



POLICY ON DISCRIMINATION AND HARASSMENT

Section: Regulations
Date Approved: February 18, 2016 by Board of Trustees
This policy supersedes all previous Franklin Pierce University Harassment or Discrimination Policies
Effective Date: February 2016
Revised: September 2019

I. POLICY

The University is committed to providing a work, residential, and educational employment that is free of unlawful discrimination and harassment. In keeping with this commitment, the University maintains a strict policy prohibiting all forms of unlawful harassment. Students, employees, faculty, volunteers, and visitors are treated in compliance with applicable laws and regulations governing nondiscrimination on the basis of age, race, color, religion, sex/gender, gender identity, ethnicity, national origin, physical or mental disability, legally-protected medical condition, military or veteran status, marital status, sexual orientation, genetic information, or any other characteristic protected by local, State or Federal law. Discrimination and/or harassment involving faculty, staff or students are unacceptable and prohibited. This policy is consistent with the University's efforts to maintain equal employment opportunity, equal educational opportunity, and nondiscrimination in programs and services.

The Policy covers all areas of discrimination including, but not limited to, Title VII of the Civil Rights Act of 1964, Title VI of the Civil Rights Act of 1984, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), and the Age Discrimination in Employment Act (ADEA).

Discrimination and Harassment, includes but is not limited to sexual harassment, sexual violence, and intimate partner violence.

The University will not tolerate the discrimination or harassment of any or by any, faculty member, staff member, student or visitor. The successful implementation of this policy is the responsibility of every member of the University community.

Inquiries regarding this policy may be directed to: The Office of Human Resources who serves as the Title IX Coordinator (603-899-4075). The Associate Director of Human Resources who serves as the Title IX Deputy Coordinator for matters related to Faculty, Staff and Vendor in the Office of Human Resources in the lower level of Digregorio Hall (603-899-4075 or broussardd@franklinpierce.edu); the Dean of Student Affairs who serves as the Coordinator of Compliance for Student Matters/Title IX Deputy Coordinator in the Lloyd and Helen Ament Astmann Career Center in New Hampshire Hall (603-899-4162 or polloma@franklinpierce.edu).

II. DEFINITIONS

A. Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal, physical, and nonphysical conduct of a sexual nature when:

- 1) Submission to such conduct is made explicitly or implicitly a term or condition of employment or status as a student;
- 2) Submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting that individual, or for awarding or withholding favorable employment or educational opportunity, evaluation or assistance; or
- 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's performance at work or in the classroom, and creates an intimidating, hostile or offensive environment in which to work or learn.

Examples of prohibited harassment include, but are not limited to, any of the following when based on a protected characteristic: making comments, slurs, innuendos or jokes; the display of cartoons, posters, or other materials; distributing pictures or words in written, pictorial or electronic form; touching, or other unwanted attention; threats, intimidation, or other abusive behavior. Faculty, administrators, supervisory staff, or others in positions of authority should be sensitive to the questions about mutuality of consent that may be raised, and to the conflicts of interest that are inherent in personal relationships where professional and educational relationships are involved (Refer to Consensual Relationship policy).

B. Sexual Violence. Sexual violence includes:

- 1) Non-consensual sexual intercourse, which is penetration of bodily orifice (vagina, anus, or mouth) by an object or body part, or attempts to commit the same, without effective consent.
- 2) Non-Consensual sexual contact, which is physical contact of a sexual nature (touching breast, buttocks, or pubic area) of anyone without his or her effective consent. In addition, any disrobing or other exposure to another without effective consent may also constitute non-sexual contact.
- 3) Sexual Exploitation, which occurs when one person takes advantage of another without his or her consent for his/her own benefit, or to the benefit of anyone other than the person being exploited (examples might include: non-consensual video, photography, audiotaping or other mediums such as the internet; peeping or voyeurism).

C. Other Harassment and Discrimination. It is unlawful and a violation of Franklin Pierce University policy to discriminate against or harass any member of the community based on any characteristic protected by local, State or Federal law.

Stalking, defined as the repeated and unwanted attention or acts that could cause a reasonable person to feel fear or to suffer emotional distress.

D. Protected Speech

Speech that conveys broad-based opinion, conviction, or speculation is not harassment; and political commentary and satire are not harassment.

E. Retaliation is the act of returning an attack; counterattack and can take the form of vengeance, revenge or retribution. Retaliation is a form of unlawful harassment and will be handled in the same manner as other allegations of sexual and other unlawful harassment.

F. Respondent is the person(s) towards whom allegations of wrongdoing is/are cited against. Under this policy, the respondent is the faculty, staff, student or visitor who stands accused.

G. Complainant is the person(s) who bring the actual complaint forward, and is/are most commonly considered to be the victim(s).

H. Third Party/Advisor is a member of the Franklin Pierce community, including faculty, staff and students, who at the request of a respondent or complainant, may be present at any investigatory meetings (or in the case of students at hearings as well) to provide moral support. The advisor may not play any other role in the investigative process (e.g., an advisor cannot also be a witness), and cannot speak or otherwise represent their advisees during any interviews or meetings.

I. Third Party Complaint is any person who wishes to bring forward concerns regarding harassment or discrimination that is in any way related to the operation of the University.

J. A Contact Person is any manager, supervisor or Vice President who receives the initial complaint.

K. Confidentiality can only be granted by specific individuals within the University community including the counseling center, health center, and campus ministry. Employees of the University may expect confidentiality through their personal health care provider or the Employee Assistance Program (EAP).

L. Mandatory Reporter Several employees and professional staff are designated as “responsible employees” and mandatory reporters. When they become aware of an alleged act of sexual harassment, discrimination or assault, the employee must promptly contact the Title IX Coordinator or Deputy Coordinator.

III. RIGHTS AND RESPONSIBILITIES

As a member of the Franklin Pierce community you have the right to work, learn and live in an environment free from discrimination and harassment. You have the right to equal opportunity and equal access to all University programs and activities.

A. Duty to Report. Manager, supervisors, faculty and other “responsible employees” of the University are required by law to promptly report allegations of sexual harassment and other forms of sexual misconduct that they observe or learn about to the Director of Human Resources/Title IX Coordinator. Failure to report a known or suspected incident or discrimination or harassment to the Director of Human Resources/Title IX Coordinator may result in disciplinary action.

