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|  | Florida Gulf Coast University Policy Manual | Policy: 1.006 Effective Date: 02/12/2010 |
| | Title: Non-Discrimination and Anti-Harassment Complaint Policy and Procedure | Responsible Executive: President Responsible Office: 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.

Note: This policy is not applicable to student respondents. Allegations made against a student will be addressed under the Student Code of Conduct.

APPLICABILITY AND/OR ACCOUNTABILITY

Applicable to all University employees and contractors committing violations of this policy affecting other members of the University community.

DEFINITION OF TERMS

1. Complainant(s). A Complainant is a person or persons alleging violations of FGCU-PR1.003.
2. Respondent(s). A Respondent is a person or persons whose conduct is the subject of a complaint under FGCU-PR1.003.

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3. Decision Maker. The President, Vice President or President's Direct Report or their designees in the Respondent's chain of command.
4. OIEC. Office of Institutional Equity and Compliance.
5. OIEC Director. Director responsible for the administration of this policy and its corresponding regulation.
6. Vendor or Contractor. Individual or business entity in a contractual relationship with the University, but not an employee.
7. Informal Complaint Procedure. Process wherein the OIEC Director utilizes alternative dispute resolution techniques to facilitate a resolution of a complaint.
8. Formal Complaint Procedure. Process wherein the OIEC Director administers the investigation of the Complaint.
9. File and Filed. The document has been received and acknowledged by the OIEC.
10. Days. Calendar days. (University holidays (i.e., days when the university is closed) are excluded from the computation of time. If the time ends on a Saturday or Sunday, the deadline is extended to the following University business day.)
11. University. Florida Gulf Coast University (FGCU).
12. Investigator. OIEC Director or trained person designated by the OIEC Director, who conducts a fact-finding inquiry (investigation) and writes an Investigative Report.
13. 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 dates, list of documents reviewed, and findings to include whether or not a violation of a University Regulation took place and, if at issue, whether the complaint was frivolous, knowingly false, malicious or retaliatory. Certain information may be redacted in accordance with applicable law.
14. Retaliation. When an officer, agent, employee, contractor or vendor takes an adverse action against an individual for his or her participation in protected activity.

15. **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.
16. **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.

PROCEDURES

1. Filing a Complaint.

An individual alleging discrimination or harassment may file a complaint with the OIEC by informing the OIEC Director in writing of the alleged wrongdoing. 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 will mail any necessary 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 may 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.

a. Informal Complaint Procedure.

A Complainant may seek Alternative Dispute Resolution before pursuing the Formal Complaint Procedure through the OIEC by making a written request for informal resolution to the complaint. If the Complainant has utilized the Informal Complaint Procedure but the matter is not informally resolved within thirty (30) days of its

submission to OIEC, 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 without resolution to notify the OIEC Director of his or her decision to move forward with the Formal Complaint Procedure. Failure to communicate with the OIEC Director may result in no further action and the closure of the Informal Resolution request.

b. Formal Complaint Procedure.

- i. 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 Complainant completes the Complaint Form, submits it to the OIEC Director and the OIEC Director initiates an investigation.
- ii. The Formal Complaint Procedure cannot be utilized when a Complainant fails to make allegations which constitutes a violation of FGCU PR1.003. When a Complainant fails to allege sufficient facts to indicate a violation has occurred, such Complaint shall be dismissed in writing by the OIEC Director and the dismissal shall be mailed to the Complainant via a form of verifiable delivery, or hand delivered (with proof of delivery.) A dismissal for failure to state a claim is the final University decision.

2. Investigation.

- a. The OIEC Director investigates, or assigns a trained Investigator to initiate an investigation. An Investigator has ninety (90) days to complete the investigation unless an extension is granted by the OIEC Director.
- b. 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 Investigator. All members of the University community are expected to cooperate with an investigation. Failure to do so could result in disciplinary action.

- c. A respondent interviewed by an Investigator as part of an investigation will be permitted to be accompanied by legal counsel, a union representative or a support person, if so desired.
- d. An investigation is considered complete when the Decision Maker provides written notice to the respondent as to whether or not a disciplinary action will be imposed.

3. Investigative Report.

- a. When the Investigative Report is completed, a copy will be provided to the Decision Maker for a determination as to whether or not a disciplinary action will be imposed.
- b. When the Decision Maker has made a determination as to the matter of a disciplinary action, the report will be released to the Respondent via certified mail, return receipt requested, hand-delivery (with proof of delivery), or any other verifiable methods of delivery.
- c. Upon completion of the investigation, the Complainant will receive a copy of the Investigative Report as the University's response to their filed complaint.

4. Decision.

- a. The Decision Maker for a Respondent not covered by a collective bargaining agreement will make a determination as to whether or not a disciplinary action will be imposed within fourteen (14) days of the delivery of the Investigative Report.

Any discipline to be imposed shall be determined in accordance with University Regulation FGCU-PR5.016 and related policies. The Decision may also be submitted to the OIEC Director for distribution to the Respondent via certified mail, return receipt requested, hand delivery (with documentation of delivery) or any other verifiable form of delivery.

- b. The Decision Maker for a Respondent covered by a collective bargaining agreement will, upon receipt of the Investigative Report, follow the appropriate procedure outlined in the Collective Bargaining Agreement

5. Appeal.

- a. For Respondents not covered by a collective bargaining agreement, decisions may be appealed to the Decision Maker, with a copy to the OIEC Director, within ten (10) days of the delivery of the Decision based on either substantive (i.e., 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) or procedural grounds.
- b. Persons covered by a collective bargaining agreement may appeal a disciplinary action pursuant to the provisions provided therein.
- c. If an appeal is not received by the Decision Maker within ten (10) days of the Respondent's delivery of the Decision, that Decision will become final.

6. Final Decision.

- a. For appeals filed by persons not covered by a collective bargaining agreement, the Decision Maker will respond to the appeal within seven (7) days of receipt of the appeal and any relevant documents. The response may also be submitted to the OIEC Director for distribution to the Respondent via certified mail return receipt requested, hand delivery (with proof of delivery) or any other form of appropriate verifiable delivery and shall constitute the final University action.
- b. For those decisions covered by a collective bargaining agreement, such decisions become final pursuant to the applicable terms of that agreement.

7. 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.

8. 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.

9. Custodian of Records.

The Director of the OIEC is the custodian of filed records associated with the investigation of complaints under FGCU-PR1.003.

10. Miscellaneous Provision

The processes outlined in Paragraphs 2 through 8 may also be utilized to address other types of investigations, such as those involving conflicts of interest. If this process is used for an investigation involving something other than discrimination and harassment, the processes may be modified, to some extent, on a case by case basis.

**RELATED
INFORMATION**

Non-Discrimination and Anti-Harassment Regulation FGCU-PR1.003,
Consensual Relationship Policy #1.007

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HISTORY New: 1/20/09, Amended 02/12/10

APPENDICES None

APPROVED



President

February 12, 2010

Date

EFFECTIVE 02/12/10