

**NONDISCRIMINATION POLICY/NOTICE OF NONDISCRIMINATION**  
**2024 FINAL RULE**  
**Published: August 1, 2024**

**Nondiscrimination Policy**

**Under 2024 Amendments to the U.S. Department of Education’s  
Title IX Regulations**

Felician University does not discriminate on the basis of sex and prohibits sex discrimination in any Education Program or Activity that it operates, as required by Title IX, including in admission and employment.

**Notice of Nondiscrimination**

**Under 2024 Amendments to the U.S. Department of Education’s  
Title IX Regulations**

Felician University does not discriminate on the basis of sex and prohibits sex discrimination in any Education Program or Activity that it operates, as required by Title IX and its regulations, including in admission and employment.

Inquiries about Title IX may be referred to Felician University’s Title IX Coordinator, the U.S. Department of Education’s Office for Civil Rights, or both. Felician University’s Title IX Coordinator is Onya Brown, Esq., Student Center Room 4D (Rutherford Campus), [brownno@felician.edu](mailto:brownno@felician.edu), [TitleIX@felician.edu](mailto:TitleIX@felician.edu), and 201-355-1431.

Felician University’s nondiscrimination policy and grievance procedures can be located at [here](#).

To report information about conduct that may constitute sex discrimination or make a Complaint of sex discrimination under Title IX, please [click here](#).

**MODEL GRIEVANCE PROCEDURE FOR COMPLAINTS OF  
SEX DISCRIMINATION OTHER THAN SEX-BASED  
HARASSMENT, SEXUAL EXPLOITATION, SEXUAL  
MISCONDUCT, OR RETALIATION**

**Grievance Procedure for Complaints of Sex Discrimination  
(Under § 106.45 of the 2024 Title IX Final Rule)**

## **I. Effective Date**

This Procedure applies to incidents that occur on or after August 1, 2024. Any incidents reported under this Procedure that occurred on or before July 31, 2024, will be processed through the institution's Title IX Grievance Policy.

Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024)), be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Grievance Procedure, the Grievance Procedure in its entirety, or the invalidated elements of this Procedure, they will be deemed revoked as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order publication by the Court. If this Procedure is revoked in this manner, any conduct covered under this Procedure shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy and/or the Felician University Campus Code of Conduct, found here. Felician University will update this Grievance Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Grievance Procedure, if applicable.

## **II. Scope of Procedure**

Felician University has adopted a grievance procedure that provides for the prompt and equitable resolution of sex discrimination Complaints made by students, employees, or other individuals who are participating or attempting to participate in its Education Program or Activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

Sex discrimination, as defined by Title IX, includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Title IX's prohibition on sex discrimination includes sex-based harassment, in the form of quid pro quo harassment, hostile environment harassment, and four specific offenses (sexual assault, dating violence, domestic violence, and stalking). Sex discrimination also includes sexual exploitation, sexual misconduct, and retaliation, as outlined within this policy. For the prompt and equitable resolution of Complaints of sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation involving a student Party, the institution will utilize the Sex-based harassment Grievance Procedure, which can be found [here](#).

## **III. Jurisdiction of Procedure**

- This Procedure applies to all sex discrimination occurring under Felician University's Education Program or Activity in the United States.
- Conduct that occurs under Felician University's Education Program or Activity includes but is not limited to conduct that occurs in a building owned or controlled by a student

organization that is officially recognized by Felician University and conduct that is subject to Felician University's Campus Code of Conduct.

- Felician University has an obligation to address a sex-based hostile environment under its Education Program or Activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's Education Program or Activity or outside the United States.
  - In the limited circumstances in which Title IX permits different treatment or separation on the basis of sex, Felician University must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted by law.

#### IV. Definitions

1. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an Education Program or Activity operated by Felician University.
2. **Consent** means a knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. For there to be consent and welcomeness, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct and welcomes it. Consent to a specific sexual contact (such as kissing or fondling) cannot be presumed to be consent to another specific sexual activity (such as intercourse). A person who is incapacitated cannot consent or welcome the activity.<sup>1</sup>
3. **Complainant** means:
  - (1) a Student or employee who is alleged to have been subjected to conduct that could constitute Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation as defined in this Grievance Procedure and who was participating or attempting to participate in Felician University's Education Program or Activity; or

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<sup>1</sup> Under this Policy, a person is incapacitated if he or she is disabled or deprived of the ability to act or reason for oneself, is unable to understand what is happening, or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent and to welcome the activity (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from taking an incapacitating substance. A person is incapacitated if the person is temporarily incapable of apprising or controlling the person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance; if a person is unable to communicate an unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited; or if the person has a physical or mental disability that substantially limits the person's ability to resist or flee.

