimination~~ misconduct, in any form, including sexual harassment, ~~sexual violence and gender based discrimination~~. The University has designated a Title IX Coordinator (see contact information below) to handle all complaints alleging sexual ~~harassment~~ misconduct and to conduct investigations of such complaints in a manner that ensures a prompt and equitable resolution. Additionally, as an employer, the University is required to comply with Title VII of the Civil Rights Act of 1964 and other federal and state laws regarding ~~sex-based~~ sexual harassment ~~and sex discrimination~~.

C. (3) DEFINITIONS:

~~1. Sexual Harassment: Sexual harassment, a form of sex discrimination, includes, but is not limited to, sexual violence, gender based discrimination, and conduct in the form of unwelcome sexual advances, requests for sexual favors, or other verbal (including written and electronic communications) or physical conduct of a sexual nature from any person when such behavior:~~

- ~~(i) Makes submission to or rejection of such conduct either an explicit or implicit basis for employment and/or academic decisions affecting the individual;~~
- ~~(ii) Unreasonably interferes with the individual's employment or academic performance by creating an intimidating, hostile or offensive environment; or~~
- ~~(iii) Creates an intimidating, hostile, or offensive work or academic environment.~~

~~2. **Sexual Violence:** Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of acts fall into the category of sexual violence, including, but not limited to, rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment.~~

~~3. **Gender-based Harassment:** Gender-based harassment, a form of sexual harassment, may include acts of verbal, non-verbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.~~

~~4. **University Community:** The University Community includes any Florida Polytechnic University officer, university employee, student, applicant, visitor, agent, vendor, or contractor.~~

~~**D. EXAMPLES OF SEXUAL HARASSMENT:**~~

~~Conduct which falls into the definition of sexual harassment, and may constitute a violation of this policy, includes, but is not limited to:~~

- ~~1. Inappropriate touching or brushing against the body of another including, but not limited to patting, fondling, massaging, caressing, pinching, attempted kissing or actual kissing.~~
- ~~2. Requesting sex or sexual acts in exchange for an occupational or educational benefit.~~
- ~~3. Repetitive propositions, invitations, or pressure for sexual activity.~~
- ~~4. Suggestive or inappropriate communications, notes, letters, e-mail, text messages, contact through social media, or other written materials.~~
- ~~5. Displaying, transmitting, or sending suggestive or inappropriate photographs, videos, computer images, slides, calendars, cartoons, or drawings through any medium.~~
- ~~6. Sexual innuendo, comments, or remarks about a person's clothing, body, or activities.~~
- ~~7. Making suggestive or obscene gestures or making suggestive or insulting sounds.~~
- ~~8. Whistling in a suggestive manner.~~
- ~~9. Actual or implied sexual threats or intimidation which places an individual in fear of imminent physical or psychological harm or injury.~~
- ~~10. Hazing, when of a sexual nature meaning acts likely to cause physical or psychological harm or social ostracism when related to admission, initiation, pledging, joining a University group, club, or organization.~~
- ~~11. Bullying, when of a sexual nature meaning repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control, or diminish another person, physically or mentally (excluding speech or other conduct protected by the First Amendment).~~

~~(a) **Advisor.** A person chosen by either party who may assist and/or accompany the individual throughout the process. An advisor may be a family member, friend, faculty member, staff member, or other advisor/support. An advisor may be an attorney but may not act as legal counsel during the grievance process. An advisor cannot directly participate in the grievance process nor speak on behalf of the party except for administering cross examination questions during a live hearing if the conduct alleged is within the jurisdiction of Title IX. An advisor is not permitted to submit any written requests (including appeals) on behalf of a party. The advisor cannot serve as a witness during the grievance process. A University representative may remove any advisor that does not adhere to these expectations or other established decorum rules during the formal hearing.~~

~~(b) **Complainant.** An individual who is alleged to be the victim of conduct that could constitute sexual misconduct under this policy.~~

~~(c) **Consent.** An understandable exchange of affirmative actions or words that indicate an active,~~

- knowing, and voluntary agreement to engage in mutually agreed upon sexual activity.
- (i) Silence or previous history does not indicate consent. Consent must be given for every instance of every act.
 - (ii) Consent can be withdrawn at any time.
 - (iii) A person cannot consent if the person is incapacitated from alcohol or drugs, asleep, or is otherwise mentally or physically unable to consent to sexual activity. A person must reasonably know or should have known the person was incapacitated for there to be a lack of consent.
 - (iv) A person cannot consent if the person is under the age of consent pursuant to Florida law.
 - (v) Consent must be freely given and cannot be granted under psychological, emotional, or physical force, manipulation, coercion, persuasion or threats.
- (d) **Dating Violence.** As defined in the Violence Against Women Act of 1994, violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- (e) **Domestic Violence.** As defined in the Violence Against Women Act of 1994, any felony or misdemeanor crime of violence committed:
- (i) By a current or former spouse or intimate partner of the victim;
 - (ii) By a person with whom the victim shares a child in common;
 - (iii) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - (iv) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
 - (v) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- (f) **Formal Complaint.** A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment.
- (g) **Preponderance of the Evidence.** Information, considered as a whole, that indicates the facts sought to be proved are more likely than not. This is the burden of proof that must be met in determining whether conduct is a violation of this policy.
- (h) **Reporter.** A person who reports a violation of this policy to the Title IX Coordinator or their supervisor/manager.
- (i) **Respondent.** An individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct under this policy.
 - (j) **Sexual Assault.** As defined in the Violence Against Women Act of 1994 is any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent. This includes, but is not limited to, attempted sexual assault and the following:
 - (i) **Rape.** The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - (ii) **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 - (iii) **Incest.** Sexual intercourse between persons who are related to each other within the degrees

wherein marriage is prohibited by law.

