



Item: III. b.

Wednesday, August 12, 2020

**SUBJECT: REQUEST FOR APPROVAL OF AMENDMENTS TO REGULATION 5.010,
ANTI-DISCRIMINATION AND ANTI-HARASSMENT**

PROPOSED BOARD ACTION

Approve amendments to FAU Regulation 5.010, Anti-Discrimination and Anti-Harassment.

BACKGROUND INFORMATION

The Anti-Discrimination/Anti-Harassment Regulation is a critical component of the University's efforts to maintain an inclusive campus that is 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 comply with the new Title IX Regulations issued by the Department of Education on May 6, 2020, which become effective on August 14, 2020. The proposed changes are summarized as follows:

1. Adds a statement of values that includes the University's intent to provide a prompt, fair and impartial process for investigating and addressing allegations of discrimination.
2. Includes the requirement that allegations be investigated and addressed promptly and equitably in accordance with the processes detailed in University Policy 1.15 (Prohibited Discrimination and Harassment) and Regulation 4.007 (Student Code of Conduct).
3. Requires that the regulation be implemented in a manner that does not restrict or prohibit speech that is protected by the First Amendment or the principles of academic freedom.
4. States that supervisory employees or other officials with the authority to institute corrective measures on behalf of the University have an absolute and unqualified

duty to promptly report alleged violations of the regulation, and identifies those University officials with authority to institute corrective measures.

5. Removes detailed definitions and procedures from the Regulation, which will be included in University Policy 1.15. This will ensure that processes for investigations of all forms of alleged discrimination or harassment are located in a single University policy document.
6. Re-numbers the regulation to remove it from the Chapter 5, *Personnel*, to Chapter 7, *Miscellaneous Provisions*, and updates the name of the Office of Equity and Inclusion from its previous title, which was the office of Equity, Inclusion and Compliance.

IMPLEMENTATION PLAN/DATE

If approved by the Board, the amended regulation will go into effect August 13, 2020.

FISCAL IMPLICATIONS

N/A

Supporting Documentation:	Text of proposed amended Regulation 5.010.
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Florida Atlantic University

Regulation 7.0085.010

Anti-Discrimination and Anti-Harassment

I. VALUES PURPOSE

Florida Atlantic University (“FAU”) is committed to providing a workplace and educational environment that is free from discrimination and harassment. To facilitate compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational enterprise, FAU has developed internal policies and procedures that provide a prompt, fair, and equitable process for those involved in allegations of discrimination or harassment. FAU values the dignity of all members of its community.

II. PURPOSE

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, military or veteran status, marital status, pregnancy or parental status, sexual orientation, gender identity or expression, or other protected status is prohibited. Discriminatory conduct in the form of sexual misconduct, including sexual harassment, sexual assault, domestic violence, dating violence, and stalking, is also prohibited. Federal laws covered by this Regulation include Title II of the Civil Rights Act of 1964 (“Title II”), Title VI of the Civil Rights Act of 1964 (“Title VI”), Title VII of the Civil Rights Act of 1964 (“Title VII”), and Title IX of the Education Amendments Act of 1972 (“Title IX”), along with all applicable implementing regulations. This Regulation also covers the Florida Civil Rights Act and any other applicable local, state or federal laws.

B. This Regulation 5.010 (“Regulation”) applies to all FAU students, registered student organizations, applicants for employment, faculty, volunteers and staff (hereinafter collectively referred to as “University Community Members”), as well as third parties providing services to FAU. When a potential violation of this regulation is reported, the allegations will be investigated and addressed promptly and equitably in accordance with the processes detailed in University Policy 1.15 (Prohibited Discrimination and Harassment) and University Regulation 4.007 (Student Code of Conduct). ~~This 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 Community Member will be processed in conjunction with FAU Regulation 4.007 (Student Code of Conduct) and/or FAU Policy~~

~~1.15 (Prohibited Sexual Conduct). The Executive Director of the Office of Equity, Inclusion, and Compliance is the Title IX Coordinator for the University.~~

~~B.C.~~ The Office of Equity ~~and~~ ~~Inclusion and Compliance~~ (“~~OEIEIC~~”) shall administer this Regulation. ~~The Executive Director of OEI is the University’s Title IX Coordinator.~~ Inquiries regarding the procedures contained in this Regulation should be forwarded to ~~OEIEIC~~.