- (2) a person other than a Student or employee who is alleged to have been subjected to conduct that could constitute Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation under this Grievance Procedure and who was participating or attempting to participate in Felician University's Education Program or Activity at the time of the alleged Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation.
4. **Complaint** means an oral or written request to Felician University that objectively can be understood as a request for Felician University to investigate and make a determination about alleged Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation at the institution.
5. **Confidential Employee** means:
- (1) an employee of Felician University whose communications are privileged under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
- (2) an employee of Felician University whom the recipient has designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services; or
- (3) an employee of Felician University who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination. The employee's confidential status is only with respect to information received while conducting the study.
6. **Disciplinary Sanctions** means consequences imposed on a Respondent following a determination under this grievance procedure that the Respondent violated Felician University's prohibition sex discrimination.
7. **Education Program or Activity** means all of the operations of a college, university, or other postsecondary institution, or a public system of higher education.
8. **Party** means Complainant or Respondent.
9. **Peer Retaliation** means retaliation by a student against another student.
10. **Pregnancy or related conditions** means
- (a) Pregnancy, childbirth, termination of pregnancy, or lactation;

- (b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- (c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

11. **Relevant** means related to the allegations of sex discrimination under investigation as part of this Grievance Procedure. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

11. **Remedies** means measures provided, as appropriate, to a Complainant or any other person Felician University identified as having had their equal access to Felician University's Education Program or Activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to Felician University's Education Program or Activity after Felician University determines that sex discrimination occurred.

12. **Respondent** means a person who is alleged to have violated Felician University's prohibition on sex discrimination.

13. **Retaliation** means intimidation, threats, coercion, or discrimination by any person, by Felician University, a Student, or an employee or other person authorized by Felician University to provide aid, benefit, or service under Felician University's Education Program or Activity, for the purpose of interfering with any right or privileged secured by Title IX, or because the person has reported information, made a Complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Grievance Procedure, including an informal resolution process.

14. **Sex-based harassment** means sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is:

(1) *Quid pro quo harassment*. An employee, agent or other person authorized by Felician University's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) *Hostile Environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Felician University's Education Program or Activity (i.e., creates a Hostile Environment). Whether a Hostile Environment has been created is a fact-specific inquiry that includes consideration of the following: (i) the degree to which the conduct affected the Complainant's ability to access Felician

University's Education Program or Activity; (ii) the type, frequency, and duration of the conduct; (iii) the Parties' ages, roles within Felician University's Education Program or Activity, previous interactions and other factors about each Party that may be Relevant to evaluating the effects of the conduct; (iv) the location of the conduct and the context in which the conduct occurred; and (v) other Sex-based harassment in Felician University's Education Program or Activity

(3) *Sexual Assault* (as defined in the Clery Act) means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent;

(4) *Dating Violence* (as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

(5) *Domestic Violence* means any felony or misdemeanor crimes committed by a person who: (A) is a current or former partner of the victim under the family or Domestic Violence laws of New Jersey, or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or Domestic Violence laws of New Jersey<sup>2</sup>; or

(6) *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress.

15. ***Student*** means a person who has gained admission.

16. ***Supportive Measures*** means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to: (1) restore or preserve that Party's access to Felician University's Education Program or Activity, including measures that are designed to protect the safety of the Parties or Felician University's educational environment; or (2) provide support during Felician University's Grievance Procedure for Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation or during the informal resolution process.

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<sup>2</sup> Note: In the State of New Jersey, roommates within an institution's residential housing, also qualify as "cohabitating", when determining if Domestic Violence occurred.