(iv) Statutory Rape. Sexual intercourse with a person who is under the statutory age of consent.

(k) Sexual Harassment. As defined in Title IX, conduct on the basis of sex that satisfies one or more of the following:

(i) A University employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;

(ii) 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; or

(1) For instances where the conduct is outside the scope of Title IX but is within the purview of the University jurisdiction or Title VII as it pertains to employment law, the definition of sexual harassment is severe, pervasive, or objectively offensive.

(iii) Sexual assault, dating violence, domestic violence, or stalking as defined herein and consistent with federal law.

(l) Sexual Misconduct. An umbrella term used to refer to a broad range of sexually inappropriate behaviors that includes sexual violence (rape/sexual battery/sexual assault); sexual harassment; intimate partner violence (domestic violence, dating violence, relationship violence); stalking; sexual exploitation; and other forms of sexually exploitative behavior that can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by any person and can occur between people of the same or different sex, sexual orientation, and gender identity or gender expression.

(m) Stalking, ~~when of a sexual nature meaning repetitive and/or menacing pursuit, following, harassing and/or interfering with the peace and/or .~~ As defined in the Violence Against Women Act of 1994, a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for the person's safety or the safety of others; or

(ii) Suffer substantial emotional distress.

(iii) For the purposes of this definition:

(1) 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.

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

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

(n) Student.

(i) Persons taking courses at the University (full-time or part-time) in undergraduate, graduate, or professional studies;

(ii) Persons who withdraw from the University after allegedly violating this policy;

(iii) Persons who were previously enrolled but are not officially enrolled for a particular term and have a continuing relationship with the University;

(iv) Persons who have been notified of their acceptance for admission to the University

(o) 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. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment.

(p) University Community. For purposes of this policy, includes individuals applying for enrollment at or employment with the University, University students, University employees, visitors, and contracted agents and vendors.

(4) SEEKING GUIDANCE OR FILING A COMPLAINT:

42. Any member of the University Community who believes that they have been subjected to sexual misconduct, retaliation related to an allegation of sexual misconduct, or any member of the University Community, who believes that others have been subjected to sexual misconduct in violation of this policy may seek guidance, supportive measures, or file a complaint by contacting:

Title IX Coordinator
4700 Research Way
Lakeland, Florida 33805-8531
(863) 874-8484
titleixcoordinator@floridapoly.edu
Online Report Form – www.floridapoly.edu/titleix

Allegations of a violation of this policy, including complaints of retaliation, will be addressed by the Title IX Coordinator, in accordance with the applicable regulations, policies and procedures. Members of the University Community may contact the Title IX Coordinator to seek assistance in informally resolving the complaint or in a formal investigation. Allegations of sexual misconduct reported to the University's Title IX Coordinator in no way affect the right of the complainant to file a criminal complaint, even in the event an internal University investigation has already commenced.

E-(5) ACTIONS THAT DO NOT CONSTITUTE SEXUAL HARASSMENT MISCONDUCT:

The University educational environment is unique in that there must be the freedom to express ideas and to foster communication on subjects that enhance the University's educational mission. Accordingly, while the University is committed to providing a learning environment that is free from sexual harassment, the purpose of this policy is not intended to abridge academic freedom or to interfere with speech, as guaranteed by the First Amendment. As such, pursuant to this policy, sexual ~~harassment~~misconduct does not include:

- 1.(a) The expression of ideas in an academic context to provoke thought or discussion on topics germane to the course and advancement of the University's educational mission.
- 2.(b) Engagement in debate or discourse over issues that society may find to be unpopular, offensive, or disagreeable.
- 3.(c) Discussing, using, or displaying views, words, symbols or thoughts in an academic setting, which are germane to the course and which some persons may find to be offensive.

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F.(6) VIOLATIONS:

In determining whether alleged conduct constitutes sexual harassment/misconduct, and a violation of this policy, the conduct will be evaluated from the perspective of a reasonable person in the alleged victim's position, considering the totality of the circumstances, such as the nature of the alleged conduct and the context in which the alleged conduct occurred. A determination on the allegations is made from the facts on a case-by-case basis, using the preponderance of the evidence standard. In an academic setting, consideration will be given to free speech and academic freedom. Those members of the University Community who are found to have violated this policy may be subject to disciplinary and other action, up to and sanctions, including termination or expulsion but not limited too.

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G. RESPONSIBILITY TO COMPLY WITH SEXUAL HARASSMENT POLICY:

Each member of the University Community is responsible for ensuring that his or her conduct does not violate this policy.

- (a) Students: Alteration of class schedule, alternation of housing assignment, restriction from entering specific buildings/areas, loss of privilege, restitution, University probation, educational sanctions, removal from on-campus housing, suspension, dismissal, and expulsion.
- (b) Employees: Reassignment of duties, mandatory training, verbal reminders, written reprimand, suspension, and termination.

