

FLORIDA GULF COAST UNIVERSITY

NOTICE OF REGULATORY ACTION

DECEMBER 10, 2008

REGULATION TITLE:

Non-Discrimination and Anti-Harassment Regulation

REGULATION NO.:

FGCU-PR1.003

SUMMARY:

This Non-Discrimination and Anti-Harassment Regulation is being updated to clarify and reaffirm the University's commitment to non-discrimination and anti-harassment. It's related complaint procedures have been removed and will be included in a separate university policy, Non-Discrimination and Anti-Harassment Complaint Policy and Procedure.

FULL TEXT:

The full text of the regulation being proposed is attached and can also be found at <http://www.fgcu.edu/generalcounsel/promulgation.asp>

LAW IMPLEMENTED:

§760.10 Florida Statutes

UNIVERSITY OFFICIAL INITIATING THE PROPOSED REVISED REGULATION:

Cheryl Seals-Gonzalez, Director Institutional Equity and Compliance

UNIVERSITY OFFICIAL APPROVING THE PROPOSED REGULATION:

Wilson G. Bradshaw, President

PERSON TO BE CONTACTED REGARDING THE PROPOSED NEW REGULATION:

Diane St. John, Administrative Assistant, dstjohn@fgcu.edu; (239) 590-1101 (Phone), (239) 590-7470 (Facsimile); 10501 FGCU Blvd. South, Fort Myers, FL 33965-6565

ANY COMMENTS REGARDING THE PROPOSED NEW REGULATION SHOULD BE SUBMITTED IN WRITING ON OR BEFORE JANUARY 5, 2009 BY 5:00 P.M. THE COMMENTS MUST IDENTIFY THE REGULATION ON WHICH YOU ARE COMMENTING.

THIS NOTICE WAS POSTED ON THE FGCU WEBSITE ON: DECEMBER 10, 2008.



REGULATION: FGCU-PR1.003

Effective Date
of Regulation:

01/15/08

Non-Discrimination and Anti-Harassment

Regulation and Complaint Procedures

(1) General Statement:

(a) Affirmation. Florida Gulf Coast University (FGCU) affirms its commitment to ensure that each member of the University community shall be permitted to work, ~~or~~ study, participate in educational programs including those receiving federal funding, services and activities, or conduct business in an environment free from any form of illegal discrimination, including race, color, religion, age, disability (or handicap), sex, national origin, marital status, and veteran status, except as otherwise permitted by law. Admission to, and participation in, the educational programs and activities of FGCU shall be open to all qualified individuals regardless of race, color, religion, disability (or handicap), sex, national origin, marital status, or veteran status. The University strives to ~~create~~ foster a community in which diversity and inclusion ~~is~~ are valued and opportunity is ~~realized~~ equalized. This Regulation ~~establishes~~ creates a mechanism of procedures for ~~an~~ applicants, students, employees, volunteers, visitors as well as vendors and contractors ~~or a member~~ of the University community to file a complaint of alleged discrimination or harassment, ~~and to include~~ sexual harassment as defined in Regulation FGCU-PR1.004.

(b) Violation. It shall be a violation of this Regulation for any officer, university employee, student, visitor, agent, vendor, or contractor to discriminate against or harass, as hereinafter defined, any other officer, university employee, student, visitor, agent, vendor, contractor or applicant for employment or admission. Discrimination and harassment are forms of conduct which shall result in employee disciplinary action pursuant to University Regulations ~~FGCU-PR5.016 and FGCU-PR5.023~~, and the terms of any applicable collective bargaining agreement. ~~as to employees, or action~~ University vendors and contractors found to have violated this Regulation will receive sanctions or other punitive actions permitted by consistent with law or ~~contract~~ contract as to vendors and contractors.

(2) Coverage:

(a) Parties. All complaints of discrimination or harassment, as otherwise provided herein, shall be adjudicated under this regulation. Complaints between students, or where one student (the Respondent) is a student and not employed by the University, shall be reported to the Office of the Vice President of Student Affairs and adjudicated under the Student Code of Conduct. Students who are also employees

may be subject to University disciplinary action as well as disciplinary action under the Student Code of Conduct.

(b) Scope of prohibitions. This Regulation covers all employment practices, as well as educational, athletic, cultural and social programs, services and activities occurring at or sponsored by, FGCU.