## V. Basic Requirements of Title IX Grievance Procedure:

- a) *Equitable Treatment*: Felician University will treat Complainants and Respondents equitably.
- b) *Conflicts and Bias*: Felician University requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.
- c) *Presumption*: Felician University presumes that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its Grievance Procedure.
- d) *Reasonably Prompt Timeframes*: Felician University has established timeframes for the major stages of the grievance procedures, for major stages, including for example, evaluation; investigation; determination; and appeal.
- e) *Extensions*: Felician University has also established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay.
- f) *Privacy*: Felician University will take reasonable steps to protect the privacy of the Parties and witnesses during its grievance procedure. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedure. The Parties cannot engage in retaliation, including against witnesses.
- g) *Objectivity*: Felician University will objectively evaluate all evidence that is relevant and not otherwise impermissible including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- h) *Impermissible Evidence*: The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by Felician University to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:
  - i) Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
  - ii) A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless Felician University obtains that Party's or witness's voluntary, written consent for use in its grievance procedures; and

- iii) Evidence that relates to the Complainant’s sexual interests or prior sexual conduct, unless evidence about the Complainant’s prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant’s prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant’s consent to the alleged sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation or preclude determination that sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation occurred.

## **VI. Disability Accommodations**

### ***A. Generally***

This Procedure does not alter any institutional obligations under applicable federal state, and/or local disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Procedure that do not fundamentally alter the Procedure. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

### ***B. Supportive Measures***

If the Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with the Director of the Office of Accessibility Services, or her designee, to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973 in the implementation of any supportive measures.

## **VII. Reporting Sex Discrimination to the Institution**

### ***A. Complaints***

The following people have a right to make a **Complaint of sex discrimination**, including Complaints of sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation, requesting that Felician University investigate and make a determination about alleged discrimination under Title IX:

- A “Complainant,” which includes: a student or employee of Felician University who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
- A person other than a student or employee of Felician University who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX



at a time when that individual was participating or attempting to participate in Felician University's Education Program or Activity;

- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or Felician University's Title IX Coordinator.

With respect to **Complaints of sex discrimination other than sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation**, in addition to the people listed above, the following persons have a right to make a Complaint:

- Any student or employee Felician University; or
- Any person other than a student or employee who was participating or attempting to participate in Felician University's Education Program or Activity at the time of the alleged sex discrimination.

Types of Complaints that may be addressed under these Grievance Procedures include, but are not limited to, sex discrimination other than sex-based harassment, such as:

- Complaints of retaliation;
- Complaints of sex discrimination that do not involve sex-based harassment;
- Complaints regarding failure to make reasonable modifications to policies, practices, or procedures as necessary to ensure equal access and prevent sex discrimination on the basis of parental, family, or marital status, including pregnancy or related conditions; or
- Complaints that Felician University's policies or procedures discriminate on the basis of sex.

Complaints may be submitted in person, by mail, by telephone, or by electronic 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.

Name: Onya Brown, Esq.

Title: Associate Dean of Students/Title IX Coordinator

Office Address: Student Center (Rutherford Campus)

1 Felician Way

Rutherford, NJ 07070

Email Address: [browno@felician.edu](mailto:browno@felician.edu) OR [TitleIX@felician.edu](mailto:TitleIX@felician.edu)

Telephone Number: 201-355-1431

### ***B. Confidential Reports***

The following officials at Felician University will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited by Title IX:

- Title IX Coordinator or designee(s);
- Officials with Authority to institute corrective measures under Title IX;
- Human Resources

The following officials at Felician University may provide confidentiality:

- A. Counseling and Wellness Center Counselors and Staff
  - i. Kathy Murray, Director
  - ii. April Lennon, Counselor
  - iii. Christine Panepinto, Counselor
  - iv. Lisa Pena, Administrative Assistant
- B. Clergy
- C. Campus Ministry
  - i. Father Thomas Franks, Vice President for Mission Integration
  - ii. Noreen Shea, Director
- D. Attitudes Against Violence
  - i. Taylor Levine, VAWA Coordinator

### ***C. Public Awareness Events***

When Felician University’s Title IX Coordinator is notified of information about conduct that reasonably may constitute sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation under Title IX or this policy that was provided by a person during a public event to raise awareness about sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation that was held on Felician University’s campus or through an online platform sponsored by it, Felician University is not obligated to act in response to the information, unless it indicates an imminent and serious threat to the health or safety of a Complainant, any students, employees, or other persons.

However, in all cases Felician University must use this information to inform its efforts to prevent sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation, including by providing tailored training to address alleged sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation in a particular part of its Education Program or Activity or at a specific location when information indicates there may be multiple incidents of sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation.

Nothing in Title IX or this policy obligates Felician University to require its Title IX Coordinator or any other employee to attend such public awareness events.