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H.(7) RESPONSIBILITY TO REPORT SEXUAL HARASSMENT/MISCONDUCT:

To maintain an environment free from sexual harassment/misconduct, the responsibility for reporting incidents of sexual harassment/misconduct rests with all members of the University Community. Thus anyAny employee, staff or faculty member, student, applicant or other member of the University Community who believes another member is being subjected to sexual harassment/misconduct in violation of this policy, is strongly encouraged, if not required, to report the matter to their supervisor, manager, or directly to the Title IX Coordinator. Once the Title IX Coordinator receives the report the University is deemed to have actual knowledge.

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1.(a) Supervisors and Managers: All supervisors and managers (defined for purposes of this policy as persons supervising one or more employees) are required to promptly report to the Title IX Coordinator (either verbally or through written communications) allegations, reports or instances of alleged sexual harassment/misconduct by or against any person covered by this policy.

2.(b) Faculty Members: All faculty members are required to promptly report to the Title IX Coordinator or, alternatively, to their department chair, dean, or applicable academic administrator any and all allegations, reports, or instances of alleged sexual harassment/misconduct by or against a student in violation of this policy. Persons to whom alleged acts of sexual harassment/misconduct are reported by faculty, must promptly report the matter to the Title IX Coordinator (either verbally or through written communications).

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(c) **Student Employees.** Except for students who are employed in Residential Life, students who are employed by the University in an OPS position are strongly encouraged, but not required, to report suspected sexual misconduct in violation of this policy to their supervisor, manager, or directly to the Title IX Coordinator. Students who are employed in Residential Life are required to promptly report to their supervisor, manager, or directly to the Title IX Coordinator (either verbally or through written communications) allegations, reports or instances of alleged sexual misconduct by or against any person covered by this policy.

3.(d) **Members of the University Community:** An individual who feels uncomfortable and/or harmed by offensive behavior should try to remove themselves from the offending situation and seek help as quickly as possible by reporting the offending conduct to an individual designated in this policy. However, failure for an individual to take affirmative steps to stop sexual ~~harassment~~misconduct, in no way, bars the individual from seeking relief through filing a claim under this policy.

(e) **Confidential Employees.** Employees, vendors, and contractors working in counseling services, medical services, and the University Ombudsperson are confidential resources and are not required to report any information regarding an incident of sexual misconduct. These individuals should:

- (i) Inform an individual of their right to file a complaint with the University and/or a complaint with campus or local law enforcement;
- (ii) Inform the student or employee about available resources for counseling, medical, academic, and other supports;
- (iii) Indicate that they are available to assist an individual in filing a complaint; and
- (iv) Explain that University policies and regulations include protections against retaliation.

(8) GRIEVANCE PROCESS:

- (a) **Responsibility of Title IX Coordinator.** The Title IX Coordinator is responsible for administering the grievance process for sexual misconduct. Reports or allegations covered in this policy will be processed upon receiving the report. The Title IX Coordinator makes an initial assessment of whether the complaint falls within the scope of this policy and/or Title IX.
- (b) **Respondent is an Employee, Vendor, or Contractor.** If the Respondent is an employee, a vendor, or a contractor, the complaint will be resolved using the procedures outlined in FPU-1.005 Discrimination and Harassment Complaint and Investigation Procedures.
- (c) **Respondent is a University Student.** If the Respondent is a student, the complaint will be resolved using the procedures outlined in FPU-3.006 Student Code of Conduct.
- (d) **Title IX Grievance Process.** Complaints that allege conduct that is within the scope of Title IX will also follow the additional provisions in section (9) below.

(9) ADDITIONAL GRIEVANCE PROCESS PROVISIONS FOR TITLE IX:

Title IX of the Higher Education Amendments of 1972, 20 USC 1681 et seq., a Federal civil rights law, prohibits sex discrimination, in any form, including sexual harassment, sexual assault, dating violence, domestic violence and stalking. The following provisions apply to allegations that conduct constitutes Sexual Harassment under Title IX.

- (a) **Title IX Coordinator and Jurisdiction.** The University has designated a Title IX Coordinator to address complaints alleging sexual harassment in a manner that ensures a prompt and equitable resolution. The Title IX Coordinator will assess each report received to determine whether the reported incident is within the jurisdiction of Title IX.
 - (i) To be considered under the jurisdiction of Title IX jurisdiction, the alleged Sexual Harassment must have occurred to persons participating or attempting to participate in the University's education program or activity in the United States.
 - (1) Education program or activity includes locations, events, or circumstances over which the University has exercised substantial control over both the Respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University.
 - (ii) The University must have jurisdiction over the Respondent and the Complainant during the time of reporting, this includes both students and employees.

