



Item: PC: A-5

PERSONNEL & COMPENSATION COMMITTEE

Monday, June 15, 2015

SUBJECT: REQUEST TO AMEND REGULATION 5.010, ANTI-DISCRIMINATION AND ANTI-HARASSMENT

PROPOSED COMMITTEE ACTION

Recommend BOT approval of amendments to FAU Regulations 5.010, Anti-Discrimination and Anti-Harassment.

BACKGROUND INFORMATION

The Office for Equity, Inclusion and Compliance under the Division of Financial Affairs seeks to amend FAU Regulation 5.010, Anti-Discrimination and Anti-Harassment. This 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.

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 the scope of FAU's anti-discrimination policies and definitions applicable to protected individuals, 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.

IMPLEMENTATION PLAN/DATE

If approved by the Board, the regulation will be amended and effective as of July 1, 2015.

FISCAL IMPLICATIONS

N/A

Supporting Documentation:	Text of proposed amended Regulation 5.010.
Presented by:	David Kian, Vice President & General Counsel
Phone:	561-297-3007

Florida Atlantic University

Regulation 5.010 Anti-Discrimination and Anti-Harassment Regulation

I. POLICY

- A. Florida Atlantic University (“FAU” or University) shall comply with applicable federal, state and local discrimination/harassment laws to provide an educational, employment, and business environment free of all forms of discrimination or harassment. Unlawful discrimination or harassment based upon an individual’s race, color, religion, sex, national origin, age, disability, veteran status, marital status, sexual orientation, gender identity or expression, or other protected status is prohibited. This policy applies to all FAU students, applicants for employment, faculty, and staff (hereinafter collectively referred to as “University Community Members”), as well as third parties providing services to FAU. This Regulation 5.010 (“Regulation”) establishes procedures for a University Community Member to file a complaint of alleged discrimination, 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 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
- D. Retaliation, or otherwise taking adverse employment or educational action, 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. Activities covered under this Regulation include, but are not limited to, all educational, athletic, cultural and social activities occurring on campus or sponsored by FAU, housing supplied by the University, and employment practices between the University and its employees.

- F. Those found to have violated any term, condition or provision of this Regulation will be subject to disciplinary action, up to and including termination or separation.
- G. Any 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 EIC Director.
- H. Every University employee has a duty to cooperate fully and unconditionally in a University investigation. This duty includes, among other things, speaking truthfully with the EIC investigator or his/her designee and voluntarily providing all documentation which relates to the claim being investigated.

II. DEFINITIONS/EXAMPLES

- A. For the purpose of this Regulation, “unlawful discrimination” is defined as a difference in treatment on the basis of a person’s status in a protected class. Harassment is a form of unlawful discrimination 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. “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. For 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**
Disparate treatment 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 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. 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. For the purposes of this Regulation, examples of prohibited conduct that fall into the definition of harassment include, but are not limited to:
- 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.
 - b. Examples of the foregoing verbal and/or physical conduct that may constitute harassment could include making 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. Sexual harassment, which includes acts of sexual violence and may include gender-based harassment, is a form of unlawful discrimination 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.

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, as the basis for decisions affecting an

individual's education, employment, or participation in a University program or activity.

- 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.
- G. The definition of sexual harassment excludes the use of sexual material in a classroom setting for academic purposes.

III. REPORTING VIOLATIONS

- A. EIC is responsible for administering the complaint and investigation process set forth in this Regulation.
 - 1. In cases where the individual making an allegation that they have been subjected to conduct that violates this regulation ("Complainant") chooses not to file a formal complaint, EIC will take action 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 EIC.
 - 2. 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/EIC/>
(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 EIC Executive Director is the Title IX Coordinator for the University.
 - 2. 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, discriminated or retaliated against in violation of this Regulation should report the facts and circumstances thereof to the EIC Director, or in the alternative, may report to the appropriate Vice President or Provost, College Dean, or the Director of Human Resources, who in turn must notify the EIC Director.
- D. Any student who believes he/she has been harassed or discriminated against in violation of this Regulation should report the facts and circumstances thereof to the EIC Director, or in the alternative, may report to a University Vice President or Provost, the Dean of Students, the Dean of his/her College, or to his/her Department Head, who in turn must notify the EIC Director.
- E. Reports or allegations of an alleged violation of this Regulation will be processed upon the filing of a written complaint with EIC. The Director of EIC 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. A complaint must be filed with EIC within one-hundred eighty (180) calendar days of the alleged act(s) of discrimination/harassment. EIC 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 from also filing a complaint with federal, state or local enforcement agencies. The filing of a complaint with EIC does not constitute a filing with, or have any effect on the filing time limitations of those external agencies. All 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 EIC office.
- G. All complaints 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). 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. INVESTIGATION OF COMPLAINTS

- A. EIC shall investigate all complaints that contain enough information to allege prohibited discrimination or harassment. This investigation 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. EIC may attempt conciliation before or during the course of an investigation of a complaint. If conciliation is not achieved, then EIC shall continue to investigate the complaint, and shall issue a final report.
- C. EIC 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. However, the investigation process may be stayed for good cause as determined by the Executive Director.
- D. The final report by EIC shall be submitted to the appropriate Vice President, Provost or designee if an employee is involved, and/or to the Dean of Students or designee if a student is involved. The Respondent and 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 EIC Director. Corrective or disciplinary action may also be considered and implemented if EIC 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.
- E. Any Complainant or Respondent may submit a response or statement to be attached to the EIC's final report and which will be maintained in the 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. Any Complainant or Respondent may request reconsideration of a finding in the EIC Report by filing a written request with the EIC Executive Director.
 - 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.
 - 3. The EIC Executive Director will consider any request for reconsideration, but reconsideration will only be granted in cases where new evidence is provided or relevant evidence was not previously considered or reviewed.

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.