

Tuesday, May 15, 2018

SUBJECT: AMENDMENTS TO REGULATION 7.006 – TRESPASS AND LOITERING

PROPOSED BOARD ACTION

Approve amendments to FAU Regulation 7.006, Trespass and Loitering.

BACKGROUND INFORMATION

This regulation assists the University administration with the maintenance of the health, safety and welfare of University campuses by providing a standard process for removing an individual who is violating or has violated the law or any University regulation or policy, who is not using University facilities in an appropriate manner, disrupting University operations, making threats, or who is creating an atmosphere not conducive to the use of University facilities by others. The regulation also provides a person trespassed with the opportunity to request an appeal or reconsideration. The proposed revisions modify the definition of “common areas” on the University campus to include “outdoor areas to which access is not restricted.” This modification is being made in accordance with the new Campus Free Expression Act.

IMPLEMENTATION PLAN/DATE

The amendments will become effective immediately upon Board of Trustees approval.

FISCAL IMPLICATIONS

N/A

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| Supporting Documentation: | Text of proposed amended Regulation 7.006 |
| Presented by: | David Kian, Vice President & General Counsel |
| Phone: | 561-297-3007 |

Florida Atlantic University

Regulation 7.006 Trespass and Loitering

(1) Florida Atlantic University is a member of the State University System. The President, as the chief executive officer of the University, has the responsibility for the operation and administration of the University. The President, or the President's designated authorized personnel, may issue trespass warnings as set forth below.

(2) Definitions.

- (a) University students. Those persons who are currently enrolled at the University or have been admitted, registered for upcoming classes or completed at least one credit at the University during the current academic year.
- (b) University persons. Those persons who are faculty, staff or other employees, volunteers or agents of the University, and persons on University property fulfilling contractual obligations or authorized members of registered University organizations.
- (c) Non-University persons. All other persons who are not classified above as University students or University persons including, but not limited to, visitors, invited guests, students of other institutions and employees of other entities, and persons who have applied but have not been admitted to the University.
- (d) President's designated authorized personnel. Any University Police officer and all Vice Presidents, Provosts, and Deans of all levels.
- (e) Trespass warning. A warning that a person is not authorized to be on University property, or a portion thereof, and may be subject to arrest, criminal sanctions and civil penalties without further warning if he or she refuses to leave or returns at any time in the future. Trespass warnings are permanent and remain in full force and effect unless revoked by the applicable appeal or reconsideration process herein.
- (f) Common areas. University areas generally open to non-University persons including, but not limited to, the library, food/vending areas, ~~and~~ bookstore/retail areas, and outdoor areas to which access is not restricted.

(3) Non-University persons are allowed to use the common areas of the University during normal business hours and are allowed to attend lectures, plays and other activities on the University campus in the designated buildings or areas when such attendance is permitted by the sponsoring organization. Non-University persons are permitted in non-

common areas of the University, including offices and administrative areas only when invited or on authorized University business. Non-University persons are not allowed on University property except as authorized by this regulation.

(4) University students may access all common areas of the University and other University property open and available to students for authorized University business. Only University students registered for a class may be in attendance in instructional areas unless permission of the instructor is given.

(5) University persons may access all common areas of the University and other campus areas open and available to students and other University personnel for authorized University business.

(6) Athletic, intra-mural and recreational facilities are for the use of University students, University persons and their authorized invited guests. Identification may be requested for the use of these facilities.

(7) No person is permitted in a residence hall except authorized University persons, resident University students, and resident University students' guests according to University Housing visitation and guest policies. Identification may be requested for the use of these facilities.

(8) Any person on University property who, in the sole discretion of the President or his/her designated authorized personnel, is violating or has violated the law, is violating or has violated any University regulation or policy, including, as applicable, the Student Code of Conduct and Employee Standards and Disciplinary Procedures, prowling, loitering, not using University facilities in an appropriate manner, obstructing traffic or impeding entry or exit, damaging property, creating a hazardous or unsafe condition, disrupting University operations, making threats toward any person or University property whether implied, express or in jest, or who are creating an atmosphere not conducive to the use of such facilities by others, may be directed to leave the property and/or issued a trespass warning by the President or his/her designated authorized personnel.

(9) Appeals. A person issued a trespass warning may appeal the warning pursuant to the applicable procedure below. All appeals must be received in writing by the appropriate individual designated below within 10 calendar days of the date of issuance of the trespass warning.

(a) University students. University students may appeal a trespass warning in accordance with Regulation 4.007, the Student Code of Conduct. A written request for appeal shall be addressed to the Dean of Students. If not already provided, the Dean of Students will issue a Notice of Charges as set forth Regulation 4.007.

(b) University persons. University persons may appeal a trespass warning in

accordance with the General Grievance Procedure in Regulation 5.009(2). A written request for appeal shall be addressed to the Director of Human Resources for processing.

- (c) Non-University persons. Non-University persons may appeal a trespass warning to the Vice President for Administrative Affairs. The appellant should submit a detailed written statement of the bases for the appeal, along with any other documents, photos, data or other items to be considered. Statements of witnesses or other individuals may also be submitted. After receiving the written appeal, the Vice President for Administrative Affairs may: 1) request additional information or documentation for any involved party including the issuing authority for further consideration; 2) schedule a meeting where all involved parties may attend to present information and documents in person; or 3) uphold or reverse the issuance of the notice or trespass warning based on the information received. The trespass warning shall only be invalidated or modified by the reviewing official if, in his/her sole discretion, the requesting individual has shown, by clear and convincing evidence, that the underlying reason for the trespass warning did not occur or does not warrant the trespass warning as issued. The decision of the Vice President for Administrative Affairs is the final decision of the University and may not be appealed.

(10) Reconsideration. Unless revoked by the appropriate appeal process, the trespass warning is permanent and shall remain in full force and effect and may only be lifted or revoked after reconsideration by the President, the Vice President for Administrative Affairs, the Senior Vice President for Student Affairs, or their respective designees. A request for reconsideration, revision, and/or revocation may be made in writing no more than once every six months. University students shall direct such requests to the Senior Vice President for Student Affairs, and all other persons shall direct such requests to the Vice President for Administrative Affairs. Reconsideration shall only be granted by the reviewing official if, in his/her sole discretion, the requesting individual has shown, by clear and convincing evidence, that the underlying reason for the trespass warning is no longer a concern and no other reasons exist to keep the trespass warning in force. The passage of time, in and of itself, shall not serve as a basis for revoking the trespass warning.

(11) Nothing in the foregoing shall preclude or be interpreted to preclude or otherwise diminish the exercise of the statutory authority of University Police officers to arrest in accordance with the laws of this state any person for violation of state law or applicable county or city ordinances when such violations occur on any property or facilities which are under the jurisdiction of the University Police.

(12) It is not the intent of the University nor does the University create any additional rights by the implementation of this Regulation or any changes thereto that are not otherwise available by law.

Specific Authority: Article IX of the Florida Constitution, Florida Board of Governors Resolution dated January 7, 2003, 1001.706, 1001.74, 1012.97 FS.; Law Implemented 1001.74, 810.08, 810.09, 856.021, 856.031, 1012.97 FS. History—New 9-14-81, Formerly 6C5-7.08, Amended 11-11-87, Formerly 6C5-7.008, Amended 1-30-08, 5-26-10, Amended 9-11-17, Amended 5-15-18.