B. Duty to Cooperate. Faculty, staff and students must cooperate with University investigators concerning allegations of discrimination or harassment. Refusal to cooperate with an investigation may result in disciplinary action.

C. Freedom from Retaliation. Any member of the University community has the right to raise concerns or make a complaint regarding discrimination or harassment under this policy without fear of retaliation. It is a violation of University policy to retaliate against an individual for filing a complaint of discrimination or harassment or for cooperating in an investigation of alleged discrimination or harassment. Any individual at Franklin Pierce University found in violation of this policy is subject to disciplinary action up to and including termination or employment or expulsion from FPU.

IV. REPORTING PROCEDURE

Persons who believe they are or have been subjected to such conduct or have witnessed such conduct are encouraged to make their concerns known.

The University has defined specific employees as mandatory reporters. Additionally, all employees who are supervisors are also “responsible employees” meaning they have the authority to redress the harassment or other types of misconduct to the appropriate administrators.

When an employee becomes aware of an alleged act of sexual harassment, discrimination, or assault, the employee must contact their supervisor or the Title IX Coordinator or Deputy Coordinator as soon as possible, hopefully within 24 hours of receiving the information. the employee should inform the student(s) that the University will maintain the privacy of the information, but the employee cannot guarantee confidentiality and, is required to report the act and may be required to reveal the name(s) of the parties involved The employee should refer or accompany the students to the Title IX Coordinator or Deputy Coordinator. Faculty, staff, students (including those at the Graduate and Professional Studies campuses), and visitors who believe they have been subjected to discrimination, sexual harassment, sexual violence, or other forms of unlawful harassment should bring their complaints or inquiries to one of the following individuals depending on the case:

- A.** If the complaint is against any **faculty or staff member**, the complainant should speak with any manager, supervisor, vice president and/or any one of the two University’s Deputy Coordinators. All such complaints *must* be referred to the Director of Human Resources, who is the Title IX Coordinator responsible for such complaints.
- B.** If the complaint is against a **Vice President**, the complainant should speak with any manager, supervisor, a vice president not involved with the current complaint and/or the University’s Title IX Coordinator or the Title IX Deputy Coordinator. All such complaints *must* be referred to the Title IX Coordinator, who will consult with the University President and decide who will investigate the case, who will decide the case, and who will serve as the appellate authority.
- C.** If the complaint is against the **President of the University**, the complainant should speak with any manager, supervisor, a vice president or the University’s Deputy Coordinators or the Title IX Coordinator. All such complaints *must* be referred to the Title IX Coordinator, who will consult with the Chairperson of the Board of Trustees and decide who will investigate the case,

which Trustee(s) will decide the case, and which Trustee(s) will serve as the appellate authority. The Chairperson of the Board of Trustees may serve in either capacity.

- D. If the complaint is against a **student**, the complainant should speak with any manager, supervisor, vice president, or the University's Deputy Coordinator or the Title IX Coordinator. All such complaints will be referred to the Vice President for Student Affairs, who is the Coordinator of Compliance responsible for complaints against students. Such complaints will be handled through the procedures outlined in the Student Code of Conduct.
- E. If the respondent is a student and a staff/faculty member, the complaint should be directed as follows:
 - 1) If the respondent is a full time student and part-time staff member, the complaint will be referred to the Deputy Coordinator/Vice President for Student Affairs;
 - 2) If the respondent is a full time employee and a part-time student, the complaint will be referred to the Deputy Coordinator/Associate Director of Human Resources or the Coordinator/Director of Human Resources;
 - 3) If the respondent is a part-time employee and part-time student or a full-time student and full-time employee, the determination will be based upon whether the respondent was employed at the University or enrolled as a student first. If the respondent was an employee (in any capacity) before he/she enrolled as a student, the case will be referred to the Deputy Coordinator/Associate Director of Human Resources or the Coordinator/Director of Human Resources. If the respondent was enrolled as a student before taking any employment at the University, the case will be referred to the Deputy Coordinator/Vice President for Student Affairs.
- F. If a complaint arises against a visitor, vendor, or **any other person not identified in this section** (including but not limited to: a Board of Trustees member, an Alumni Board member, etc.), the complainant shall be referred to the Title IX Coordinator, who shall determine in consultation with the President, where the case shall be referred for investigation, who will decide the case and who will serve as the appellate authority. Should the complaint be against a Trustee, the most senior ranking executive board member of the Board of Trustees, who is not involved in the case, shall be advised by the President of the University.

If unsure where to initiate a complaint, individuals may obtain further information from the Human Resources Office, the Student Affairs Office, or a Dean or Associate Dean at a Graduate and Professional Studies Campus. If the concern involves the Director of Human Resources or the Vice President for Student Affairs, the report should be made to the President of the University. Respondents and complainants may designate a member of the University faculty, staff or student body to act as a neutral third party/advisor in connection with a complaint of discrimination, sexual harassment, sexual violence or other unlawful harassment. The advisor role should support the individual in the complaint and investigation process which can include accompanying the individual making the initial report under the complaint procedure, and sitting in on meetings with the individual, and others (Also see: Section B. Formal investigation and Determination, #9 for

faculty or staff respondents; and Article I Definitions, #13 in the Student Code of Conduct for student respondents).

A person who has not experienced harassment or discrimination but has information regarding someone else who has experienced harassment or discrimination is expected to report that information. To make a ***third-party complaint***, the individual is encouraged to contact the University Deputy Coordinator or the Title IX Coordinator as soon as possible. Upon receipt of such information the Coordinator will make preliminary inquiries, which may include contacting the alleged victim, to determine whether further action is warranted. If a concern about harassment or discrimination is reported to the Coordinator, Deputy Coordinators or a Contact Person by someone other than the alleged victim of harassment or discrimination, and the alleged victim is unwilling or unable to provide a written statement, the Coordinator or Deputy Coordinator will have the incident investigated if sufficient information is furnished to enable the University to conduct a meaningful and fair investigation. If the alleged victim of harassment or discrimination provides an oral statement, the Coordinator or Deputy Coordinator will convert the oral statement to writing and such statement will serve as the complaint. The complainant will be asked to review the written statement, will be given the opportunity to amend the statement, and will ultimately sign the written statement to attest to its accuracy.