- (b) **Supportive Measures.** The Complainant and Respondent may request and receive supportive measures without filing a formal complaint and at any time during the grievance process.
- (c) **Formal Complaint.** The Complainant or Title IX Coordinator must sign a document acknowledging the process moving forward with an informal resolution or formal investigation. There is a presumption of innocence that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- (i) If a formal complaint has been signed, the Complainant can choose an Informal Resolution or Formal Investigation.
- (d) **Notice of Allegations.** A Notice of Allegation will be sent to the both parties, if a Formal Complaint has been filed. The notice will provide sufficient time to prepare a response before the initial meetings. The Notice of Allegation will include, but not limited to:
- (i) The identity of the Complainant and Respondent;
- (ii) An explanation of the Grievance Process;
- (iii) Information regarding the allegations of sexual misconduct, providing sufficient details known at the time, time and location if available.
- (iv) Right to have an Advisor of the party's choice to accompany them through the grievance process (can, but does not need to be an attorney)
- (v) A statement that knowingly making false statements or submitting false information is prohibit.
- (vi) Right to present witnesses, including fact and expert witnesses, and other evidence and to review all evidence collected.
- (e) **Informal Resolution.** Informal Resolution is a process that will allow for both parties to work on a resolution outside of an investigation. This can include mediation, restorative justice, or an alternative format agreed upon by both parties. Informal Resolution will not result in a policy violation but rather an agreed upon resolution by both parties.
- (i) This process can be used at any time before or during an investigation of a complaint and allows parties to resolve a complaint through informal means such as mediation or restorative justice.
- (ii) In order to resolve complaints through Informal Resolution, both parties must agree to resolve the complaint through Informal Resolution.
- (iii) A Complainant or Respondent may, at any time, end the Informal Resolution process.
- (iv) If a complaint is not resolved through Informal Resolution, the Grievance Process, as described in this policy, will continue.
- (v) Informal Resolution cannot be used in sexual harassment allegations that involve an employee sexually harassing a student.
- (vi) Once an Informal Resolution has been reached and both parties sign the agreed upon terms, the Grievance Process is complete.
- (vii) However, if a party violates the agreed upon terms, the parties have the option to re-enter Informal Resolution or continue with a Formal Investigation. The party that violates the terms, may receive additional charges under University policies.
- (f) **Formal Investigation and Investigative Report.** Prior to completion of the Formal Investigative Report, the Complainant and Respondent are both provided an equal opportunity to inspect and review any evidence obtained as part of the Formal

Investigation that is directly related to the allegations raised in the Formal Complaint so that each party can meaningfully respond to the evidence prior to conclusion of the Formal Investigation.

(i) This includes evidence that is not intended to be relied upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. This means evidence that favors both the Complainant (inculpatory) and Respondent (exculpatory).

(ii) The evidence subject to inspection and review is provided to each party and their advisors in an electronic format or a hard copy. Each party has ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report.

(iii) The Investigative Report fairly summarizes relevant evidence determined by the Investigator and, is provided to each party and the party's advisor in electronic format or hard copy at least ten (10) business days prior to the live hearing for their review and written response.

(g) **Live Hearing.** A live hearing must be conducted for all Formal Complaints unless the Formal Complaint has been dismissed or resolved through the Informal Resolution process. This includes allegations between employees, employees and students, and students. For Formal Complaints where the Respondent is a student, the following provisions also apply to the Formal Hearing process in FPU-3.006 Student Code of Conduct.

(i) **Remote Participation.** Live hearings may be conducted virtually, with technology enabling participants simultaneously to see and hear each other.

(ii) **Hearing Body.** The Hearing Body is comprised of up to three (3) staff and/or faculty members that have been trained to be a part of this process and are appointed by the President or President's designee. The Title IX Coordinator, investigator, or other person who participated in the informal resolution process, if any, may not be a member of the Hearing Body.

(1) The parties may opt to waive a Hearing Body for a single Hearing Officer. Both parties must agree and a written request must be made outlining the reason.

(2) Both parties may have an advisor of their choice at the live hearing. An Advisor may conduct cross examination only. An Advisor may not participate in any other part of the live hearing.

(3) During the Live Hearing, if either party does not have an advisor with them, the University will provide an advisor of the University's choosing at no cost to the party.

(iii) **Cross Examination.**

(1) Before a Complainant, Respondent, or Witness answers a cross-examination or other question from the respective Advisor, the Hearing Body must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

(2) Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior

with respect to the Respondent and are offered to prove consent.

(3) Repetitive questions to the Complainant, Respondent, or Witness may be deemed not relevant if the questions have already been answered throughout the Hearing.

(4) If a Complainant, Respondent, or Witness does not participate in cross examination, the Hearing Body will not be able to use any of the statements or information that the individual previously provided. This includes statements made to the investigator, documentation provided by the party, and police reports that include the specific individual's statements alone.

(iv) Conduct of Live Hearing.

(1) Reading of charge(s) by Hearing Body.

(2) Respondent's response of "responsible" or "not responsible."

(3) Hearing Body presents information regarding the charges.

(4) Complainant's opening statement and presentation of information.

(5) Respondent's opening statement and presentation of information.

(6) Hearing Body questions the Complainant, Respondent, and/or witnesses.

(7) Complainant's advisor questions the Complainant, Respondent, and/or witnesses.

(8) Respondent's advisor questions the Complainant, Respondent, and/or witnesses.

(9) Hearing Body's final questions of the Complainant, Respondent, and/or witnesses.

(10) Complainant's closing remarks.

(11) Respondent's closing remarks.

(12) Hearing is brought to a close.

