

**FLORIDA ATLANTIC UNIVERSITY
NOTICE OF PROPOSED REGULATION AMENDMENT**

Date: June 1, 2015

REGULATION TITLE AND NUMBER: Anti-Discrimination/Anti-Harassment (5.010).

SUMMARY: The Office for Equity, Inclusion and Compliance under the Division of Financial Affairs seeks to amend FAU Regulation 5.010, Anti-Discrimination/Anti-Harassment. The Anti-Discrimination/Anti-Harassment Regulation is a critical component of the University's efforts to ensure our campus is inclusive and free from prohibited discrimination. This regulation outlines the process by which the University defines protected groups, and the process for addressing behavior that is inconsistent with the high standards we expect from our campus community. These revisions are intended to further clarify Regulation 5.010. The proposed changes are summarized as follows:

1. Systematic reorganization of the Regulation in order to ensure clarity and consistency in the application of FAU's anti-discrimination policies.
2. Clarification of definitions applicable to prohibited conduct and investigations by the Office of Equity, Inclusion and Compliance.
3. The definition of "sexual harassment" was revised to include explanations of hostile environment and quid pro quo harassment.
4. The process for conducting investigations and applicable timelines were clarified, specifically to account for new requirements under Title IX.
5. The grounds and processes for requesting reconsideration of a Complaint were clarified.
6. The "Equal Opportunity Programs" office was changed to the "Office of Equity, Inclusion and Compliance" to reflect the recent re-designation.

The Office of Equity, Inclusion and Compliance spent several weeks revising this regulation.

FULL TEXT OF THE AMENDED REGULATION: The full text of the proposed amended regulation is attached below to this notice. The full text of the existing regulation is posted on FAU's website at www.fau.edu/regulations. In addition, the full text of the proposed amended regulation and current regulation are available upon request to the Office of the General Counsel, which can be contacted at (561) 297-3007 or GeneralCounsel@fau.edu.

AUTHORITY TO AMEND THE REGULATION: Article IX of the Florida Constitution and the Board of Governors Regulation Development Procedure dated July 21, 2005.

UNIVERSITY OFFICIAL INITIATING THE REGULATION AMENDMENT: Mr. Ande Durojaiye, Executive Director, Office of Equity, Inclusion and Compliance.

COMMENTS CONCERNING THE PROPOSED REGULATION AMENDMENT SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. In response, the University may solicit additional written comments, schedule a public hearing, withdraw or modify the proposed regulation amendment in whole or in part after notice, or proceed with adopting the regulation amendment. The comments must identify the regulation(s) on which you are commenting.

THE PERSON TO BE CONTACTED REGARDING THE REGULATION AMENDMENT IS: Mr. Daniel Jones, Office of the General Counsel, 777 Glades Road, Boca Raton, Florida, 33431, (561) 297-3007 (phone), (561) 297-2787 (fax), GeneralCounsel@fau.edu.

PROPOSED

Florida Atlantic University

Regulation 5.010 Anti-Discrimination and --- Anti-Harassment Regulation

I. 1. POLICY

A. ~~(a)~~ Florida Atlantic University ~~is committed to ensuring that each member of the~~ (“FAU” or University ~~community~~) shall ~~be permitted to work or study in~~ comply with applicable federal, state and local discrimination/harassment laws to provide an educational, employment, and business environment free ~~from any form of unlawful~~ all forms of discrimination or harassment ~~that is~~. Unlawful discrimination or harassment based ~~on~~ upon an individual’s race, color, religion, ~~age, disability,~~ sex, national origin, ~~marital status~~ age, disability, veteran status, marital status, sexual orientation, ~~or any legally~~ gender identity or expression, or other protected class or basis (each a “protected class”). ~~The status is prohibited.~~ This policy applies to all FAU students, applicants for employment, faculty, and staff (hereinafter collectively referred to as “University ~~recognizes its obligation to work towards a community in which diversity is valued and opportunity is equalized.~~ This Community Members”), as well as third parties providing services to FAU. This Regulation 5.010 (“Regulation”) establishes procedures for a ~~student, applicant, employee or a member of the~~ University ~~community~~ Community Member to file a complaint of alleged discrimination ~~or~~, harassment or retaliation.