Once a complaint is received, the University will react swiftly to ensure the safety and well-being of the complainant with interim measures, as well as other community members. Interim measures may be necessary to ensure the safety and well-being of victims, as well as community members. Such measures might include, but are not limited to: Interim suspension of students, administrative leave for employees, housing changes, and no contact orders.

V. PRIVACY

The privacy of the complainant, the respondent, and all other parties involved in the complaint resolution process will be observed provided it does not interfere with the University's ability to investigate or take corrective action. Complainants, respondents, and any witnesses are instructed not to talk about the complaint except to receive guidance and counseling from family, appropriate administrators, and other formal advisors.

Reports of sexual harassment or non-consensual sexual assault will be taken seriously by Franklin Pierce University. Under federal law, if a student makes a formal report about an act of sexual harassment, other unlawful harassment or sexual violence to a University official (i.e., Coach, Student Affairs personnel, Campus Safety, or Title IX Coordinator), or when deemed necessary to protect the University community, the University has an obligation to investigate the complaint. To the extent possible, the University will protect the privacy of all parties.

The University employs several individuals who can maintain confidentiality for students, including those individuals working in the Counseling Center, Campus Ministry, or Health Services. Employees may contact the Employee Assistance Program. EMTs, Campus Safety personnel, or other members of the campus community cannot guarantee confidentiality.

These offices will pass along non-personally identifiable statistical information to Campus Safety for statistical purposes. The only information that will be released is that an incident was reported,

the type of incident, the general location, and the date and approximate time. Campus Safety will advise the Title IX Coordinator.

VI. COMPLAINT RESOLUTION - STUDENT

If you have any questions about the process or procedures after filing a complaint, or if a complaint has been filed against you, please contact The Vice President for Student Affairs/Deputy Coordinator at 603 899-4162.

When information about an incident of harassment or discrimination is brought to the attention of the Coordinator or Deputy Coordinator, the Coordinator or Deputy Coordinator will contact the complainant to explain the policy and complaint resolution process options. Coordinator or Deputy Coordinator may be excused from carrying out his/her duties under the policy in the event of a conflict of interest. In the event that a conflict of interest becomes apparent, another individual will be assigned and will assume the role of Acting Deputy Coordinator. Formal rules of process, procedure, or rules of evidence such as those applied to criminal or civil courts are not used within the University's disciplinary systems. The University uses a preponderance of evidence standard (i.e., it is more likely than not that sexual violence or harassment has occurred).

A. Informal Resolution

The aim of informal complaint resolution is not to determine whether there was intent to harass or engage in discriminatory conduct but to ensure that the alleged offending behavior ceases and that the matter is resolved promptly at the appropriate level. The assumptions underlying this form of resolution are that both parties perceive a problem (although they may define the problem differently), that both share a common interest in solving that problem, and that together they can negotiate an agreement that will be satisfactory to everyone involved. The focus is on what will happen in the future between the parties, rather than on what has happened in the past.

If at any point during an informal resolution of a complaint, either the complainant or the respondent communicates dissatisfaction with the process or resolution and the Coordinator or Deputy Coordinator deems it appropriate, the Coordinator or Deputy Coordinator can terminate the informal resolution and begin the formal investigation and determination process.

If agreed to by both the complainant and the respondent, mediation by an internal or external third party may be used as a form of informal resolution. It can be helpful in setting boundaries for future contact, for instance, including whether the parties may contact each other at all, specifics on who uses what space and at what time, etc. The most important outcome of mediation is that both parties agree to the resolution.

Many people think that in order to mediate, they need to sit face to face and talk. Mediated resolutions can be worked out without the parties ever meeting together, by the mediator talking with each party in turn and relaying what they are willing to agree to each other. Mediation may also be used following the outcome of a formal investigation and determination to work out the details of future contact.

B. Formal Investigation and Determination

A request for a formal investigation of an allegation of harassment or discrimination should be addressed to the University's Title IX Coordinator or the Title IX Deputy Coordinator.

If the complaint allegations, assuming factual support, could constitute harassment or discrimination, the Coordinator or Deputy Coordinator may nonetheless elect not to investigate for reasons which could include, but are not limited to, that (1) the alleged harassment or discrimination occurred beyond the time frame that exceeds the legal statute of limitations; or (2) the person against whom the complaint is made is no longer associated with Franklin Pierce University at the time the complaint is filed. This decision will be made by the Coordinator or Deputy Coordinator in the exercise of his/her sole and reasonable discretion.

The complainant has the right to withdraw the complaint in writing at any time, although if the University believes a violation of this policy has occurred, it may be required by law to continue the investigation on its own.

Once a complaint has been filed and a formal investigation deemed appropriate, the following procedure will ordinarily be used:

1. If a complaint alleges wrong doing by a student, the case will be referred to the Vice President of Student Affairs, who serves as the Deputy Coordinator for student matters. The case will be referred to the office of Judicial Affairs for investigation. The outcome of the investigation will be forwarded to the Associate Dean of Student Affairs, and the case will proceed as outlined in the Student Code of Conduct. The remainder of this section does not apply to cases where students stand accused.
2. The Complainant and Respondent will be notified in person or in writing of the identity of the Investigator. For the purpose of simplicity, the remainder of this section will assume the Investigator and Coordinator/Deputy Coordinator are the same, although this may not be the case.
3. The Coordinator/Deputy Coordinator will meet with the respondent to inform him or her that a complaint of harassment or discrimination has been filed and that a formal resolution is desired.
 - a. Should the respondent admit to the charges as described by the complainant, the process will then continue at step eleven (11) of the complaint resolution process and the investigation will be terminated.
 - b. If the respondent denies involvement as described by the complainant, the Coordinator/Deputy Coordinator will advise the respondent that a formal investigation will be initiated, who will conduct the investigation (typically the Coordinator/Deputy Coordinator), and that he or she is not to contact the complainant regarding the complaint or to otherwise engage in any retaliatory conduct. At this meeting, the Coordinator/Deputy Coordinator will review this policy. After meeting with the Coordinator/Deputy Coordinator, both the respondent and the complainant will be asked to sign a form acknowledging that they have been advised about both the complaint and the process.