(3) Reporting: If the university becomes aware of activity which could be violative this Regulation, it will take necessary actions, which may include an investigation, even when a complaint has not been filed. While all members of the university are expected to promptly report known activity which could violate this Regulation, only those in supervisory or managerial personnel may be subject to disciplinary action pursuant to FGCU PR5.016 should they know of such activity and fail to report. Complaints will be promptly investigated, consistent with the University's Complaint Procedure Policy. The Office of Institutional Equity and Compliance (OIEC) will be responsible for the investigation of Complaints covered under this Regulation.

(a) Responsibility of supervisors and managers: All supervisors and managers are encouraged to take steps necessary to prevent discrimination or harassment based on a protected class from occurring. They should clearly communicate to employees that such behavior will not be tolerated and periodic training on these topics should be attended. Whenever an employee, student, or non-employee files a complaint, immediate and appropriate action is advisable. Any University supervisory or managerial employee who receives a report, observes or learns of an alleged violation of this Regulation has an absolute and unqualified duty to immediately report the alleged violation to the OIEC Director in a timely manner.

(b) Responsibility of alleged victim: The person deeming any action or conduct as unwelcome is encouraged to so advise the offending party and inform him or her that it must stop. However, the alleged victim is not required to inform an alleged offender of the offensiveness of the behavior in order to make a claim under this Regulation. The University's Complaint Procedure Policy should be used to address any concerns or issues.

(c) Responsibility of employees involving conflicts of interest: Employees in a position of authority must resolve any actual or potential conflict of interest by taking necessary steps, including removing himself or herself from evaluative decisions concerning the other individual. If the employee in authority is unable to resolve the conflict of interest, he or she is required to inform his/her immediate supervisor promptly. Failure to resolve potential or actual conflicts of interest as described in this regulation shall result in disciplinary action pursuant to University regulations.

(24) Definitions:

(a) Discrimination. For the purpose of this regulation, discrimination ~~or harassment~~ is defined as the intentional or unintentional ~~treating~~ treatment of any member of the University community differently than those who are similarly situated, or any unfair treatment solely ~~others are treated~~ based upon race, color, religion, age, disability (or handicap), sex, national origin, marital status and/or veteran status.

~~1. Disparate treatment in recruitment, hiring, training, promotion, transfer, reassignment, termination, discipline, salary and other economic benefits, and all other terms and conditions of employment on the basis of membership in one of the categories protected in paragraph (a), above.~~

~~2. Disparate treatment in or access to educational programs and related support services on the basis of membership in one of the categories protected in paragraph (a), above.~~

~~3. Limitation in access to housing, or to participation in athletic, social, cultural or other activities of the University because of membership in one of the categories protected in paragraph~~

(b) Harassment. For the purposes of this regulation, harassment is unwelcome conduct that is based upon race, color, religion, age, disability (or handicap), sex, national origin, marital status 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.

(c) Sexual Harassment. For the purposes of this Regulation, sexual harassment is defined as unwelcome sexual attention, to included requests for sexual contact, and other verbal or physical conduct of a sexual nature from any person when:

1. Submission to such conduct is either explicitly or implicitly a term or condition of an individual's hire or employment, salary increase, position advancement or other employment-related benefits as well as a student's educational experience;

2. Submission to or rejection of such conduct by an individual is used as the basis for employment or education-related decisions affecting such individuals; or

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating or hostile working or educational environment.

(d) Conflict of Interest. When an individual evaluates or supervises another individual with whom he or she has, or desires to have, an amorous or sexual relationship, a conflict is created. The University discourages such amorous or sexual relations between employees and students. Such relationships, even when consensual, may be exploitive, and jeopardize the integrity of the educational process or work

environment and may lead to charges of sexual harassment. The University requires the resolution of any conflict of interest created by these relationships. The employee in a position of authority must resolve any actual or potential conflict of interest by taking necessary steps, including removing himself or herself from evaluative decisions concerning the other individual. If the employee in authority is unable to resolve the conflict of interest, he or she is required to inform his/her immediate supervisor promptly. Failure to resolve potential or actual conflicts of interest as described in this regulation shall result in disciplinary action pursuant to University regulations.