(h) Determination of Responsibility and Written Determination. The Hearing Body determines whether alleged conduct constitutes a policy violation and will determine sanction(s) as appropriate. The conduct will be evaluated based on the facts gathered from the live hearing on a case-by-case basis. The Hearing Body will consider the totality of the circumstances and use the preponderance of the evidence standard in its determination. The Hearing Body must issue a written determination regarding responsibility. The written determination must include:

(i) Identification of the allegations potentially constituting sexual harassment;

(ii) A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(iii) Findings of fact supporting the determination;

(iv) Conclusions regarding the application of FPU-3.006 Student Code of Conduct to the facts if the Respondent is a student;

(v) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and

(vi) The procedures and permissible bases for the Complainant and Respondent to appeal.

(i) Appeal. A Complainant or Respondent may appeal the findings and sanction(s) after receiving the Notice of the Determination or a dismissal of the Final Complaint or any

allegations in a Formal Complaint.

- (i) An appeal must be submitted to the Title IX Office, in writing, within ten (10) business days of receipt of the issued findings and sanction(s) and must specify the basis of the appeal.
- (ii) Appeals must be based on one or more of the following provisions and that had an effect on the outcome of the matter:
 - (1) Procedural irregularity;
 - (2) New evidence that was not reasonably available at the time of the Live Hearing or when the determination regarding responsibility or dismissal was made; and
 - (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.
- (iii) Written notice of an appeal is provided to the other party. The Complainant or Respondent may submit a written response to an appeal to the Title IX Office. Such response will be attached to the final report and maintained in the same file.
- (iv) The President or designee may designate a person with appropriate training to serve as an appellate officer to review the appeal and issue a written decision that describes the result of the appeal and the rationale for the result. A person that reached the determination regarding responsibility (Hearing Body) or dismissal, the investigator(s), nor the Title IX Coordinator can be an appellate officer.
- (v) The written decision is provided to both parties simultaneously.

I.(10) RETALIATION PROHIBITED:

Retaliation, or otherwise taking adverse employment or educational action, against a member of the University Community because the member, in good faith, reported an allegation of sexual harassment, ~~or~~ participated in an investigation or review regarding a complaint, participated in the resolution process, supported a Complainant or Respondent, or assisted in providing information relevant to an investigation is strictly prohibited. ~~Those found to have violated and a violation of this prohibition against retaliation may be subject to disciplinary and other policy. Retaliation includes adverse action, up to and including termination, harassment, intimidation, threats or coercion in any employment, educational, program or activity.~~

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J.(11) FRIVOLOUS OR MALICIOUS COMPLAINTS:

In the event that a claim of sexual ~~harassment~~ ~~misconduct~~ is found to be frivolous or malicious, the person making the frivolous or malicious complaint may be subject to disciplinary and other action.

K.(1) SEEKING GUIDANCE OR FILING A COMPLAINT:

~~Any member of the University Community who believes that he or she has been subjected to sexual harassment; any member of the University Community who believes that he or she has been subjected to retaliation related to an allegation of sexual harassment; or any member of the University Community who believes that others have been subjected to sexual harassment, in violation of this policy, may seek guidance, counseling, or file a complaint, in accordance with this policy, by contacting:~~

~~Title IX Coordinator 4700 Research Way
Lakeland, Florida 33805-8534~~

(863)-583-9050
TitleIXCoordinator@floridapolytechnic.org

~~Allegations of a violation of this policy, including complaints of retaliation, will be addressed by the Title IX Coordinator, in accordance with the University's Complaint and Investigation Procedures. Members of the University Community may contact the Title IX Coordinator to seek assistance in informally resolving the complaint or in filing a formal complaint or grievance. Allegations of sexual harassment reported to the University's Title IX Coordinator in no way affect the right of the complainant to file a criminal complaint, even in the event an internal Title IX investigation has already commenced.~~

(12) N-EDUCATION AND NOTIFICATION:

Copies of this policy ~~shall be~~ widely disseminated to the University Community so that all members are aware of acts which constitute sexual ~~harassment~~ misconduct and shall recognize that the University regards sexual ~~harassment~~ misconduct to be a serious offense and will not be tolerated. Periodic workshops and other educational programs are offered to University personnel regarding the topic of sexual ~~harassment~~ misconduct.

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POLICY APPROVAL	
Policy No.: FPU-1.005P	
_____	_____
Initiating Authority	Date
_____	_____
Policies & Procedures Review Committee Chair	Date
_____	_____
President/Designee	Date
Approved by FPU BOT, if required	_____
	Date

EXECUTED SIGNATURE PAGES ARE AVAILABLE IN THE OFFICE OF THE GENERAL COUNSEL

For Title IX purposes, those that are part of the process must be appropriately trained. This may include the Title IX Coordinator, investigators, decision makers, appellate officers, and advisors. All trainings for these individuals are located on the Title IX Webpage.

POLICY APPROVAL

Policy No.: FPU-1.005P

Initiating Authority

Date

Policies & Procedures Review Committee Chair

Date

President/Designee

Date

Approved by FPU BOT, if required

Date

EXECUTED SIGNATURE PAGES ARE AVAILABLE IN THE
OFFICE OF THE GENERAL COUNSEL

DRAFT

**Florida Polytechnic University
Board of Trustees Meeting
September 9, 2020**

Subject: Academic & Student Affairs Committee: Consent Agenda Items

Proposed Action

Approve the following items:

1. Approve Academic & Student Affairs Committee Charter
2. Approve the 2020 Textbook and Instructional Materials Report and the reapproval for the previously approved 2019 Textbook and Instructional Materials Report
3. Approve FPU-5.003 Textbook Adoption and Affordability – Amendment and Repeal of Board of Trustees Resolution 2017-001
4. Approve FPU-BOT COVID19 MOU 2

Background Information

Please see background information in the materials for the Academic & Student Affairs Committee.