Discriminatory conduct in the form of sexual misconduct/sexual harassment is also prohibited, and procedures for processing and investigating claims of sexual misconduct/sexual harassment by a University employee will be processed in accordance with current University policy on prohibited sexual conduct.

B. The Office of Equity, Inclusion and Compliance (“EIC”) shall administer this Regulation. Inquiries regarding the procedures contained in this Regulation should be forwarded to EIC.

C. It shall be a violation of this Regulation for any ~~officer, employee, agent, or student~~ University Community Member to discriminate against or harass; any other University Community Member on the basis of a protected status as defined by law or University regulations and policy

~~(b)~~ D. Retaliation in this Regulation, any other officer, employee, agent, student, or applicant. Discrimination and harassment are forms of conduct that shall result in disciplinary otherwise taking adverse employment or other educational action as

~~provided by the Regulations and Policies of the University.~~ against a University Community Member because he/she in good faith reported discrimination or harassment, or who assisted or participated in any investigation, regarding a complaint, is prohibited.

~~(e)~~E. Activities covered under this Regulation include, but are not limited to, all educational, athletic, cultural and social activities occurring on ~~a~~ campus ~~of~~ or sponsored by ~~Florida Atlantic University~~ FAU, housing supplied by the University, and employment practices between the University and its employees, ~~including Support Personnel (“SP”) employees.~~

~~The Office of Equal Opportunity Programs (“EOP”) shall administer the policies and procedures outlined in this Regulation. EOP shall answer inquiries regarding the procedures contained in this Regulation and may provide informal advice regarding issues of discrimination.~~

~~(d)~~A.

~~(e)~~F. ~~Retaliation, or otherwise taking adverse employment or educational action, against a member of the University community because he/she in good faith reported discrimination or harassment, or participated in an investigation or review regarding a complaint, is strictly prohibited. Those found to have violated this prohibition against retaliation~~ any term, condition or provision of this Regulation will be subject to disciplinary action, up to and including termination or separation.

~~(f)~~G. Any ~~University~~ supervisory 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 conduct to the ~~EOP Director. Those found to have failed to report in a timely manner will be subject to disciplinary action up to and including termination.~~ EIC Director.

~~(g)~~H. Every University employee has a duty to cooperate fully and unconditionally in a ~~harassment~~ University investigation. This duty includes, among other things, speaking truthfully with the ~~EOPEIC~~ EIC investigator or his/her designee and voluntarily providing all documentation which ~~relate~~ relates to the claim being investigated. ~~The failure and/or refusal of any employee to cooperate in an investigation may result in disciplinary action up to and including termination.~~

~~(h)~~ — ~~The prohibited conduct contained in this Regulation shall apply to vendors and contractors of the University. The EOP Director shall consult with the vendor or contract manager to determine how any investigation will be undertaken. The University shall take action against the vendor or contractor, when warranted, in accordance with the terms of the governing contract or agreement.~~

II. ~~2.~~ — **DEFINITIONS/EXAMPLES**

(a) For the purpose of this Regulation, “unlawful discrimination” is defined as ~~unlawfully treating any member of the University community differently than similarly situated others based~~ a difference in treatment on the basis of a person’s status in a protected class ~~herein~~. Harassment is a form of unlawful discrimination ~~based on a protected class that may also be covered~~ under Title VII of the Civil Rights Act of 1964, (“Title VII”), the Florida Civil Rights Act and other applicable local, state or federal laws.

A. ~~(b) Additionally,~~ “Prohibited discrimination” includes unlawful discrimination and that which is based on other protected classes defined by University regulations or policy. A violation of this Regulation may occur regardless of any finding of “unlawful” conduct, as the standards for finding a violation of this policy are independent.

B. Discrimination on the basis of sex in education programs and activities receiving federal financial funding as set forth in Title IX of the Education Amendments of 1972, as amended (“Title IX”), is included in this Regulation’s definition of prohibited discrimination. Discrimination on the basis of sex includes sexual violence, sexual battery, sexual harassment, domestic battery, dating violence, stalking and bullying (as defined below). Title IX prohibits sex discrimination in both the educational and employment settings. Sex discrimination is governed by the current University policy on prohibited sexual conduct.