~~(b) Conduct which falls into the definition of discrimination, includes, but is not limited to:~~

~~1. Disparate treatment in recruitment, hiring, training, promotion, transfer, reassignment, termination, discipline, salary and other economic benefits, and all other terms and conditions of employment on the basis of membership in one of the categories protected in paragraph (a), above.~~

~~2. Disparate treatment in or access to educational programs and related support services on the basis of membership in one of the categories protected in paragraph (a), above.~~

~~3. Limitation in access to housing, or to participation in athletic, social, cultural or other activities of the University because of membership in one of the categories protected in paragraph —~~

~~4. Failure to abide by the terms of a conciliated agreement.~~

~~5. Retaliation for filing complaints or protesting practices which are prohibited under this rule.~~

~~(c) Conduct which falls within the definition of harassment includes, but is not limited to, that which unreasonably interferes with an employee's, student's, or applicant's status or performance by creating an intimidating, hostile, or offensive working or educational environment and is based upon membership in one of the categories protected in paragraph (a) above. It includes offensive or demeaning language or treatment of an individual, where such language or treatment is based typically on prejudicial stereotypes of a group to which an individual may belong, such as, objectionable epithets, threatened or actual physical harm or abuse, or other intimidating or insulting conduct directed against the individual.~~

(e) Complainant. A Complainant is a person or persons alleging a violation under this Regulation.

(f) Respondent. A Respondent is a person or persons whose conduct is the subject of concern under this Regulation.

~~(d) Scope of prohibitions: This Regulation covers all employment practices, educational, athletic, cultural and social programs, services and activities occurring on a campus of; or sponsored by, Florida Gulf Coast University and, housing supplied by the University.~~

(5) Retaliation: Retaliation occurs when an officer, agent or employee takes an adverse action against a covered individual because he or she engaged in a protected activity under this regulation. Therefore, a supervisory or managerial employee may not terminate, demote, harass or otherwise "retaliate" against an individual for engaging in protected activity. Neither may an employee harass or otherwise "retaliate" against an individual for engaging in protected activity. Protected activity includes filing a discrimination charge, testifying or participating in any way in an investigation, proceeding, or lawsuit, opposing employment practices that one reasonably believes discriminates against individuals or encourages someone to exercise their rights.

(6) Cooperation: All members of the university community are expected to cooperate in any university investigation of discrimination or harassment. An employee's failure to cooperate fully with an investigation will result in disciplinary action up to immediate termination for cause pursuant to FGCU-PR5.016.

(7) False Complaints and/or False Information: Knowingly making false or malicious statements or allegations under this Regulation will result in disciplinary action.

~~(e) When referred to in this Regulation, days means calendar days unless otherwise noted.~~

~~(3) Procedures for Reporting Violations and Conducting Investigations of Complaints:~~

~~(a) Administration and Consultation. The Office of Institutional Equity and Compliance shall administer the policies and procedures outlined in this Regulation, answer inquiries regarding the procedures, and provide informal advice regarding issues of discrimination. In cases where the complainant chooses not to file a formal complaint, action will be taken to inform the alleged offender of the concerns, suggesting that if the allegations are true, the alleged offender monitor and modify his/her behavior.~~

~~(b) Formal Complaint.~~

~~1. A complaint must be made in writing to the Office of Institutional Equity and Compliance using the Discrimination Complaint Form. This form, which is incorporated by reference, has been approved by the University President and is available upon request at the Office of Institutional Equity and Compliance, 10501 FGCU Blvd. South, Fort Myers, FL 33965-6565. The complaint shall contain the name of the complainant and state the nature of the act(s)~~

~~complained of, including such details as the name of the alleged offender and the date(s) or approximate date(s) on which the offending act(s) occurred, the name(s) of any witnesses, and the desired resolution(s).~~

~~2. A complaint should be filed within sixty (60) days of the alleged act(s) of discrimination, or in the case of a student complaint against a faculty member, within fourteen (14) days of the beginning of class of the following semester. This provision shall not limit the University in any way from initiating its own investigation and taking appropriate action should such be deemed warranted under the circumstances presented.~~

~~3. The Office of Institutional Equity and Compliance or its designee shall be responsible for investigating or coordinating the review of the complaint. The investigation may include, but shall not be limited to, interviewing the alleged offender, and/or other persons who may have information relevant to the allegations, preparation of witness statements for all persons interviewed, and review of any relevant documents. Upon completion of the investigation, a report shall be prepared which includes a summary of the complaint, a description of the investigation, the findings and recommendations.~~

~~(c) Conciliation. The Office of Institutional Equity and Compliance may attempt conciliation during the course of an investigation of a complaint. If conciliation is not achieved, then the Office of Institutional Equity and Compliance shall continue to investigate the complaint, and shall issue a written finding within a maximum of sixty (60) days. If conciliation of the complaint was achieved between the parties in cooperation with the Office of Institutional Equity and Compliance, and the alleged offender fails to abide by the agreement or retaliates against the complainant, the complainant or supervisor shall notify the Office of Institutional Equity and Compliance.~~