4. The Coordinator/Deputy Coordinator will notify appropriate administrators that the University is conducting an investigation into an allegation of harassment or discrimination. Information will be provided on a “legitimate need to know” basis. An official has a “legitimate need to know” if the information is essential in fulfilling his/her professional responsibilities as described in his/her job description.
5. The complainant or the respondent must notify the Coordinator/Deputy Coordinator in writing within two (2) business days of the Investigator being identified if he or she believes that the Investigator cannot be objective and fair, and must also state at that time the reasons for that belief. The Coordinator will review the objection and within two (2) business days, in his/her sole discretion, determine whether a different Investigator will be assigned. If a new Investigator is to be assigned to the complaint, both parties will be notified in writing. If the objection relates to the Coordinator/Deputy Coordinator, the objection shall be reviewed by the Title IX Coordinator.
6. The investigation will be conducted as promptly as possible without compromising thoroughness. The Coordinator/Deputy Coordinator or assigned Investigator is expected to perform the investigation and make his or her findings in an objective and fair manner, and investigate the complaint thoroughly and expeditiously. It is expected that the Coordinator/Deputy Coordinator will complete the investigation phase within sixty (60) days of receipt of the formal complaint. If, for any reason, the investigation is not completed within sixty days, a written explanation will be provided to both the complainant and the respondent.
7. The complainant and respondent will be asked to identify all witnesses with whom they wish the Coordinator/Deputy Coordinator or assigned Investigator to speak. The Coordinator/Investigator will interview those witnesses who are believed by the Coordinator/Investigator to have first-hand knowledge of the incident or otherwise relevant information. The Coordinator/Investigator is not otherwise required to interview any particular witness, even if identified by one of the parties. All witnesses, including but not limited to the parties, are strongly encouraged to cooperate with the Coordinator/Investigator’s request for an interview.
8. The respondent and the complainant may each elect to have a neutral third party/advisor of their choice present with them at the investigatory meetings to provide moral support. A neutral third party/advisor must be a member of the Franklin Pierce community. The advisor may not play any other role in the investigative process (e.g., an advisor cannot also be a witness), and cannot speak or otherwise represent their advisees during any interviews or meetings. Individuals who wish to bring an advisor to an interview or meeting must notify the Coordinator/Deputy Coordinator at least one (1) business day in advance of their intent to bring an advisor, who the advisor will be, and if the advisor changes at any point during the process. A Contact Person (including the one who initially received the complaint) may act as an advisor, provided they meet the criteria listed above.
9. Throughout the course of the investigation, including any meetings, both parties (complainant and accused) will have equal opportunities to present relevant witnesses and other evidence.

Although rare, in cases when the Coordinator/Deputy Coordinator brings the complainant and the respondent together, parties are not allowed to question or cross-examine each other.

10. At the conclusion of the investigation, any parties assigned by the coordinator to investigate will report his/her findings to the Coordinator/Deputy Coordinator. The Investigation file will be secured in the Human Resources Office. This file containing relevant documentation obtained during the investigation and complaint resolution process will not be released from the Office of Human Resources unless required by law. Documentation in the file regarding students is protected under the Family Education Rights and Privacy Act (FERPA) and is not any one single participant's educational record.
11. The Coordinator/Deputy Coordinator will summarize the investigation in a report which will be forwarded to the respondent's employment manager. In cases where the respondent is a faculty member, the investigation report will be forwarded to the appropriate dean. The summary report will include a recommendation as to whether or not it is more likely than not that a violation of policy occurred. The Coordinator/Deputy Coordinator **must** use a preponderance of the evidence standard in making his/her determination (e.g., that it was more likely than not that a violation of the policy has occurred).
12. The respondent's manager (or in the case of faculty, the appropriate dean) is authorized to access relevant records, including personnel, grievance and student records, except those deemed confidential or privileged by law, in order to determine an appropriate resolution to the complaint.
13. The respondent's manager (or in the case of faculty, appropriate dean) will provide the respondent a letter stating whether or not it has been determined that there was a violation of the policy, and if so, what sanctions are to be imposed. In cases of sexual violence and sexual harassment, the respondent's manager (or in the case of faculty, appropriate dean) will send the complainant a letter stating whether or not it has been determined that there was a violation of policy, and if so, which sanctions were imposed-if and only if, the sanctions relate directly to the complainant, and as permitted by state and federal employment law.

Discrimination, sexual harassment, sexual violence and other unlawful harassment complaints will be addressed promptly. Normally, from the time of the complaint, the University will endeavor to take no more than sixty (60) calendar days to resolve the complaint. If there is a need to extend this period (e.g., a witness is away from the University), the Coordinator/Deputy Coordinator charged with the investigation will inform all concerned parties in writing of the need to extend the timeline and the anticipated new timeline. The time periods prescribed in this document for actions by the Coordinator/Deputy Coordinator are intended not as rigid rules, but rather as guidelines to which all are expected to adhere in good faith. The Coordinator/Deputy Coordinator may exercise reasonable discretion to extend deadlines when he or she considers that action necessary or appropriate.

VII. COMPLAINT RESOLUTION –EMPLOYEE (FACULTY OR STAFF)

If you have any questions about the process or procedures after filing a complaint, or if a complaint has been filed against you, please contact The Director of Human Resources/Coordinator or Associate Director of Human Resources/Deputy Coordinator at 603 899-4075.

When information about an incident of harassment or discrimination is brought to the attention of the Coordinator or Deputy Coordinator, the Coordinator or Deputy Coordinator will contact the complainant to explain the policy and complaint resolution process options. Coordinator or Deputy Coordinator may be excused from carrying out his/her duties under the policy in the event of a conflict of interest. In the event that a conflict of interest becomes apparent, another individual will be assigned and will assume the role of Acting Deputy Coordinator. Formal rules of process, procedure, or rules of evidence such as those applied to criminal or civil courts are not used within the University's disciplinary systems. The University uses a preponderance of evidence standard (i.e., it is more likely than not that sexual violence or harassment has occurred).

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The aim of informal complaint resolution is not to determine whether there was intent to harass or engage in discriminatory conduct but to ensure that the alleged offending behavior ceases and that the matter is resolved promptly at the appropriate level. The assumptions underlying this form of resolution are that both parties perceive a problem (although they may define the problem differently), that both share a common interest in solving that problem, and that together they can negotiate an agreement that will be satisfactory to everyone involved. The focus is on what will happen in the future between the parties, rather than on what has happened in the past.