C. ~~(e)~~ For ~~the~~ purposes of this Regulation, examples of prohibited conduct that fall into the definition of discrimination include, but are not limited to:

~~1. Disparity of treatment in recruitment, hiring, training, promotion, transfer, reassignment, termination, salary and other economic benefits, and all other terms and conditions of employment on the basis of membership in a protected class herein.~~

1. 2. Disparity of **Disparity of treatment**
Disparate treatment in educational programs and related support services on the basis of membership occurs when an individual suffers less favorable treatment than others because of the protected status.

2. **Disparate Impact**
Disparate impact occurs when an employment policy, although neutral on its face, adversely impacts persons in a protected ~~class herein~~status. Disparate treatment on the basis of a class not protected by federal, state or local law shall not constitute discrimination or harassment if such disparate treatment is required by federal or state law.

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

~~protected class herein, and not based on a bona fide requirement or distinction.~~

- ~~4. — Retaliation for asserting protected anti-discrimination rights, filing complaints or protesting practices which are prohibited under this Regulation.~~

3. Retaliation

Retaliation is adverse action taken against a person for engaging in protected activity. Examples of adverse action include: firing, denial of a promotion, lowering a grade, unjustified negative performance evaluations and reports, increased supervision or scrutiny, sudden enforcement of previously unenforced policies, exclusion from activities or privileges open to others, making critical comments about the protected activity to others, or any other action that would deter a reasonable person in the same circumstances from filing a complaint or engaging in protected activity.

~~(d)~~ D. For the purposes of this Regulation, examples of prohibited conduct that fall into the definition of harassment include, but are not limited to:

~~1.a.~~ 1.a. Verbal and/or physical conduct based on a protected characteristic that: (A) has the purpose or effect of creating an objectively intimidating, hostile or offensive work or educational environment; (B) has the purpose or effect of unreasonably interfering with an individual's work or learning performance; or (C) otherwise unreasonably adversely affects an individual's employment or educational opportunities.

~~2.b.~~ 2.b. Examples of the foregoing verbal and/or physical conduct that may constitute harassment could include making ~~“jokes”~~ comments (“humorous” or “non-humorous”) based on a protected characteristic, objectionable epithets/slurs, threatened or actual physical harm or abuse, the display of hostile symbols/objects, and other intimidating or insulting conduct directed against the individual because of their protected characteristic or membership.

~~(e)~~ E. Sexual harassment, which includes acts of sexual violence and may include gender-based harassment, is a form of unlawful discrimination on the basis of sex and is prohibited by Title VII, Title IX, and other applicable laws. Sexual harassment can take the form of hostile environment harassment, or “quid pro quo” harassment.

- ~~1. — Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature when:~~

~~a. Submission to such conduct or request is made either~~ **Hostile Environment**

Hostile environment harassment exists when harassment has the purpose or effect of unreasonably interfering with a person's work or educational performance or participation in a university program or activity, or is sufficiently severe or pervasive to create an intimidating, hostile, or offensive work or educational environment.

Quid Pro Quo

Quid pro quo harassment is established when submission or rejection of conduct is used, explicitly or implicitly ~~a term or condition of an individual's employment;~~

~~b. Submission to such conduct or request is made either explicitly or implicitly a term or condition of academic achievement;~~

~~c. Submission to or rejection of such conduct or request by an individual is used, as the basis for an employment or academic decision~~ decisions ~~affecting such individual;~~ an individual's education, employment, or

~~d. Such conduct~~ participation in a University program ~~or request unreasonably interferes with an individual's work or academic performance or creates an objectively intimidating, hostile, or offensive environment for working or learning.~~

~~2. Examples of unwelcome conduct of a sexual nature that may constitute sexual harassment under this regulation include, but are not limited to:~~

~~a. Displaying or telling sexually oriented jokes, statements, photographs, drawings, computer images, web sites, videos, slides, graphics, calendars, cartoons, e-mails or other communications.~~

~~b. Making sexually explicit or suggestive gestures or sounds.~~

~~c. Making actual or implied promises of an employment or educational opportunity or benefit in exchange for sexual activity.~~

~~d. Making actual or implied threats to impede or interfere with employment or educational opportunities or benefits for failing to agree to or engage in sexual activity.~~

~~e. Inappropriate and unwelcome sexual attention or touching, including but not limited to leering, patting, fondling, pinching, sexually based stalking and/or bullying, and attempted or actual kissing.~~