Supporting Documentation: Please see supporting documentation under "Academic & Student Affairs Committee"

**Florida Polytechnic University
Board of Trustees Meeting
September 9, 2020**

Subject: Audit & Compliance Committee: Consent Agenda Items

Proposed Action

Approve the following items:

1. Approve Audit & Compliance Committee Charter
2. Approve Auditor General Operational Audit
3. Approve UAC Annual Report – FYE 6/30/20
4. Approve UAC Audit Plan and Risk Assessment - FYE 6/30/21
5. Approve UAC Compliance and Ethics Program Plan - FYE 6/30/21

Background Information

Please see background information in the materials for the Audit & Compliance Committee.

Supporting Documentation: Please see supporting documentation under "Audit & Compliance Committee"

**Florida Polytechnic University
Board of Trustees Meeting
May 20, 2020**

Subject: Finance & Facilities Committee: Consent Agenda Items

Proposed Action

Approve the following items:

1. Approve Carryforward and Fixed Capital Outlay Budgets
2. Approve University Resources Used by the Foundation FY19-20 and to be Used FY20-21
3. Approve Foundation Board Appointments

Background Information

Please see background information in the materials for the Finance & Facilities Committee.

Supporting Documentation: Please see supporting documentation under "Finance & Facilities Committee"

**Florida Polytechnic University
Board of Trustees
September 9, 2020**

Subject: Governance Committee: Consent Agenda Items

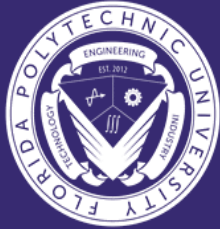
Proposed Action

1. Approve Governance Committee Charter

Background Information

Please see background information in the materials for the Governance Committee.

Supporting Documentation: Please see supporting documentation under "Governance Committee"



Board of Trustees Meeting

DRAFT MEETING MINUTES

Wednesday, May 20, 2020

11:15 AM – 11:45 AM

Florida Polytechnic University WEBEX TELE-CONFERENCE MEETING

I. Call to Order

Chair Don Wilson called the meeting to order at 12:47 p.m.

II. Roll Call

Michele Rush called the roll: Chair Don Wilson, Vice Chair Cliff Otto, Trustee Mark Bostick, Trustee Connor Coddington, Trustee Henry McCance, Trustee Victoria Astley, Trustee Earl Sasser, Trustee Bob Stork, Trustee Philip Dur, and Trustee Gary Wendt were present (Quorum).

Trustees not present: Trustee Lou Saco, Trustee Frank Martin

Staff present: President Randy Avent, Provost Terry Parker, Mr. Mark Mroczkowski, Ms. Gina Delulio, Ms. Kathy Bowman, Mr. Rick Maxey, Mrs. Kris Wharton, Ms. Michele Rush, Mrs. Kim Abels, and Mr. David Blanton were present.

III. Public Comment

There were no requests received for public comment.

IV. Chairman's Remarks

Chair Don Wilson welcomed Trustee Connor Coddington to the Board of Trustees. Trustee Coddington was elected as Student Government Association (SGA) president for 2020-2021. Chair Wilson also stated his appreciation to Adrienne Perry, whose service to the Board ended May 4, 2020, and to Trustee Henry McCance, who has served the Board since 2016.

V. President's Remarks

President Randy Avent also expressed his appreciation to Adrienne Perry and Trustee McCance for their service. Trustee McCance stated he enjoyed his experience on the Board as well as getting to know President Avent, Provost Parker, and the other Trustees. He affirmed his belief in the mission of Florida Poly and stated he will continue to follow the University's success.

VI. Consent Agenda

Action Required

Chair Wilson read the list of items to be approved on the consent agenda:

- A. Academic & Student Affairs Committee
 - 1. Approve Cyber Security Engineering degree
 - 2. Approve Collective Bargaining Agreement Revised Article 12: Salaries
 - 3. MOU “Memorandum of Understanding re: COVID-19 Health Emergency”
 - 4. Approve revised Regulation FPU-3.006 Student Code of Conduct
- B. Audit & Compliance Committee
 - 1. Approve University Financial Audit – (FYE 6/30/19)
 - 2. Approve Foundation Form 990 (FYE 6/30/19)
 - 3. Approve UAC Quality Assurance Review (QAR) – Self Assessment (Report No. FPU 2020-07)
- C. Finance & Facilities Committee
 - 1. Approve revised FPU-4.001 Tuition and Related Fees Schedule
 - 2. Approve the 2021-2022 Capital Improvement Plan (CIP)
 - 3. Approve granting Dr. Avent authority to sign a change order up to \$2.4 million to Skanska to continue construction of the Applied Research Center until additional funding is received from the State of Florida
 - 4. Approve amendment to the 2019-2020 Carry Forward Budget to use Carry Forward to fund up to \$2.4 million of construction costs for the Applied Research Center pursuant to the change order described above in #3
 - 5. Approve 2021-2022 Operating Legislative Budget Request (LBR)
 - 6. Approve 2020-2021 Foundation Operating Budget
 - 7. Approve Foundation Board Reappointments
- D. Governance Committee
 - 1. Approve President’s Proposed Goals FYE 2021
- E. Board of Trustees
 - 1. Approve the February 26, 2020 Board of Trustees Meeting Minutes