If at any point during an informal resolution of a complaint, either the complainant or the respondent communicates dissatisfaction with the process or resolution and the Coordinator or Deputy Coordinator deems it appropriate, the Coordinator or Deputy Coordinator can terminate the informal resolution and begin the formal investigation and determination process.

If agreed to by both the complainant and the respondent, mediation by an internal or external third party may be used as a form of informal resolution. It can be helpful in setting boundaries for future contact, for instance, including whether the parties may contact each other at all, specifics on who uses what space and at what time, etc. The most important outcome of mediation is that both parties agree to the resolution.

Many people think that in order to mediate, they need to sit face to face and talk. Mediated resolutions can be worked out without the parties ever meeting together, by the mediator talking with each party in turn and relaying what they are willing to agree to each other. Mediation may also be used following the outcome of a formal investigation and determination to work out the details of future contact.

B. Formal Investigation and Determination

A request for a formal investigation of an allegation of harassment or discrimination should be addressed to the University's Title IX Coordinator/Director of Human Resources or the Title IX Deputy Coordinator/Associate Director of Human Resources.

If the complaint allegations, assuming factual support, could constitute harassment or discrimination, the Coordinator or Deputy Coordinator may nonetheless elect not to investigate for reasons which could include, but are not limited to, that (1) the alleged harassment or discrimination occurred beyond the time frame that exceeds the legal statute of limitations; or (2) the person against

whom the complaint is made is no longer associated with Franklin Pierce University at the time the complaint is filed. This decision will be made by the Coordinator or Deputy Coordinator in the exercise of his/her sole and reasonable discretion.

The complainant has the right to withdraw the complaint in writing at any time, although if the University believes a violation of this policy has occurred, it may be required by law to continue the investigation on its own.

Once a complaint has been filed and a formal investigation deemed appropriate, the following procedure will ordinarily be used:

1. The Complainant and Respondent will be notified in person or in writing of the identity of the Investigator. For the purpose of simplicity, the remainder of this section will assume the Investigator and Coordinator/Deputy Coordinator are the same, although this may not be the case.
2. The Coordinator/Deputy Coordinator will meet with the respondent to inform him or her that a complaint of harassment or discrimination has been filed and that a formal resolution is desired.
 - a. Should the respondent admit to the charges as described by the complainant, the process will then continue at step eleven (11) of the complaint resolution process and the investigation will be terminated.
 - b. If the respondent denies involvement as described by the complainant, the Coordinator/Deputy Coordinator will advise the respondent that a formal investigation will be initiated, who will conduct the investigation (typically the Coordinator/Deputy Coordinator), and that he or she is not to contact the complainant regarding the complaint or to otherwise engage in any retaliatory conduct. At this meeting, the Coordinator/Deputy Coordinator will review this policy. After meeting with the Coordinator/Deputy Coordinator, both the respondent and the complainant will be asked to sign a form acknowledging that they have been advised about both the complaint and the process.
3. The Coordinator/Deputy Coordinator will notify appropriate administrators that the University is conducting an investigation into an allegation of harassment or discrimination. Information will be provided on a “legitimate need to know” basis. An official has a “legitimate need to know” if the information is essential in fulfilling his/her professional responsibilities as described in his/her job description.
4. The complainant or the respondent must notify the Coordinator/Deputy Coordinator in writing within two (2) business days of the Investigator being identified if he or she believes that the Investigator cannot be objective and fair, and must also state at that time the reasons for that belief. The Coordinator will review the objection and within two (2) business days, in his/her sole discretion, determine whether a different Investigator will be assigned. If a new Investigator is to be assigned to the complaint, both parties will be notified in writing. If the objection relates to the Coordinator/Deputy Coordinator, the objection shall be reviewed by the Title IX Coordinator.

5. The investigation will be conducted as promptly as possible without compromising thoroughness. The Coordinator/Deputy Coordinator or assigned Investigator is expected to perform the investigation and make his or her findings in an objective and fair manner, and investigate the complaint thoroughly and expeditiously. It is expected that the Coordinator/Deputy Coordinator will complete the investigation phase within sixty (60) days of receipt of the formal complaint. If, for any reason, the investigation is not completed within sixty days, a written explanation will be provided to both the complainant and the respondent.
6. The complainant and respondent will be asked to identify all witnesses with whom they wish the Coordinator/Deputy Coordinator or assigned investigator to speak. The Coordinator/investigator will interview those witnesses who are believed by the Coordinator/Investigator to have first-hand knowledge of the incident or otherwise relevant information. The Coordinator/Investigator is not otherwise required to interview any particular witness, even if identified by one of the parties. All witnesses, including but not limited to the parties, are strongly encouraged to cooperate with the Coordinator/Investigator's request for an interview.
7. The respondent and the complainant may each elect to have a neutral third party/advisor of their choice present with them at the investigatory meetings to provide moral support. A neutral third party/advisor must be a member of the Franklin Pierce community. The advisor may not play any other role in the investigative process (e.g., an advisor cannot also be a witness), and cannot speak or otherwise represent their advisees during any interviews or meetings. Individuals who wish to bring an advisor to an interview or meeting must notify the Coordinator/Deputy Coordinator at least one (1) business day in advance of their intent to bring an advisor, who the advisor will be, and if the advisor changes at any point during the process. A Contact Person (including the one who initially received the complaint) may act as an advisor, provided they meet the criteria listed above.
8. Throughout the course of the investigation, including any meetings, both parties (complainant and respondent) will have equal opportunities to present relevant witnesses and other evidence. Although rare, in cases when the Coordinator/Deputy Coordinator brings the complainant and the respondent together, parties are not allowed to question or cross-examine each other.
9. At the conclusion of the investigation, any parties assigned by the coordinator to investigate will report his/her findings to the Coordinator/Deputy Coordinator. The Investigation file will be secured in the Human Resources Office. This file containing relevant documentation obtained during the investigation and complaint resolution process will not be released from the Office of Human Resources unless required by law. Documentation in the file regarding students is protected under the Family Education Rights and Privacy Act (FERPA) and is not any one single participant's educational record.
10. The Coordinator/Deputy Coordinator will summarize the investigation in a report which will be forwarded to the respondent's employment manager. In cases where the respondent is a faculty member, the investigation report will be forwarded to the appropriate dean. The summary report will include a recommendation as to whether or not it is more likely than not that a violation of policy occurred. The Coordinator/Deputy Coordinator **must** use a preponderance of the evidence

standard in making his/her determination (e.g., that it was more likely than not that a violation of the policy has occurred).

