

	<b>Florida Gulf Coast University</b> Policy Manual	<b>Policy: 1.006</b>  <b>Effective Date: 1/20/2009</b>
	<b>Title:</b> <b>Non-Discrimination and          Anti-Harassment Complaint Policy          and Procedure</b>	<b>Responsible Executive:</b> President  <b>Responsible Office:</b> Office of Institutional Equity and Compliance

**POLICY STATEMENT**

Florida Gulf Coast University (FGCU) is committed to providing prompt and effective resolution of allegations of discrimination and harassment for members of the university community. Therefore, members of the FGCU community have the right to file complaints of discrimination and harassment. Complaint investigations will be conducted in a fair, respectful and consistent manner.

**REASON FOR POLICY**

This policy provides a procedure whereby members of the University community may file complaints of alleged discrimination and harassment and outlines the procedure used to investigate said complaints pursuant to FGCU-PR1.003, and in compliance with applicable federal, state and local laws, as well as orders and University regulations.

**DEFINITION OF TERMS**

Complainant(s). A Complainant is a person or persons alleging discrimination or harassment under FGCU-PR1.003.

Respondent(s). A Respondent is a person or persons whose conduct is alleged to be discriminatory or harassing.

Advisor or Support Person. One person present at any time during these procedures for either the Complainant or Respondent. However, this person may not stand in place of, speak for Complainant or Respondent, or participate in the administration of this Policy, even if he or she is an attorney.

Decision Maker. The President, Vice President or President’s Direct Report or their designees in the Respondent’s chain of command.

OIEC. Office of Institutional Equity and Compliance.

OIEC Director. Director responsible for the administration of this policy and its corresponding regulation.

Vendor or Contractor. Individual or business entity in a contractual relationship with the University, but not an employee.

Informal Complaint Procedure. Process wherein the OIEC Director utilizes alternative dispute resolution techniques to facilitate a settlement of the Complaint.

Formal Complaint Procedure. Process wherein the OIEC Director administers the investigation of the Complaint.

File and Filed. The document has been received and acknowledged by the OIEC.

Days. Calendar days. University holidays and their concurrent weekends are excluded.

University. Florida Gulf Coast University.

Investigator. OIEC Director or trained person designated by the OIEC Director, who conducts a fact-finding inquiry (investigation) and writes an Investigative Report.

Investigative Report. The report created by the Investigator which includes: a summary of the Complaint, description of the investigation, to include names of persons interviewed with times and dates, list of documents reviewed, and recommendations to include whether or not discrimination or harassment took place and if the Complaint was knowingly false or malicious. Certain information may be redacted in accordance with applicable law.

Retaliation. When an officer, agent, employee, contractor or vendor takes an adverse action against an individual for his or her participation in protected activity.

Discrimination. The intentional or unintentional treatment of any member of the University community differently than those who are similarly situated, or any unfair treatment solely based upon a legally protected class to include race, color, religion, age, disability (or handicap), sex, national origin, marital status, sexual orientation and/or veteran status.

Harassment. Unwelcome conduct that is based on the legally protected class to include race, color, religion, age, disability (or handicap), sex, national origin, marital status, sexual orientation and/or veteran status. Harassment occurs when: (1) enduring the offensive

conduct becomes a condition of continued employment or educational participation, or (2) the conduct is severe or pervasive enough to create a work or educational environment that a reasonable person would consider intimidating, hostile, or abusive.

## **PROCEDURES**

### **1. Filing a Complaint.**

An individual alleging discrimination or harassment files a complaint with the OIEC. A Complainant may have an Advisor or Support Person accompany him or her at any time during the procedure. Complaints must be filed, either informally or formally, within ninety (90) days of the last act of alleged discrimination or harassment, or within ninety (90) days from becoming aware of the alleged act. A Complainant completes a Complaint Form made available by the OIEC. The OIEC Director mails correspondence to the address designated by the Complainant and Respondent during the Complaint procedure, but may also utilize additional methods of communication. If an address is not designated by the Complainant or Respondent, the OIEC Director shall use an address on file with the University, or the best address available.

At any time throughout the process, the OIEC Director may grant the Complainant, Respondent, Investigator or Decision Maker an extension as is reasonably necessary, and will communicate any extensions in writing to the parties.

### **2. Informal Complaint Procedure.**

A Complainant may seek Alternative Dispute Resolution before pursuing the Formal Complaint Procedure through the OIEC. The Formal Complaint Procedure shall not be used when a Complainant fails to make an allegation which could violate FGCU PR1.003. Such Complaint shall be dismissed in writing by the OIEC Director and the dismissal shall be mailed to the Complainant or hand delivered (with documentation of delivery.) A dismissal for failure to state a claim is the final University decision.