~~f. Requesting or coercing sexual intercourse or sexual favors, or attempting to or actually engaging in a sexual assault.~~

~~g. Continuing to ask someone for a date after repeatedly being told "no."~~

~~h. Continuing any of the conduct listed in the above examples after being told or being otherwise made aware that the conduct is unwelcome.~~

~~e) Sexual Violence is a form of sexual harassment and is prohibited under Title IX. Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to an intellectual or other disability or the victim's use of or exposure to drugs or alcohol. Acts falling into the category of sexual violence include, but are not limited to, rape, sexual assault, sexual battery, and sexual coercion.~~

4.F. Gender-based harassment may be a form of sexual harassment prohibited under Title IX or other state or local laws. Gender-based harassment includes acts of verbal, nonverbal or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

~~(f)G.~~ The definition of sexual harassment excludes the use of sexual material in a classroom setting for academic purposes.

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

~~(h) Disparate treatment on the basis of a class not protected by federal or state law shall not constitute discrimination or harassment if such disparate treatment is required by federal or state law.~~

~~3. PROCEDURE FOR~~ III. **REPORTING VIOLATIONS**

A. ~~(a) The Office of Equal Opportunity Programs~~ EIC is responsible for administering the complaint and investigation process set forth in this Regulation.

1. In cases where the ~~potential complainant~~ individual making an allegation that they have been subjected to conduct that violates this regulation ("Complainant") chooses not to file a formal complaint, ~~EOPEIC~~ EIC will take action ~~to inform~~ it deems necessary, including but not limited to informing the alleged offender ("Respondent") of the concerns, and suggesting that the individual monitor and modify (if necessary) his/her behavior. All complaints, formal or informal, must be reported to ~~EOP. The EOP contact information is provided below:~~ EIC.

2. ~~Director Equal Opportunity Programs~~
The EIC contact information is provided below:
Equity, Inclusion and Compliance
Florida Atlantic University
Administration Building

777 Glades Road, Room 265
Boca Raton, Florida 33431-0991
<http://www.fau.edu/eopEIC/>
(561) 297-3004

-B. In all cases in which a violation of Title IX is alleged against a University Community Member, the University shall provide notice to the Complainant of his/her rights as soon as possible after it receives notification of the alleged violation. For complaints involving allegations of student misconduct by a student, the *Student Code of Conduct*, Regulation 4.007, will govern.

1. The ~~EOPEIC~~ Executive Director is the Title IX Coordinator for the University.

2. ~~(b)~~—Individuals with questions or concerns about Title IX may contact the University’s Title IX Coordinator and may file a complaint directly with that office consistent with the procedures outlined herein.

C. Any University employee who believes he/she has been harassed ~~or~~, discriminated ~~or retaliated~~ against in violation of this Regulation ~~must~~should report the facts and circumstances thereof to the ~~EOPEIC~~ Director, ~~the University~~or in the alternative, may report to the appropriate Vice President or Provost, College Dean, or the Director of Human Resources, or to his/her College Dean or Vice President, who in turn must notify the ~~EOPEIC~~ Director.

D. ~~(e)~~—Any student who believes he/she has been harassed or discriminated against in violation of this Regulation ~~must~~should report the facts and circumstances thereof to the ~~EOPEIC~~ Director, ~~or in the alternative, may report to a University Ombudsman, the University Vice President or Provost, the Dean of Students, the Dean of his/her College,~~ or to his/her Department Head/~~Director or College Dean,~~ who in turn must notify the ~~EOPEIC~~ Director.

E. ~~(d)~~—Reports or allegations of an alleged violation of this Regulation will be processed upon the filing of a written complaint with ~~EOPEIC~~. The Director of ~~EOPEIC~~ may process an alleged violation without a written complaint if deemed necessary by the Director and if enough information is available to conduct a responsible investigation.

F. ~~(e)~~—A complaint must be filed with ~~EOPEIC~~ within one-hundred eighty (180) calendar days of the alleged act(s) of discrimination/harassment. ~~The Director of EOPEIC~~ may process an alleged violation outside of this time limitation if deemed necessary by the Executive Director. The filing of a complaint under this Regulation is independent and does not preclude the ~~complainant~~Complainant from also filing a complaint with federal, state or local enforcement agencies. The filing of a complaint with ~~EOPEIC~~ does not constitute a filing with, or have any effect on

the filing time limitations of those external agencies. All ~~complainants~~ Complainants are urged to contact these external agencies directly to learn the filing deadlines and procedures for each agency. Contact information for these agencies is available from the EOPEIC office.