11. The respondent's manager (or in the case of faculty, the appropriate dean) is authorized to access relevant records, including personnel, grievance and student records, except those deemed confidential or privileged by law, in order to determine an appropriate resolution to the complaint.
12. The respondent's manager (or in the case of faculty, appropriate dean) will provide the respondent a letter stating whether or not it has been determined that there was a violation of the policy, and if so, what sanctions are to be imposed. In cases of sexual violence and sexual harassment, the respondent's manager (or in the case of faculty, appropriate dean) will send the complainant a letter stating whether or not it has been determined that there was a violation of policy, and if so, which sanctions were imposed-if and only if, the sanctions relate directly to the complainant, and as permitted by state and federal employment law.

Discrimination, sexual harassment, sexual violence and other unlawful harassment complaints will be addressed promptly. Normally, from the time of the complaint, the University will endeavor to take no more than sixty (60) calendar days to resolve the complaint. If there is a need to extend this period (e.g., a witness is away from the University), the Coordinator/Deputy Coordinator charged with the investigation will inform all concerned parties in writing of the need to extend the timeline and the anticipated new timeline. The time periods prescribed in this document for actions by the Coordinator/Deputy Coordinator are intended not as rigid rules, but rather as guidelines to which all are expected to adhere in good faith. The Coordinator/Deputy Coordinator may exercise reasonable discretion to extend deadlines when he or she considers that action necessary or appropriate.

VIII. COMPLAINT RESOLUTION – VENDOR, VISITOR, OR OTHER NON-EMPLOYEE/NON-STUDENT If you have any questions about the process or procedures after filing a complaint, or if a complaint has been filed against you, please contact Title IX Coordinator/Director of Human Resources.

When information about an incident of harassment or discrimination is brought to the attention of the Coordinator or Deputy Coordinator, the Coordinator or Deputy Coordinator will contact the complainant to explain the policy and complaint resolution process options. Coordinator or Deputy Coordinator may be excused from carrying out his/her duties under the policy in the event of a conflict of interest. In the event that a conflict of interest becomes apparent, another individual will be assigned and will assume the role of Acting Deputy Coordinator. Formal rules of process, procedure, or rules of evidence such as those applied to criminal or civil courts are not used within the University's disciplinary systems. The University uses a preponderance of evidence standard (i.e., it is more likely than not that sexual violence or harassment has occurred).

A. Informal Resolution

The aim of informal complaint resolution is not to determine whether there was intent to harass or engage in discriminatory conduct but to ensure that the alleged offending behavior ceases and that the matter is resolved promptly at the appropriate level. The assumptions underlying this form of resolution are that both parties perceive a problem (although they may define the problem differently), that both share a common interest in solving that problem, and that together they can

negotiate an agreement that will be satisfactory to everyone involved. The focus is on what will happen in the future between the parties, rather than on what has happened in the past.

If at any point during an informal resolution of a complaint, either the complainant or the respondent communicates dissatisfaction with the process or resolution and the Coordinator or Deputy Coordinator deems it appropriate, the Coordinator or Deputy Coordinator can terminate the informal resolution and begin the formal investigation and determination process.

If agreed to by both the complainant and the respondent, mediation by an internal or external third party may be used as a form of informal resolution. It can be helpful in setting boundaries for future contact, for instance, including whether the parties may contact each other at all, specifics on who uses what space and at what time, etc. The most important outcome of mediation is that both parties agree to the resolution.

Many people think that in order to mediate, they need to sit face to face and talk. Mediated resolutions can be worked out without the parties ever meeting together, by the mediator talking with each party in turn and relaying what they are willing to agree to each other. Mediation may also be used following the outcome of a formal investigation and determination to work out the details of future contact.

B. Formal Investigation and Determination

A request for a formal investigation of an allegation of harassment or discrimination should be addressed to the University's Title IX Coordinator or the Title IX Deputy Coordinator.

If the complaint allegations, assuming factual support, could constitute harassment or discrimination, the Coordinator or Deputy Coordinator may nonetheless elect not to investigate for reasons which could include, but are not limited to, that (1) the alleged harassment or discrimination occurred beyond the time frame that exceeds the legal statute of limitations; or (2) the person against whom the complaint is made is no longer associated with Franklin Pierce University at the time the complaint is filed. This decision will be made by the Coordinator or Deputy Coordinator in the exercise of his/her sole and reasonable discretion.

The complainant has the right to withdraw the complaint in writing at any time, although if the University believes a violation of this policy has occurred, it may be required by law to continue the investigation on its own.

Once a complaint has been filed and a formal investigation deemed appropriate, the following procedure will ordinarily be used:

1. The Complainant and Respondent will be notified in person or in writing of the identity of the Investigator. For the purpose of simplicity, the remainder of this section will assume the Investigator and Coordinator/Deputy Coordinator are the same, although this may not be the case. The immediate supervisor, or company in the event of a third-party complaint, of the complainant or respondent will be notified by the Coordinator/Deputy Coordinator.