## **VIII. Supportive and Interim Measures**

### ***A. Providing Supportive Measures***

Complainants who report allegations of sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation have the right to receive supportive measures from Felician University regardless of whether they file a Complaint. Supportive measures are non-disciplinary and non-punitive. Supportive measures may vary depending upon what is reasonably available at Felician University.

As appropriate, supportive measures may include but not be limited to:

- Counseling services;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Campus escort services, as available;
- Restrictions on contact applied to one or more Parties (no contact orders)
- changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative;
- Leaves of absence;
- Increased security and monitoring of certain areas of the campus; or
- Training and education programs related to sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation.

Supportive measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or Felician University’s educational environment, or to provide support during Felician University’s sex-based harassment grievance procedure under this policy, or during informal resolution under these procedures.

Felician University may modify or terminate supportive measures at the conclusion of the grievance procedure, or at the conclusion of the informal resolution process, or may continue them beyond that point within Felician University’s discretion.

Felician University will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one Party of supportive measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party’s access to Felician University’s Education Program or Activity, or there is an exception that applies, such as:

- Felician University has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation under Title IX in Felician University’s Education Program or Activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

### ***B. Process for Review of Supportive Measures***

Felician University provides for a Complainant or Respondent to seek modification or reversal of Felician University’s decision to provide, deny, modify, or terminate a Supportive Measure.

This review will be done by an impartial employee of Felician University who did not make the challenged decision on the original supportive measure request. The impartial employee of Felician University who makes this determination will have the authority to modify or reverse the decision if that impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the procedure as outlined above for providing supportive measures in accordance with the Title IX regulations.

Parties are only allowed to challenge their own individual supportive measures. Challenges by one Party will not be heard to supportive measures afforded to the opposite Party, unless that supportive measure directly impacts the Party making such challenge (i.e., two-way no contact orders).

### ***C. Emergency Removal***

Felician University retains the authority to remove a Respondent from all or part of Felician University's education program or activity on an emergency basis, where Felician University (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of a Complainant or any Students, employees, or other persons arising from the allegations of Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation justifies removal.

Felician University will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. If the Respondent wishes to challenge the decision, said challenge must be submitted to the Title IX office at TitleIX@felician.edu, within five business days. Upon receipt of said challenge, the Title IX Coordinator, will assign a trained, unbiased designee to review the challenge and render a decision within two business days. The decision made by the trained, unbiased designee, cannot be appealed.

Emergency removals will not be considered Relevant evidence that can be considered in reaching a determination of whether Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation occurred.

### ***D. Administrative Leave***

Felician University retains the authority to place a non-Student employee Respondent on administrative leave during the Title IX Grievance Procedures. Such a decision will be made by Human Resources, in conjunction with the non-Student employee Respondent's direct supervisor. Human Resources may also include outside counsel when making decisions about a non-Student employee Respondent administrative leave.

Note on Student employees: when a Complainant or Respondent is both a Student and an employee of Felician University, the Title IX office, in conjunction with Human Resources, must make a fact-specific inquiry to determine whether these procedures apply to that Student

employee. Felician University will consider if the Complainant or Respondent's primary relationship with Felician University is to receive an education and whether the alleged Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation occurred while the Party was performing employment-related work.

## **IX. The Title IX Grievance Procedure for Sex Discrimination**

### ***A. Filing a Complaint***

A Title IX Complaint can be initiated by three entities, A Complainant, which includes: a student or employee of Felician University who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or a person other than a student or employee of Felician University who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in Felician University's Education Program or Activity; A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or The Title IX Coordinator.

In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator must determine whether to initiate a Complaint of sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation. This determination is fact-specific, and the Title IX Coordinator must consider:

- The Complainant's request not to proceed with the initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation would occur if a Complaint were not initiated;
- The severity of the alleged sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation, including whether the sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is an employee of the recipient;
- The scope of the alleged sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation, including information suggesting a pattern, ongoing sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation, or sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation alleged to have impacted multiple individuals;
- The availability of evidence to assist a decisionmaker in determining whether sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation occurred; and

- Whether Felician University could end the alleged sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation and prevent its recurrence without initiating these grievance procedures.

If after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged present as an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents Felician University from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator may initiate a Complaint.

If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing supportive measures as listed in Section VI of these procedures.