As each of the items comes before the Board with unanimous approval from the respective Committees, there is no need for a second. **Trustee Henry McCance made a motion to approve the Consent Agenda as presented. A vote was taken, and the motion passed unanimously.**

VII. Committee Reports

A. Executive Committee Report (April 13, 2020)

Chair Wilson reported the Executive Committee met on April 13, 2020 and approved the Annual Work Plan to be presented to the Board of Governors. No action is required on behalf of the full Board.

B. Academic & Student Affairs Committee.

As all trustees were present for the Academic & Student Affairs Committee meeting today, Chair Wilson did not give a formal report. No action is required on behalf of the full Board.

C. Audit & Compliance Committee

Action Required

Committee Chair Gary Wendt stated the Chief Audit Executive presented the Audit Charter; the Compliance and Ethics Charter; and the Audit and Compliance Committee Charter for review and approval. The Committee evaluated their performance relative to the Committee Charter requirements and determined that they were performing satisfactorily with respect to the duties outlined in the Audit & Compliance Committee Charter.

The Committee recommended the Board approve (1) the Audit and Compliance Committee (AACC) Charter, (2) the Internal Audit Charter, and (3) the Compliance and Ethics Charter and the Audit & Compliance Committee's satisfactory evaluation. Trustee Earl Sasser seconded the motion; a vote was taken, and the motion passed unanimously.

D. Finance & Facilities Committee

Action Required

As all trustees were present for the Finance & Facilities Committee meeting today, Chair Wilson did not give a formal report. There is only one item for review and approval by the full Board:

The Committee recommended the Board approve the 2020-2021 University Operating Budget. Trustee Philip Dur seconded the motion; a vote was taken, and the motion passed unanimously.

E. Governance Committee

Action Required

Committee Chair Philip Dur reported the Governance committee reviewed the President's proposed goals for Fiscal Year 2020-21 which are on the consent agenda. The Committee reviewed President Avent's accomplishments thus far in this fiscal year and is recommending that the Board renew the President's employment for another year (2020-21).

The Committee recommended the Board approve the Renewal of President's Employment 2020-21. Trustee Bob Stork seconded the motion; a vote was taken, and the motion passed with one abstention by Trustee Victoria Astley.

The Committee has been reviewing the President's Employment Agreement which has resulted in several changes and a new Employment Agreement. The Committee is recommending that the Board approve the new Employment Agreement to go into effect in July 7, 2020.

The Committee recommended the Board approve the President's Employment Agreement 2020-21. Trustee Mark Bostick seconded the motion; a vote was taken, and the motion passed with one abstention by Trustee Victoria Astley.

VIII. Officer Elections

Action Required

Governance Committee Chair Dur stated the Committee discussed the slate of officers for the Board Chair and Vice Chair and is recommending Cliff Otto for the position of Chair and Mark Bostick for the position of Vice Chair.

With no nominations from the floor, the Committee recommended the Board approve Trustee Cliff Otto as Board of Trustees Chair for the term 2020-2022 and to approve Trustee Mark Bostick as Board

of Trustees Vice Chair for the term 2020-2022. Trustee Henry McCance seconded the motion; a vote was taken, and the motion passed unanimously.

IX. Board of Trustees Meeting Schedule

Action Required

Mrs. Kris Wharton reviewed the challenges surrounding certain established Board meeting dates for 2020-2021. After brief consideration, Trustees agreed to move the December meeting date back into November, and the late May meeting date to occur the Monday immediately after annual commencement.

A motion was made by Victoria Astley to amend the Board of Trustees meeting schedule to include moving the December 2020 meeting to November 17-18, 2020, and the late May 2021 meeting to Monday, May 3, 2021. Trustee Philip Dur seconded the motion; a vote was taken, and the motion passed unanimously.

X. Board of Governors' Meetings

Chair Wilson encouraged trustees to attend, or at the minimum listen to, the Board of Governors meetings.

XI. Closing Remarks and Adjournment

Trustee Cliff Otto thanked and recognized the work of President Avent, Rick Maxey, and Kathy Mizereck regarding the challenges that occurred in Tallahassee in February and March. Chair Wilson echoed Trustee Otto's remarks.

With no further business to discuss the meeting adjourned at 1:09 p.m.

**Florida Polytechnic University
Board of Trustees
September 9, 2020**

Subject: Approve 2019-2020 Florida Polytechnic University Equity Report

Proposed Action

Recommend approval of the 2019-20 Florida Polytechnic University Equity Report.

Background Information

Each university in the State University System of Florida is required to submit an annual equity report pursuant to Florida Board of Governors Regulation 2.003 Equity and Access. The regulation states that discrimination on the basis of race, color, national origin, sex, religion, age, disability, marital status, veteran status, or any other basis protected by applicable state and federal law against a covered individual at any university is prohibited.