2. The Coordinator/Deputy Coordinator will meet with the respondent to inform him or her that a complaint of harassment or discrimination has been filed and that a formal resolution is desired.
 - a. Should the respondent admit to the charges as described by the complainant, the process will then continue at step eleven (11) of the complaint resolution process and the investigation will be terminated.
 - b. If the respondent denies involvement as described by the complainant, the Coordinator/Deputy Coordinator will advise the respondent that a formal investigation will be initiated, who will conduct the investigation (typically the Coordinator/Deputy Coordinator), and that he or she is not to contact the complainant regarding the complaint or to otherwise engage in any retaliatory conduct. At this meeting, the Coordinator/Deputy Coordinator will review this policy. After meeting with the Coordinator/Deputy Coordinator, both the respondent and the complainant will be asked to sign a form acknowledging that they have been advised about both the complaint and the process.
3. The Coordinator/Deputy Coordinator will notify appropriate administrators that the University is conducting an investigation into an allegation of harassment or discrimination. Information will be provided on a “legitimate need to know” basis. An official has a “legitimate need to know” if the information is essential in fulfilling his/her professional responsibilities as described in his/her job description.
4. The complainant or the respondent must notify the Coordinator/Deputy Coordinator in writing within two (2) business days of the Investigator being identified if he or she believes that the Investigator cannot be objective and fair, and must also state at that time the reasons for that belief. The Coordinator will review the objection and within two (2) business days, in his/her sole discretion, determine whether a different Investigator will be assigned. If a new Investigator is to be assigned to the complaint, both parties will be notified in writing. If the objection relates to the Deputy Coordinator, the objection shall be reviewed by the Title IX Coordinator.
5. The investigation will be conducted as promptly as possible without compromising thoroughness. The Coordinator/Deputy Coordinator or assigned Investigator is expected to perform the investigation and make his or her findings in an objective and fair manner, and investigate the complaint thoroughly and expeditiously. It is expected that the Coordinator/Deputy Coordinator will complete the investigation phase within sixty (60) days of receipt of the formal complaint. If, for any reason, the investigation is not completed within sixty days, a written explanation will be provided to both the complainant and the respondent.
6. The complainant and respondent will be asked to identify all witnesses with whom they wish the Coordinator/Deputy Coordinator or assigned Investigator to speak. The Coordinator/Investigator will interview those witnesses who are believed by the Coordinator/Investigator to have first-hand knowledge of the incident or otherwise relevant information. The Coordinator/Investigator is not otherwise required to interview any particular witness, even if identified by one of the parties. All witnesses, including but not limited to the parties, are strongly encouraged to cooperate with the Coordinator/Investigator’s request for an interview.

7. The respondent and the complainant may each elect to have a neutral third party/advisor of their choice present with them at the investigatory meetings to provide moral support. A neutral third party/advisor must be a member of the Franklin Pierce community. The advisor may not play any other role in the investigative process (e.g., an advisor cannot also be a witness), and cannot speak or otherwise represent their advisees during any interviews or meetings. Individuals who wish to bring an advisor to an interview or meeting must notify the Coordinator/Deputy Coordinator at least one (1) business day in advance of their intent to bring an advisor, who the advisor will be, and if the advisor changes at any point during the process. A Contact Person (including the one who initially received the complaint) may act as an advisor, provided they meet the criteria listed above.
8. Throughout the course of the investigation, including any meetings, both parties (complainant and respondent) will have equal opportunities to present relevant witnesses and other evidence. Although rare, in cases when the Coordinator/Deputy Coordinator brings the complainant and the respondent together, parties are not allowed to question or cross-examine each other.
9. At the conclusion of the investigation, any parties assigned by the coordinator to investigate will report his/her findings to the Coordinator/Deputy Coordinator. The Investigation file will be secured in the Human Resources Office. This file containing relevant documentation obtained during the investigation and complaint resolution process will not be released from the Office of Human Resources unless required by law. Documentation in the file regarding students is protected under the Family Education Rights and Privacy Act (FERPA) and is not any one single participant's educational record.
10. The Coordinator/Deputy Coordinator will summarize the investigation in a report which will be forwarded to the respondent's employment manager. In cases where the respondent is a faculty member, the investigation report will be forwarded to the appropriate dean. The summary report will include a recommendation as to whether or not it is more likely than not that a violation of policy occurred. The Coordinator/Deputy Coordinator **must** use a preponderance of the evidence standard in making his/her determination (e.g., that it was more likely than not that a violation of the policy has occurred).
11. The respondent's manager (or in the case of faculty, the appropriate dean) is authorized to access relevant records, including personnel, grievance and student records, except those deemed confidential or privileged by law, in order to determine an appropriate resolution to the complaint.
12. The respondent's manager (or in the case of faculty, appropriate dean) will provide the respondent a letter stating whether or not it has been determined that there was a violation of the policy, and if so, what sanctions are to be imposed. In cases of sexual violence and sexual harassment, the respondent's manager (or in the case of faculty, appropriate dean) will send the complainant a letter stating whether or not it has been determined that there was a violation of policy, and if so, which sanctions were imposed-if and only if, the sanctions relate directly to the complainant, and as permitted by state and federal employment law.

Discrimination, sexual harassment, sexual violence and other unlawful harassment complaints will be addressed promptly. Normally, from the time of the complaint, the University will endeavor to take no more than sixty (60) calendar days to resolve the complaint. If there is a need to extend this period (e.g., a witness is away from the University), the Coordinator/Deputy Coordinator charged with the investigation will inform all concerned parties in writing of the need to extend the timeline and the anticipated new timeline. The time periods prescribed in this document for actions by the Coordinator/Deputy Coordinator are intended not as rigid rules, but rather as guidelines to which all are expected to adhere in good faith. The Coordinator/Deputy Coordinator may exercise reasonable discretion to extend deadlines when he or she considers that action necessary or appropriate.

IX. SANCTIONS

Sanctions for violations of this policy will be determined by the University in its discretion, and may include a written apology and/or other disciplinary action up to and/or including separation from the University.

In the event of determination of harassment or discrimination, sanctions will be reasonably calculated to attempt to prevent reoccurrence and allow the victim/complainant to reach full potential in the performance of his or her assigned job or educational pursuits. Prior violations of University policy and sanctions will be taken into consideration. Sanctions may include, but are not limited to, any of the following:

- Oral or written warning
- Change of job or class assignment (removing a person from being in a position to retaliate or further affect the victim/complainant)
- Counseling or mediation
- Mandatory attendance at an appropriate educational workshop (at the expense of the respondent)
- Relevant community service
- Prohibiting a student from holding office or participating in student activities, including sports, for a specified time
- Transferring the students to different housing or banning them from University housing facilities,
- Suspension (with or without pay for employees)
- Termination of employment or expulsion from the University.

In addition to the above-listed potential sanctions, a respondent, or any other party, may at any time be referred to other University disciplinary processes because of information obtained from the complaint resolution process.

In cases of sexual harassment and sexual violence, outcome decisions will ultimately be conveyed in writing, and will be shared with both the respondent and the complainant (as outlined in #14 in the previous section). The University will disclose, in writing, to the respondent and complainant of the formal or informal resolution process or appeal conducted that relates to a violent crime or non-forcible sex offense, if required by state and federal law. If the victim is deceased as a result of such crime or offense, release will be made to the next of kin of a victim of any violent crime or non-forcible sex offense.