#### *Format of Complaint*

As defined in IV(4) of these procedures, a Complaint can be an oral or written request to Felician University that objectively can be understood as a request for Felician University to investigate and make a determination about alleged sex discrimination at the institution. This complaint can be made with the Title IX Coordinator or designee, and any University official with authority to institute corrective measures under Title IX.

### **B. Consolidation of Complaints**

Felician University may consolidate Complaints of sex discrimination against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one Complainant or more than one Respondent is involved, references below to a Party, Complainant, or Respondent include the plural, as applicable.

### **C. Allegations Potentially Falling Under Two Policies:**

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied in the investigation and adjudication of all of the allegations.

### **D. Notice of Allegations**

Upon initiation of Felician University's Title IX grievance procedure, Felician University will notify the Parties of the following:

- Felician University's Title IX grievance procedure and informal resolution process;

- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- That Retaliation is prohibited; and
- The Parties are entitled to an equal opportunity to access the Relevant and not otherwise impermissible evidence.

If, in the course of an investigation, Felician University decides to investigate additional allegations of sex discrimination by the Respondent toward the Complainant that are not included in the notice provided or that are included in a Complaint that is consolidated, Felician University will notify the Parties of the additional allegations.

## **E. Investigation**

Felician University will provide for adequate, reliable, and impartial investigation of Complaints. The burden is on Felician University, not on the Parties, to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

Felician University will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible. Felician University will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

Felician University will provide each Party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

Felician University will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence.

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence and will provide that Report to the Parties at least ten calendar days prior to the hearing in an electronic format for each Party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of the relevant evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e., tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

Felician University will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and

Felician University will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the Complaint of sex discrimination are authorized.

### *Impermissible Evidence*

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by Felician University to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless Felician University obtains that Party's or witness's voluntary, written consent for use in its grievance procedure; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex discrimination or preclude determination that sex discrimination occurred.

### ***Questioning Parties and Witnesses to Aid in Evaluating Allegations and Assessing Credibility***

When a party or witness's credibility is in dispute, and such dispute is relevant to evaluating one or more allegations of sex discrimination, the investigator and/or decisionmaker must have an opportunity to question any party or witness whose credibility is in dispute in a live format.

The investigator/decisionmaker will question Parties and witnesses to adequately assess a Party's or witness's credibility to the extent credibility is both in dispute and Relevant to evaluating one



or more allegations of sex discrimination. This will occur during individual meetings with a Party or witness.

Each Party shall have the opportunity to propose questions that the Party wants asked of any Party or witness and have those questions asked by the investigator/decisionmaker during one or more individual meetings, including follow-up meetings, with a Party or witness, subject to the appropriate procedures outlined herein regarding the decisionmaker's advance evaluation of all questions. Each Party will be provided with an audio or audiovisual recording or transcript with enough time for the Party to have a reasonable opportunity to propose follow-up questions.<sup>3</sup>

## **F. Determination Regarding Responsibility**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, Felician University will:

- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded by the evidence, under the applicable standard, that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- Notify the Parties in writing of the determination whether sex discrimination occurred under Title IX, including the rationale for such determination, and the procedures and permissible bases for the Complainant and Respondent to appeal, if applicable;
- Not impose discipline on a Respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedure that the Respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - Coordinate the provision and implementation of remedies to a Complainant and other people Felician University identifies as having had equal access to Felician University's Education Program or Activity limited or denied by sex discrimination;
  - Coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions; and
  - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within Felician University's Education Program or Activity.

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<sup>3</sup> NOTE: This section provides for a "single investigator/decisionmaker" model. If your jurisdiction requires a live hearing to assess credibility, you will need to modify this Procedure to reflect language that fits your institutional needs.

- Comply with the grievance procedure before the imposition of any disciplinary sanctions against a Respondent; and
- Not discipline a Party, witness, or others participating in the grievance procedure for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

## **G. Optional: Informal Resolution**

### *Procedures for Entering and Exiting Informal Resolution Process*

At any time prior to determining whether Sex-Discrimination occurred under this Grievance Procedure, including prior to making a Complaint, Parties may instead seek Felician University's assistance to resolve allegations of Sex-Discrimination, and may elect to enter the informal resolution process.