G. ~~(f)~~ — All complaints shall contain the name of the ~~complainant~~ 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). Any portion of a complaint file that is exempt from public disclosure under the Florida Public Records law shall remain confidential to the extent permitted by law.

IV. ~~4.~~ — **PROCEDURE FOR INVESTIGATION OF COMPLAINTS**

A. ~~(a)~~ — EOPEIC shall investigate all complaints that contain enough information to allege prohibited discrimination or harassment. This investigation ~~must~~ will include, but shall not be limited to, interviewing the alleged offender and the complainant. Each party shall have an equal opportunity to present relevant witnesses and other evidence. The investigation may include the interview of 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 final report shall be prepared which includes a summary of the complaint, a description of the investigation, whether a violation of University Regulation was found, based on a preponderance of the evidence, and recommendations for disposition.

B. ~~(b)~~ — ~~The Office of Equal Opportunity Programs~~ EIC may attempt conciliation before or during the course of an investigation of a complaint. If conciliation is not achieved, then EOPEIC shall continue to investigate the complaint, and shall issue a final report.

C. ~~(c)~~ — EOPEIC shall attempt to conclude its investigation on non-Title IX matters and issue its final report within seventy-five (75) calendar days of the filing of the complaint. ~~If additional time is required~~ However, the ~~complainant and alleged offender will~~ investigation process may be ~~notified in writing no less than ten (10) days prior to the seventy-five (75) day deadline of the reason(s) stayed for the delay and the expected date of completion~~ good cause as determined by the Executive Director.

D. ~~(d)~~ — The final report by EOPEIC shall be submitted to the appropriate Vice President ~~or Associate~~, Provost or designee if an employee is involved, and/or to the Dean of Students or designee if a student is involved. The ~~alleged offender~~ Respondent and ~~complainant~~ Complainant will each be notified in writing of the outcome of the complaint and any appeal. Corrective or disciplinary action up to and including dismissal or expulsion will be considered and implemented, if warranted, by the Vice President, Provost or Dean of Students in consultation with

the EOPEIC Director. Corrective or disciplinary action ~~will~~may also be considered and implemented if EOPEIC determined the complaint was unfounded and made maliciously or recklessly. All disciplinary action shall be subject to applicable University Regulations (including but not limited to University Regulation 5.009 (Grievance Procedure) and University Regulation 4.007 (Student Code of Conduct)), policies and applicable collective bargaining agreements.

~~VI. 5. PROCEDURE FOR RECONSIDERATION~~

~~(a)~~E. Any ~~party~~Complainant or Respondent may submit a ~~written~~ response or statement to be attached to the EOPEIC's final report and which will be maintained in the same file. ~~EIC file; any response or statement must be submitted to the EIC Director within ten (10) calendar days of the date the final report is published.~~

VI. RECONSIDERATION

A. ~~Either the complainant or alleged offender~~Any Complainant or Respondent may request reconsideration of ~~the~~a finding in the EOP final report. ~~The party must submit this EIC Report by filing a written request in writing to the EOP Director within ten (10) days of receipt of~~with the EOPEIC Executive Director.

~~(b)~~1. The EIC Executive Director must receive the written request within ten (10) calendar days of the date the final report is published.

2. The request must include a basis for the reconsideration ~~must be in writing and shall specify the basis of the request. Typically,~~

~~(c)~~3. The EIC Executive Director will consider any request for reconsideration, but reconsideration will only be granted ~~only~~ in cases where new evidence is provided or relevant evidence was not previously considered or reviewed ~~and/or new evidence is available.~~

4. The EIC Executive Director shall notify the requesting party, in writing, of the appeal decision within twenty (20) calendar days.

Specific Authority: Article IX of the Florida Constitution; Florida Board of Governors Regulation 1.001; Formerly 6C5-5.012, Amended 11-11-87, 7-5-99, 11-9-05, 6-28-06, 11-16-11, 07-01-15.