

**NOTICE OF NEW REGULATION**

December 12, 2007

**REGULATION TITLE:**

Non-Discrimination Regulation and Complaint Procedures

**REGULATION NO.:**

FGCU-PR1.003

**SUMMARY:**

This new regulation is being proposed to update the pre-existing rule with the current nomenclature of appropriate departments as well as the Florida Board of Governor's Regulation Development 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:**

Dr. Charles McKinney, Assistant to President and University Ombudsman

**PERSON TO BE CONTACTED REGARDING THE PROPOSED NEW REGULATION:**

Jennifer Baker, Administrative Legal Assistant, [jforbes@fgcu.edu](mailto:jforbes@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 WEDNESDAY, JANUARY 2, 2008, 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 OR BEFORE DECEMBER 12, 2007.**

## FLORIDA GULF COAST UNIVERSITY

### ~~6C10~~FGCU-PR1.003 Non-Discrimination Regulation ~~Policy~~ and Complaint Procedures

#### (1) General Statement:

(a) Florida Gulf Coast University affirms its commitment to ensure that each member of the University community shall be permitted to work or study 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. The University strives to create a community in which diversity is valued and opportunity is equalized. This Regulation ~~rule~~ establishes procedures for an applicant or a member of the University community to file a complaint of alleged discrimination or harassment, and sexual harassment as defined in ~~Rule 6C10~~Regulation FGCU-PR1.004; ~~F.A.C.~~

(b) It shall be a violation of this ~~rule~~ Regulation for any officer, agent, vendor, or contractor to discriminate against or harass, as hereinafter defined, any employee, student, or applicant for employment or admission. Discrimination and harassment are forms of conduct which shall result in disciplinary action pursuant to University ~~Rules 6C10~~Regulations FGCU-PR5.016 and ~~6C10-FGCU-PR5.022~~, ~~F.A.C.~~, and the terms of any applicable collective bargaining agreement as to employees, or action permitted by law or contract as to vendors and contractors.

#### (2) Definitions:

(a) For the purpose of this ~~rule~~ Regulation, discrimination or harassment is defined as treating any member of the University community differently than others are treated based upon race, color, religion, age, disability (or handicap), sex, national origin, marital status and/or veteran status.

(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 (a), above.

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.

(d) Scope of prohibitions: This ~~rule~~ 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, ~~and employment practices between the University and its employees, including Other Personal Services ("OPS") employees.~~

(e) When referred to in this ~~rule~~ 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 ~~Equal Opportunity Programs~~ Institutional Equity and Compliance shall administer the policies and procedures outlined in this ~~rule~~ 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 ~~individual~~ alleged offender monitor and modify his/her behavior.

(b) Formal Complaint.

1. A complaint must be made in writing to the Office of ~~Equal Opportunity Programs~~ Institutional Equity and Compliance using the Discrimination Complaint Form ~~EOP-D100 (10-96)~~. ~~Form EOP-D100~~ This form, which is incorporated by reference, has been approved by the University President and is available upon request at the Office of ~~Equal Opportunity Programs~~ 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 ~~Equal Opportunity Programs~~ 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 ~~person complained about regarding the allegations 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 ~~Equal Opportunity Programs~~ 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 ~~Equal Opportunity Programs~~ Institutional Equity and Compliance shall continue to investigate the complaint, and shall issue a written finding ~~concerning probable cause~~ within a maximum of sixty (60) days. If conciliation of the complaint was achieved between the parties in cooperation with the Office of ~~Equal Opportunity Programs~~ 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 ~~Equal Opportunity Programs~~ Institutional Equity and Compliance.

(d) Findings. A copy of ~~the~~ report of the Office of ~~Equal Opportunity Programs~~ 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 ~~party~~ 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 the 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 ~~Equal Opportunity Programs~~ Institutional Equity and Compliance.

3. The opposing party and/or the Office of ~~Equal Opportunity Programs~~ 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 ~~Equal Opportunity Programs~~ Institutional Equity and Compliance. Disciplinary action shall be taken in accordance with University guidelines contained in University ~~Rules-Regulations 6C10-FGCU-PR5.016 and 6C10-FGCU-PR5.022, F.A.C.~~, 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, ~~or~~ applicant, or vendor for initiating a complaint shall be treated as a separate allegation of discrimination.

(h) The procedures contained in this ~~rule~~ Regulation apply also to vendors and contractors, except that the Director, ~~Equal Opportunity Programs of Institutional Equity and Compliance~~ shall consult with the ~~contract manager~~ Office of Procurement Services to determine how the investigation will be undertaken. Upon determination ~~that there is probable cause to believe that~~ of any findings that it is more likely than not ~~discrimination~~ 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 ~~rule~~ 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 ~~the University Rule-Regulation 6C10-FGCU-PR5.016 or 6C10-FGCU-PR5.020, F.A.C.~~, 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 ~~rule~~ [regulation](#). Should a grievance be filed pursuant to an alternative [internal](#) remedy and subsequent to the filing of a Complaint under this ~~rule~~ [Regulation](#) but before proceedings under this ~~rule~~ [Regulation](#) have been completed, the filing of any such grievance nonetheless will act as a waiver, and proceedings pursuant to this ~~rule~~ [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, ~~or the filing of a petition for a hearing pursuant to Section 120.57, Florida Statutes,~~ 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 ~~rule~~ [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 ~~Rules~~ [Regulations](#) ~~6C10-FGCU-PR~~5.016 and ~~6C10-FGCU-PR~~5.022, ~~F.A.C.~~, and the terms of any applicable collective bargaining agreement as to employees, and University ~~Rule~~ [Regulation](#) ~~FGCU-PR~~4.002 ~~6C10-4.003, F.A.C.~~, as to students.

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*Action by Florida Gulf Coast University Board of Trustees:*

*Approved: January 15, 2008*

*Law Implemented:*

*760.10 Florida Statutes*

*History of Rule:*

*New 03-18-03*

*History of Regulation:*

*New 01-15-08*

*Effective Date of Regulation:*

*January 15, 2008*