The report summarizes the diversity of Florida Poly's student body, faculty and staff as well as trends. In addition, the equity report discusses efforts the university is taking to make education at the Florida Poly accessible to persons of all groups. Acceptable efforts include conducting targeted outreach and recruitment aimed at inclusion, creating training programs to increase capacity of diverse cohorts, and taking lawful action to remedy underutilization.

Supporting Documentation: Please see supporting documentation under "Strategic Planning Committee"

Prepared by: Rick Maxey, AVP, Office of Diversity & Inclusion

**Florida Polytechnic University
Board of Trustees
September 9, 2020**

Subject: Approve Proposed P3 for Building on Campus and Related ITN

Proposed Action

Approve issue of an Invitation to Negotiate ("ITN") to enter into a public-private partnership between the University and a private company to plan, design, fund, construct, maintain and operate an on-campus state of the art research building.

Background Information

Florida Poly needs private support to build out the campus to provide academic, research, and student development opportunities to the university community. Entering into a public-private partnership is the most viable means of building campus facilities that allow the University to continue the research anticipated when the University was created by the Legislature. This will ultimately lead to increased economic growth for Polk County and the State of Florida.

The University will lease real property on its main campus sufficient to construct and operate a privately funded and operated research facility. The amount of land and location of the project will be decided by the University.

The desired project will result in a facility containing at least 35,000 gross square feet and having a permanent staff of at least 25 on campus employees.

The contract for a ground lease will be for a maximum of thirty (30) years and will be renewable under terms and conditions negotiated with the chosen Responder. Florida Poly will have right of first refusal (ROFR) based on agreed upon criteria.

Respondents will demonstrate expertise in the planning, construction and operation of a research facility and management of the accompanying staff. As such, respondents will demonstrate experience in project planning, technical design and specification, and other relevant information.

Respondents will provide technical and financial information on the research facility to include but not be limited to the following: gross and net square footage; total acreage required, project time-line, infrastructure needs, project cost, financing capabilities, number and types/categories of employees and annual payroll, and other relevant information.

The Private Party is expected to pay for any and all costs and expenses pertaining to the performance of its obligations to the University and as will be outlined in the Agreement. This will include, but is not limited to, the cost of design review, permitting, code compliance, inspection services, construction (including all necessary site utility connections), management, security, emergency response, maintenance and all operational costs for the Project constructed under the Agreement. Total Project cost is contingent on the gross square feet (GSF), construction cost, financing costs, and operating costs.

The University must approve any and all potential tenants who may desire to lease space in the facility.

Respondents will provide information on the business nature/structure of the research facility with regard to leasing expectations including number of years, lease rate, profit sharing, any economic incentives, and other relevant information.

The University expects for the Private Party or Private Parties to introduce the cutting-edge innovation in the design and construction elements of the Project, including efficient energy utilization.

The Successful Respondent will have signage on the façade of the Facility that is consistent with University policy and subject to University approval and will also have the right to inclusion on campus maps and directional signage.

Respondents will explain how the research facility will enable Florida Polytechnic University to achieve the following goals.

- a. Develop strong academic and research programs related to areas of expertise of the University.
- b. Collaborate on potential degree program expansion that benefits the University's mission.
- c. Establish internship, graduate research assistant or similar programs and/or cooperative programs for University students.
- d. Provide consideration of University students for career opportunities related to their fields of study.
- e. Engage in collaborations with University faculty leading to enhanced education of students and advancement of research in fields related to University areas of focus.

Supporting Documentation: Please see supporting documentation under "Finance & Facilities Committee"

**Florida Polytechnic University
Board of Trustees
September 9, 2020**

Subject: Approve Legislative Advocacy Plan

Proposed Action

Approve the 2020 Legislative Advocacy Plan.

Background Information

The vast majority of the University's revenue is appropriated by the Legislature. That makes it critical that we have an effective advocacy plan for helping members of the Legislature, the Governor and the Board of Governors of the State University System understand the value of funding the University at appropriate levels.

The proposed plan takes several components into account, state revenue levels, competition for those resources, and the Florida Poly's importance to the State as determined by those involved in providing funds to operate the University.

The goal is to maximize the amount of funds that are appropriated to Florida Poly and work to secure legislation that is beneficial to its development.

Supporting Documentation: Please see supporting documentation under "Governance Committee"

Florida Polytechnic University
Board of Trustees

2020-2022
Board of Trustees
MEETING CALENDAR

- November 18, 2020 (*Virtual*)
- February 16-17, 2021
- May 3, 2021 (*May 2: Commencement*)
- September 14-15, 2021
- November 16-17, 2021
- February 15-16, 2022
- May 2, 2022 (*May 1: Commencement*)
- September 13-14, 2022
- November 15-16, 2022

Florida Polytechnic University
Board of Trustees

2020-2021
Board of Governors
MEETING CALENDAR

2020

- September 16, 2020 (*USF, Tampa*)
- November 4-5, 2020 (*University of North Florida, Jacksonville*)

2021

- January 20-21, 2021 (*NCF, Sarasota*)
- March 24-25, 2021 (*FAMU, Tallahassee*)
- June 22-24, 2021 (*USF, Tampa*)
- September 1-2, 2021 (*FAU, Boca Raton*)
- October 7, 2021 Facilities Committee; Budget & Finance Committee Workshops (*FGCU, Ft. Myers*)
- November 3-4, 2021 (*FIU, Miami*)