~~C.D.~~ ~~It shall be a violation of this Regulation for any University Community Member to deny, deprive, or limit the educational or employment access, benefits, or opportunities of any member of the FAU community, guest, or visitor on the basis of that person’s actual or perceived membership in~~ ~~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 policies.

~~D.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.

~~E.F.~~ Those found to have violated any term, condition or provision of this Regulation will be subject to disciplinary action, up to and including suspension, expulsion, termination, or separation.

~~F.~~ ~~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 EIC. Failure to report an alleged violation as required by this Regulation may result in disciplinary action up to and including separation or termination from employment.~~

~~G.~~ ~~This Regulation shall not be implemented in a manner that restricts or prohibits speech that is protected by the First Amendment or the principles of academic freedom. All University employees have a duty to cooperate fully and unconditionally in a University investigation. This duty includes, among other things, speaking truthfully with EIC and voluntarily providing all documentation and information that relates to the claim being investigated.~~

~~DEFINITIONS/EXAMPLES~~

~~A.~~ ~~“Unlawful discrimination” is defined as a difference in treatment based on a person’s status in a protected class. Harassment based on one’s membership in a protected class is a form of unlawful discrimination. “Prohibited discrimination” includes unlawful discrimination and discrimination 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 Regulation are independent.~~

~~B.~~ ~~“Executive Director” shall refer to the Executive Director of the Office of Equity, Inclusion, and Compliance or designee.~~

~~C. 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 also prohibited. 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 (Policy 1.15).~~

~~D. For purposes of this Regulation, examples of conduct that fall into the definition of prohibited 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.~~

~~E. For the purposes of this Regulation, examples of conduct that fall into the definition of harassment include, but are not limited to:~~

~~1. “Hostile Environment Harassment” is unwelcome verbal and/or physical conduct based on a person’s protected class that: has the purpose or effect of: (A) creating an objectively intimidating, hostile or offensive work or educational environment; (B) unreasonably interfering with an individual’s work or learning performance; or (C) otherwise unreasonably adversely affects an individual’s employment or educational opportunities.~~

~~2. Examples 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 membership in a protected class.~~

~~3. “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. Sexual harassment, which includes acts of sexual violence and gender-based harassment, is also prohibited. Sexual harassment can take the form of “hostile environment harassment” or “quid pro quo harassment”, as described above. 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. The definition of sexual harassment excludes the use of sexual material in a setting for academic or educational purposes.~~

III. REPORTING

A. ~~OEIEIC~~ is responsible for administering the complaint and investigation process set forth in this Regulation.

~~1. Any supervisory employee or other official who has the authority to institute corrective measures on behalf of the University who receives a report, observes or learns of an alleged violation of this Regulation has an absolute and unqualified duty to promptly report the conduct to OEI. Failure to report an alleged violation as required by this Regulation may result in disciplinary action up to and including separation or termination from employment.~~

~~2. All employees in the University’s K-12 programs are all considered officials with authority to institute corrective measures on behalf of the University for K-12 students and must report any claims of harassment, discrimination, or sexual misconduct to OEI. All complaints, formal or informal, must be reported to EIC.~~

~~4.3. Reports or allegations of an alleged violation of this Regulation will be processed upon the filing of a written complaint with OEI, consistent with the requirements of University Policy 1.15. In cases where the person making an allegation that they have been subjected to conduct that violates this regulation, (“Complainant”), chooses not to file a formal complaint, ~~OEIEIC~~ will take any action it deems necessary and permissible pursuant to applicable law or regulations to attempt to address the situation or prevent further concerns. Such action may include informing the alleged offender (“Respondent”) or their supervisor of the potential violation and suggesting behavioral modifications (if necessary).~~

~~4.2. The ~~OEIEIC~~ and Title IX Coordinator contact information is provided below. Any person may report allegations of harassment, discrimination, or sexual misconduct in person, via telephone, or online at FAU.edu/report.~~

Office of Equity, and Inclusion ~~and Compliance~~
Florida Atlantic University
Administration Building
777 Glades Road, Room 265
Boca Raton, Florida 33431-0991
dkamm@fau.edu
<http://www.fau.edu/oeieie/>
(561) 297-3004

- B. Any University employee or applicant who believes ~~they~~he/she ~~have~~has been harassed, discriminated or retaliated against in violation of this Regulation should report the facts and circumstances thereof to ~~the Executive Director~~OEI, or in the alternative, may report to the appropriate supervisory employee or other official who has the authority to institute corrective measures on behalf of the University, including the appropriate Vice President or Provost, College Dean, or the Director of Human Resources, who in turn must notify the Executive Director.