The Parties may voluntarily elect to enter Felician University's informal resolution process at any time through an informed written Consent. This informed written Consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

No Party may be required to participate in informal resolution, and Felician University may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the Grievance Procedure that the Parties paused will continue. In participating in the informal resolution process, the Parties understand that the timeframes governing the Grievance Procedure will temporarily cease, and only reinstate upon reentry into the Grievance Procedure.

Supportive Measures will be available, or continue to be available if already provided, during an informal resolution process, if elected to proceed. The Title IX Coordinator will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation does not continue or recur within Felician University's Education Program or Activity.

### *Notice Prior to Entry Into Informal Resolution Process*

Before the initiation of an informal resolution process, the Title IX Coordinator must provide to the Parties a written notice that explains:

- The allegations;
- The requirements of the informal resolution process;

- That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume Felician University's Grievance Procedure;
- That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming Felician University's Grievance Procedure arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- What information Felician University will maintain and whether and how Felician University could disclose such information for use in its Grievance Procedure if they are initiated or resumed.

#### *Determination to Approve Entry into Informal Resolution Process*

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator **may** approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that Title IX Coordinator may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, whether the alleged conduct would present a future risk of harm to others, and whether the Parties are participating in good faith. This determination is not subject to appeal.

At any time after the commencement of the informal resolution process, the Title IX Coordinator may determine that the informal resolution process is not an appropriate method for resolving the matter and may require that the matter be resolved through the Grievance Procedures. This determination is not subject to appeal.

#### *Role of the Facilitator*

Informal resolution processes are managed by trained facilitators. All facilitators must not be the same person as the investigator or the decisionmaker in Felician University's Grievance Procedure. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Title IX Coordinator may serve as the facilitator, so long as the Title IX Coordinator was not the investigator during the Grievance Procedure.

All facilitators must have specialized training, required by law and regulation. Such training includes:

- Felician University’s obligation to address sex discrimination, including Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation, in its Education Program or Activity;
- The scope of conduct that constitutes sex discrimination, including Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation, under Title IX, including the definition of Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation;
- All applicable notification and information requirements related to parental, family, or marital status, including pregnancy and related conditions, and Felician University’s response to sex discrimination;
- The rules and practices associated with Felician University’s informal resolution process; and
- How to serve impartially, including by avoiding conflicts of interest and bias.

#### *Contents of Informal Resolution Agreements*

Potential terms that may be included in an informal resolution agreement between the Parties include but are not limited to:

- Restrictions on contact; and
- Restrictions on the Respondent’s participation in one or more of Felician University’s education programs or activities or attendance at specific events, including restrictions Felician University could have imposed as Remedies or Disciplinary Sanctions had Felician University determined at the conclusion of the Grievance Procedure that Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation occurred.

#### *Breach of Informal Resolution Agreements*

If a Party breaches the resolution or if Felician University has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, Felician University may void the agreement and initiate or resume the Grievance Procedure.

If a Party breaches the resolution or if Felician University has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, Felician University may void the agreement and initiate or resume the Grievance Procedure.

#### *Confidentiality:*

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Complaint are confidential while the Parties participate in the informal resolution process. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a

parent, friend, advisor, or other source of emotional support, or with an advocacy organization. Should the Parties withdraw from the informal resolution process, information disclosed or obtained for purposes of the informal resolution process *may* be incorporated into the Grievance Procedure, provided that this information is disclosed and reviewed by the Parties under Felician University's Grievance Procedure.

### *Informal Resolution Options*

Felician University offers the following informal resolution procedures for addressing Complaints of Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation described under this Grievance Procedure:

#### Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the Complaint at any point during the informal resolution process, the institution may administratively resolve the Complaint.

Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and a decision-maker will convene to determine the Respondent's sanction and other Remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements, and the Parties may be accompanied by their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and Remedies, which may be appealed according to the process described above.

#### Mediation

The purpose of mediation is for the Parties who are in conflict to identify the implications of a Student's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate Remedies to address them. Either Party can request mediation to seek resolution; mediation will be used only with the Consent of both Parties, who will be asked not to contact one another during the process. The Title IX Office will also review any request for mediation and may decline to mediate based on the facts and circumstances of the particular case. Either Party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within ten business days after the Title IX Office receives Consent to mediate from both Parties and has made its determination to allow informal resolution to go forward. Mediation will continue until concluded or terminated by either Party, the facilitator, or the Title IX Office. During mediation, any potential investigation will halt, and

calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded, and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the Title IX Coordinator to re-evaluate other options for resolution, including investigation or proceeding forward with the Grievance Procedure.