### **3. Formal Complaint Procedure.**

If the Complainant has utilized the Informal Complaint Procedure but the matter is not informally resolved within thirty (30) days, the Complainant must communicate to the OIEC Director whether or not he or she wishes to proceed with the Formal Complaint Procedure. The Complainant has fourteen (14) days from the date of the communication from the OIEC Director that the Informal Complaint Procedure has concluded to notify the OIEC Director of his or her decision. Failure to communicate with the OIEC Director may result in

no further action. A Complainant may forego the Informal Complaint Procedure and go directly to the Formal Complaint Procedure. After the Complainant notifies the OIEC Director that he or she wishes to proceed to the Formal Complaint Procedure, the Complaint Form is provided via certified return receipt mail or hand delivery (with documentation of delivery) to the Respondent by the OIEC within seven days.

#### **4. Investigation.**

The OIEC Director investigates the Complaint or assigns a trained Investigator. Investigators have thirty (30) days to complete the investigation unless an extension is granted by the OIEC Director.

All persons involved with the investigation are cautioned that retaliation is strictly prohibited. It is imperative that matters discussed during the investigation are kept confidential in order that the fact-finding of the investigation is in no way hindered or impaired. Investigations include, but are not limited to, witness interviews, the gathering of documentation and other evidence, as well as other investigative techniques deemed appropriate by the OIEC Director. All members of the University community are expected to cooperate with this Complaint procedure.

#### **5. Investigative Report.**

The OIEC Director submits the Investigative Report to the Decision Maker as well as to the Complainant and Respondent. It is submitted via certified return receipt or hand delivery (with documentation of delivery) to the Complainant and Respondent.

#### **6. Response.**

Complainant and Respondent may file a response to the Investigative Report which must be received by the OIEC within fourteen (14) days of the date of the Investigative Report submission. Any response submitted is provided to the opposing party and to the Decision Maker by the OIEC.

#### **7. Decision.**

The Decision Maker will issue the decision within fourteen (14) days of receiving from the OIEC Director, the Investigative Report with any responses submitted by the Complainant or Respondent. For a decision adverse to persons covered by a Collective Bargaining Agreement, the decision will be communicated pursuant to the provisions therein. The Decision will include a determination as to

whether or not discrimination or harassment took place, and any appropriate remedy or disciplinary actions. Disciplinary actions shall be determined on a case-by-case basis. The Decision shall also include a statement as to whether the Complaint was knowingly false or malicious. In the event that it is determined that the Complaint was knowingly false or malicious, appropriate discipline shall be recommended by the Decision Maker to the President, Complainant's Vice President, President's Direct Report or their designees if the Complainant is not in the chain of command of the Decision Maker. For a student, the appropriate Vice President is the Vice President for Student Affairs.

Any discipline shall be taken in accordance with University Regulation FGCU-PR5.016, the Student Code of Conduct as well as the terms of any applicable Collective Bargaining Agreement. The Decision is submitted to the OIEC Director for distribution to the Complainant and Respondent via certified return receipt mail or hand delivery (with documentation of delivery).

#### **8. Retaliation.**

The university strictly prohibits and will not tolerate reprisals against any individual due to their participation in this process or any other protected activity. A claim of retaliation shall be treated as a separate allegation of Discrimination.

#### **9. Vendors and Contractors.**

When a Vendor or Contractor is the named Complainant or Respondent, The OIEC Director shall consult with the appropriate University department concerning the investigation. The Decision Maker shall be the President, appropriate Vice President or designee.

#### **10. Appeal.**

Decisions may be appealed by a Complainant or Respondent not covered by a collective bargaining agreement to the Final Decision Maker within thirty (30) days of issuance of the Decision based on either substantive or procedural grounds. Such appeals must be submitted in writing to the OIEC for distribution to the opposing party and the Decision Maker.

The appeal shall be based on one or more of the following grounds: relevant evidence was not reviewed, discovery of new evidence that was previously not available through exercise of reasonable diligence, or the factual evidence was insufficient to support the findings.

Persons covered by a Collective Bargaining Agreement may appeal pursuant to the provisions provided thereunder.

**11. Final Decision.**

For appeals filed by persons not covered by a collective bargaining agreement, the Decision Maker will respond to the appeal within fourteen (14) days of receipt of the final of appeal documents. The response is submitted to the OIEC Director for distribution to the Complainant and Respondent via certified return receipt mail or hand delivery (with documentation of delivery) and shall constitute the final University decision. Should no appeal be filed, the Decision becomes final after fourteen (14) days of issuance of the Decision, and shall constitute the final University decision.

For those Decisions covered by a Collective Bargaining Agreement, such Decisions become final pursuant to the applicable terms of the agreement.

**12. Custodian of Records.**

The Director of the Office of Institutional Equity and Compliance is the custodian of filed records associated with the investigation of complaints under FGCU-PR1.003.

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**POLICY AMENDMENTS**

None

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**HISTORY**

New: January 20, 2009

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**APPENDICES**

None

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**APPROVED**

s/Wilson G. Bradshaw  
\_\_\_\_\_  
President

January 23, 2009  
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Date

**EFFECTIVE**

January 20, 2009