Any student who believes ~~he/she~~they ~~have~~has been harassed or discriminated against in violation of this Regulation should report the facts and circumstances thereof to ~~the Executive Director~~OEI, or in the alternative, may report to another official who has the authority to institute corrective measures on behalf of the University, including the appropriate University Vice President or Provost, the Dean of Students, the Dean of ~~his/her~~their College, or to their ~~his/her~~ Department Head, who in turn must notify the Executive Director.

~~Reports or allegations of an alleged violation of this Regulation will be processed upon the filing of a written complaint with EIC. The Executive Director may process an alleged violation without a written complaint if deemed necessary by the Executive Director and if enough information is available, in the discretion of the Executive Director, to conduct a responsible investigation.~~

- C. A complaint of discrimination or harassment not related to Title IX must be filed with ~~OEI~~EIC within one-hundred eighty (180) calendar days of the alleged act(s) of discrimination or/ harassment. ~~OEI~~EIC may process an alleged violation outside of this time limitation in the discretion of 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 ~~OEI~~EIC does not constitute a filing with, or have any effect on the filing time limitations of those external agencies. All Complainants are ~~urged~~advised 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 ~~OEI~~EIC office.
- D. All complaints should contain the name of the reporting party 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. ~~OEI~~EIC shall investigate all complaints, as permitted or required by law, which~~that~~ contain enough information to substantiate investigation and allege prohibited discrimination or harassment. The investigation may include, but shall not be limited to, interviewing the involved parties ~~Complainant and Respondent~~ and any relevant witnesses. Each party shall have an equitable opportunity to present the names and contact details of witnesses and other relevant evidence. Upon completion of the investigation, a final investigation report shall be prepared which includes a summary of the complaint, a description of the

investigation, ~~whether a violation of University Regulation was found~~ and analysis of the facts and evidence presented, based on a preponderance of the evidence standard, ~~and recommendations for disposition.~~

B. ~~OEI/EIC~~ may attempt conciliation or informal settlement resolution before or during an investigation of a complaint, consistent with the requirements of University Policy 1.15. If conciliation or informal settlement resolution is not achieved, ~~OEI/EIC~~ shall continue to investigate the complaint, and shall issue a final investigation report.

C. ~~OEI/EIC~~ shall attempt to conclude its investigation and issue its final report within seventy-five (75) calendar days of the filing of the complaint. However, the investigation process may be stayed/extended for good cause as determined by the Executive Director.

~~C.D.~~ All University employees have a duty to cooperate fully and unconditionally in a University investigation. This duty includes, among other things, speaking truthfully with OEI/EIC and voluntarily providing all documentation and information that relates to the claim being investigated.

~~D.E.~~ The final report by ~~OEI/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, consistent with the requirements of Policy 1.15 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 Executive Director. Corrective or disciplinary action may also be considered and implemented if ~~OEI/EIC~~ determined the complaint was unfounded and made maliciously or recklessly. All disciplinary action shall be subject to applicable University Regulations and Policies, ~~including but not limited to University Regulation 5.009 (Grievance Procedure) and University Regulation 4.007 (Student Code of Conduct)~~, University Policy 1.15, 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 Executive Director within ten (10) calendar days of the date the final report is published.~~

~~V.~~ RECONSIDERATION

~~A.~~ ~~Any Complainant or Respondent may request reconsideration of a finding in the final investigation report by filing a written request with the Executive Director.~~

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

~~2.~~ ~~The request must include a basis for the reconsideration.~~

~~3.~~ ~~Reconsideration will only be granted in cases where new evidence is provided or relevant evidence was not previously considered or reviewed.~~

~~4.—The 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, 6-4-19, 8-XX-20.*