During mediation, a facilitator will guide a discussion between the Parties. In circumstances where the Parties do not wish to meet face to face, either Party can request “caucus” mediation, and the facilitator will conduct separate meetings. Whether or not the Parties agree to meet face to face, each Party will be permitted to bring an advisor of their choice to any meetings who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the facilitator will memorialize the agreement that was reached between the Parties. The Title IX Office will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

### Restorative Justice

A restorative justice (“RJ”) Conference is a dialogue, facilitated by an informal resolution facilitator with appropriate training, intended to restore relationships and repair harm after a conflict has occurred. Both the responsible Party and the individuals affected by the conflict come together to identify what harm was caused and, collaboratively, determine how conflict and trust might be, respectively, resolved and repaired.

A Party may request to engage in RJ at any stage of the disciplinary process, however, restorative justice may not be an appropriate mechanism for all conflicts. To qualify for RJ, the Student accused of wrongdoing must accept responsibility and express remorse for the harm that was caused. The harmed Party must also be willing to accept an apology offered by the Student accused of wrongdoing. Additionally, all involved Parties must agree to and abide by measurable and timely actions within the scope of this Policy and directives. The Title IX Office will review any request for RJ and may decline to initiate RJ based on the facts and circumstances of the particular case.

The RJ Conference proceeds only if all Parties agree to participate willingly. Upon doing so, the RJ process typically commences within ten business days after the Title IX Office receives written agreements from all involved Parties. The conference will continue until the conference is successfully concluded or until the Title IX Office determines that the conference will not be successful. If successful, an agreeable resolution is reached by all involved Parties, at which time the process is concluded, and the matter is resolved. If a resolution cannot be reached, the matter will be referred to the Title IX Coordinator to re-evaluate other options for resolution.

The Title IX Coordinator will monitor the Parties’ adherence to their proposed solution and reserves the right to close the matter when compliance is satisfactory.

## ***H. Dismissal of a Complaint***

### *Grounds for Dismissal*

Felician University may dismiss a Complaint of Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation for any of the following reasons:

- Felician University is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in Felician University's education program or activity and is not employed by Felician University
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint through this Grievance Procedure, and Felician University determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation under Title IX or this Grievance Procedure even if proven; or
- Felician University determines that the conduct alleged in the Complaint, even if proven, would not constitute Sex-based harassment, Sexual Exploitation, Sexual Misconduct, or Retaliation under Title IX or these procedures.<sup>4</sup>

### *Notice of Dismissal*

Upon dismissal, Felician University will promptly notify the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then Felician University will also notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Complainant, or simultaneously if notification is in writing.

Felician University will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then Felician University will also notify the Respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

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<sup>4</sup> Felician University must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

Appeal rights must also be outlined in any notification of dismissal of a Complaint, as outlined below.

## ***I. Appeal of Dismissals and Determinations***

Felician University offers the following process for appeals from a dismissal or a determination whether sex discrimination occurred:

If the dismissal or determination is appealed, Felician University will:

- Notify the Parties of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
- Implement appeal procedures equally for the Parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the Parties of the result of the appeal and the rationale for the result.

When a Complaint is dismissed, Felician University will, at a minimum:

- Offer supportive measures to the Complainant as appropriate.
- If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within Felician University's Education Program or Activity.

The submission of appeal stays (or pauses) any sanctions for the pendency (or duration while the appeal is being deliberated and decided upon) of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, the institution will as soon as practicable notify the other Party in writing of the appeal, however the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals may be no longer than two pages. Appeals should be submitted in electronic form using Times New Roman, 12-point font, and single-spaced. Appeals that do not meet these standards may be returned to the Party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.



Whether an appeal moves to the Appeals Panel will be decided by the chair of the hearing panel. Appeals that are approved to move to the Appeals Panel stage will be decided by the Appeals Panel. Both the Chair of the Appeals Panel and the Appeals Panel themselves will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter. The outcome of the appeal will be provided in writing simultaneously to both Parties and include rationale for the decision.

## **J. Retaliation**

Felician University prohibits retaliation, including peer retaliation, in its Education Program or Activity. Upon receiving a Complaint alleging retaliation or upon receiving information about conduct that reasonably may constitute retaliation under Title IX, Felician University will initiate its grievance procedure or, as appropriate, an informal resolution process.