X. APPEAL PROCESS

If either party involved in discrimination, sexual harassment, sexual violence or other unlawful harassment complaint is dissatisfied with the results of the outcome, the party may appeal the determination of the investigation within five (5) business days from notice of the decision.

A. Vendor, Non-Employees/Non-Students, Contracted Services and Visitor Cases

In cases which vendors, contracted service employees or visitors are accused, appeals are to be directed to the supervisor of the FP employee who decided the original case. Appeals may be submitted by either the respondent or the complainant. All appeals are to be submitted in writing, state the reason(s) for the appeal, contain all information necessary to evaluate the merits of the appeal, and be delivered to the office of the appellate authority. The appeal is not an opportunity to rehear the case. The appellate authority will review the letter of appeal, review the case file, and at his or her sole discretion, decide the outcome of the appeal. The appellate authority may uphold the original decision, alter any part of the original decision, or vacate the original decision entirely. If there is an appeal, the decision of the appellate authority will represent the final position of the University with respect to the matter.

B. Student Cases

In cases where students are accused, the appeals policy for both complainant and respondent are dictated by the Student Code of Conduct.

C. Faculty and Staff Cases

In cases where faculty and staff are accused, appeals may be submitted by either the respondent or the complainant. Cases in which a staff member is accused, appeals shall be directed to the supervisor of the FPU employee who decided the original case. In cases where a faculty member is accused, the Provost of the University will serve as the appellate authority. Appeals must be made in writing; state the reason(s) for the appeal, contain all information necessary to evaluate the merits of the appeal, and must be addressed and delivered to the office of the appellate authority. The appeal is not an opportunity to rehear the case. The appellate authority will review the letter of appeal, review the case file, and at his or her sole discretion, decide the outcome of the appeal. The appellate authority may uphold the original decision, alter any part of the original decision, or vacate the original decision entirely. If there is an appeal, the decision of the appellate authority will represent the final position of the University with respect to the matter.

D. Vice President Cases

In cases which a Vice President is accused, appeals may be submitted by either the respondent or the complainant. Appeals shall be directed to the University official designated by the Title IX Compliance Officer as the appellate authority (see IV. Reporting Procedures, B.). Appeals must be made in writing; state the reason(s) for the appeal, contain all information necessary to evaluate the merits of the appeal, and must be addressed and delivered to the office of the appellate authority. The appeal is not an opportunity to rehear the case. The appellate authority will review the letter of appeal, review the case file, and at his or her sole discretion, decide the outcome of the appeal. The appellate authority may uphold the original decision, alter any part of the original decision, or vacate the original decision entirely. If there is an appeal, the decision of the appellate authority will represent the final position of the University with respect to the matter.

E. Cases involving the President of the University

In cases which the President of the University is accused, appeals may be submitted by either the respondent or the complainant. Cases in which a staff member is accused, appeals shall be directed to the university official who was designated by the Title IX Compliance Officer (in consultation with the Chairperson of the Board of Trustees) as the appellate authority (see IV. Reporting Procedures, section C.). Appeals must be made in writing; state the reason(s) for the appeal, contain all information necessary to evaluate the merits of the appeal, and must be addressed and delivered to the office of the appellate authority. The appeal is not an opportunity to rehear the case. The appellate authority will review the letter of appeal, review the case file, and at his or her sole discretion, decide the outcome of the appeal. The appellate authority may uphold the original decision, alter any part of the original decision, or vacate the original decision entirely. If there is an appeal, the decision of the appellate authority will represent the final position of the University with respect to the matter.

In all cases of appeal, the appellate authority will normally render a decision within thirty (30) calendar days in writing to both parties (respondent and complainant). If a decision cannot be rendered within thirty (30) days, the appellate authority will so notify the parties and will then render the decision as soon as possible.

Questions or concerns about this policy should be directed to the Title IX Coordinator. This policy is subject to change to comply with changes in relevant laws or University operating procedures.

XI. EDUCATION AND TIMELY WARNINGS

Franklin Pierce University will work to educate employees and students relative to the prevention of harassment and discrimination and the provisions of this policy. The intent of this training is to produce an institution that is free of harassment and discrimination.

When the University, through a report from a University official, becomes aware of an incident of sexual violence that occurred on or around campus, and there is a potential for bodily harm or danger to members of the University community or visitors, the office of Campus Safety will issue a timely warning to the campus through the University e-mail system. While the University will provide enough information to safeguard the campus community, the person's name or other personally identifying information will not be disclosed.

XII. INFORMATION AND COUNSELING

Anyone may seek advice, information, or counseling on harassment or discrimination by contacting the Office of Human Resources or the Office of Student Affairs. Persons who have experienced harassment or discrimination, or are uncertain as to whether what they have experienced is considered harassment or discrimination, are encouraged to talk with one of the University's Coordinator or Deputy Coordinators, the Assistant Dean for Student Affairs, the Director of Campus Safety, or a counselor in the Outreach and Counseling Center. Individuals who are called to participate in the complaint resolution process are encouraged to seek counseling and support. Students can meet and talk with a counselor on a confidential basis by contacting the Outreach and Counseling Center at extension 4130. Faculty and staff can obtain information about counseling services provided through the Employee Assistance Program (EAP). The information on the EAP is available on eRaven.

XIII. EMERGENCY PHONE NUMBERS

Franklin Pierce University will assist complainants who seek support services (i.e., medical, counseling, or victims assistance) as well as complainants who choose to seek criminal or civil prosecution. The University will not delay its investigation of a complaint if a complainant chooses to file criminal or civil complaint.

- Campus Safety or EMTs: From a campus phone dial 5555. From a cell or other phone dial 603-899-5555
- Women's Crisis Center: From a campus phone dial 4130. From a cell or other phone dial 603899-4130
- Health Services: From a campus phone dial 4130. From a cell phone or other phone dial 603899-4130
- Rindge Police Emergency: Dial 603-899-5009, or after business hours at 603-899-2000
- Monadnock Center for Violence Prevention: Dial 603-352-3782 or toll free at 888-511-6287
- Monadnock Community Hospital: Dial 603-924-7191

This policy supersedes all previous Franklin Pierce University Harassment or Discrimination Policies.