~~(d) Findings. A copy of the report of the Office of Institutional Equity and Compliance shall be made to the complainant, the alleged offender, the immediate supervisor and the Vice President of the alleged offender, or in cases of allegations against a vice president or a non Vice President direct report, to the President.~~

~~(e) Review.~~

~~1. Either the complainant or the accused may seek review of the findings by filing a written appeal within fourteen (14) days of receipt, with the Vice President or designee of the alleged offender or, if the alleged offender is a Vice President or a non Vice President direct report, with the President or designee. The appeal shall be based on only 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.~~

~~2. Copies of the appeal shall be provided to the opposing party and to the Office of Institutional Equity and Compliance.~~

~~3. The opposing party and/or the Office of Institutional Equity and Compliance may file a response to the appeal with the Vice President or designee or the President, in cases of allegations against a Vice President or a non Vice President direct report, within fourteen (14) days of receipt of the appeal.~~

~~4. The Vice President or designee, or the President, in cases of allegations against a Vice President or a non Vice President direct report, shall issue a written finding not more than fourteen (14) days after receipt of the appeal, or of a response to the appeal, whichever is later. Such written finding shall be limited to a review of the grounds on which the appeal is based.~~

~~(f) Resolution. The Vice President or designee, or the President, in cases of allegations against a Vice President or a non Vice President direct report, shall issue a finding of cause or no cause on the complaint. Where there is a finding of cause, the immediate supervisor of the alleged offender shall propose a resolution to the complaint (e.g., that a student be allowed to change sections, that the employee report to a different supervisor) and shall recommend or take disciplinary action against the offender. The proposed resolution shall be approved by the Office of Institutional Equity and Compliance. Disciplinary action shall be taken in accordance with University guidelines contained in University Regulations FGCU-PR5.016 and FGCU-PR5.022, and the terms of any applicable collective bargaining agreement.~~

~~(g) Prohibition of Retaliation. No University employee shall retaliate against a complainant witness to an investigation. Any attempt to retaliate against a student, employee, applicant, or vendor for initiating a complaint shall be treated as a separate allegation of discrimination.~~

~~(h) The procedures contained in this Regulation apply also to vendors and contractors, except that the Director of Institutional Equity and Compliance shall consult with the Office of Procurement Services to determine how the investigation will be undertaken. Upon determination of any findings that it is more likely than not discrimination occurred, the University shall take action against the vendor or contractor in accordance with the terms of the party's contract.~~

~~(4) Election of Remedies; Complainant's Right to Seek Remedy Outside the University:~~

~~(a) The doctrine of election of remedies shall apply to complaints filed pursuant to this Regulation. Should a complainant elect to pursue an alternative remedy available to them, including the filing of a grievance pursuant to the collective bargaining agreement, or pursuant to University Regulation FGCU-PR5.016 or FGCU-PR5.020, the filing of any such grievance shall operate as a waiver of the Complainant's right to file a complaint and avail themselves of the procedures available under this~~

~~regulation. Should a grievance be filed pursuant to an alternative internal remedy and subsequent to the filing of a Complaint under this Regulation but before proceedings under this Regulation have been completed, the filing of any such grievance nonetheless will act as a waiver, and proceedings pursuant to this Regulation shall be terminated. As an exception to this provision, a complainant may file an EEOC charge while the complaint is in progress when such filing becomes necessary to meet federal filing deadlines pursuant to 42 U.S.C. § 200e et seq.~~

~~(b) The doctrine of election remedies shall also apply to appeals filed by persons against whom a complaint has been filed. The filing of an appeal pursuant to an alternative internal remedy by a person against whom a complaint has been filed, including the filing of a grievance under the collective bargaining agreement shall operate as a waiver of the right to appeal to the President the decision of a Vice President or a non Vice President direct report pursuant to this Regulation.~~

~~(5) Frivolous or Malicious Complaints:~~

~~In the event that a claim of discrimination, harassment or sexual harassment is found to be frivolous or malicious, disciplinary action shall be taken against the complainant, pursuant to University Regulations FGCU-PR5.016 and FGCU-PR5.022, and the terms of any applicable collective bargaining agreement as to employees, and University Regulation FGCU-PR4.002, as to students.~~

Action by Florida Gulf Coast University Board of Trustees:

Approved: ~~January 15, 2008,~~ _____

Law Implemented:

~~4004.05~~ [§760.10](#) Florida Statutes

History of Rule:

~~New 03-18-03~~

History of Regulation:

~~New 01-15-08, [Amended](#)~~ _____

Effective Date of Regulation:

~~January 15, 2008~~ _____