



Item: AC: A-1

AUDIT & COMPLIANCE COMMITTEE

Tuesday, November 15, 2022

**SUBJECT: REQUEST FOR APPROVAL OF AMENDMENTS TO FAU REGULATION 7.008,
ANTI-DISCRIMINATION/ANTI-HARASSMENT**

PROPOSED COMMITTEE ACTION

Recommend BOT approval of amendments to FAU Regulation 7.008, Anti-Discrimination/Anti-Harassment.

BACKGROUND INFORMATION

Florida Atlantic University seeks to amend FAU Regulation 7.008, Anti-Discrimination/Anti-Harassment. This Regulation is a critical component of the University's efforts to maintain an inclusive campus that is free from prohibited discrimination. The proposed revisions are intended to comply with new Board of Governors ("BOG") Regulation 10.005, *Prohibition of Discrimination in University Training or Instruction*, which prohibits subjecting any student or employee to training or instruction that espouses, promotes, advances, inculcates, or compels such student or employee to believe any of the concepts set forth in paragraph (1)(a) of BOG Regulation 10.005. The proposed changes to FAU Regulation 7.008 are summarized as follows:

1. Includes the prohibition of discrimination on the basis of race, color, national origin, or sex by subjecting any student or employee to training or instruction that espouses, promotes, advances, inculcates, or compels such student or employee to believe any of the concepts set forth in paragraph (1)(a) of Florida (BOG) Regulation 10.005.
2. Modifies the statement of purpose to affirm that the Regulation covers the Florida Educational Equity Act.
3. Includes the requirement that potential violations pertaining to BOG Regulation 10.005 will be investigated and addressed in accordance with the processes detailed in BOG Regulation 10.005.
4. States, in accordance with existing Florida law, that the University may not shield students or employees from ideas or opinions that they may find uncomfortable, unwelcome, disagreeable, or offensive.

5. Updates the contact email of the Title IX Coordinator to compliance@fau.edu.
6. Requires that any administrator, as defined in BOG Regulation 10.005(1)(f), who receives a complaint of an alleged violation of BOG Regulation 10.005 has an absolute and unqualified duty to promptly report alleged violations to the Office of Equity and Inclusion, which will process the complaint consistent with the requirements of BOG Regulation 10.005.
7. Requires the University's Chief Compliance & Ethics Officer to inform the BOG Office of Inspector General in the event an investigation finds that a University instruction or training violates BOG Regulation 10.005(1)(a).

IMPLEMENTATION PLAN/DATE

The Regulation will be amended and effective upon adoption by the Board of Trustees.

FISCAL IMPLICATIONS

There are no fiscal implications to this proposed board action.

Supporting Documentation:	Text of proposed amended Regulation 7.008
Presented by:	David Kian, Vice President & General Counsel
Phone:	561-297-3007

Florida Atlantic University

Regulation 7.008

Anti-Discrimination and Anti-Harassment

I. VALUES

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, as well as discrimination on the basis of race, color, national origin, or sex by subjecting any student or employee to training or instruction that espouses, promotes, advances, inculcates, or compels such student or employee to believe any of the concepts set forth in paragraph (1)(a) of Florida Board of Governors (BOG) Regulation 10.005, which are incorporated by reference herein. 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, the Florida Educational Equity Act, and any other applicable local, state or federal laws.
- B. This Regulation 7.008 (“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). Potential violations pertaining to BOG Regulation 10.005 (Prohibition of Discrimination in University Training or Instruction) will be investigated and addressed in accordance with the processes detailed in BOG Regulation 10.005.

- C. The University's Office of Equity and Inclusion ("OEI") 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 OEI.
- 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 a protected status as defined by law or University regulations and policies.
- 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, training and instruction (as defined in BOG Regulation 10.005), 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 suspension, expulsion, termination, or separation.
- 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. The University may not shield students or employees from ideas or opinions that they may find uncomfortable, unwelcome, disagreeable, or offensive. This Regulation does not prohibit the discussion of the concepts set forth in BOG Regulation 10.005 as part of a larger course of training or instruction, provided such training or instruction is given in an objective manner without endorsement of the concepts.

III. REPORTING

- A. OEI 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, and any administrator as defined in BOG Regulation 10.005(1)(f) who receives a complaint alleging that University training or instruction violates BOG Regulation 10.005(1)(a), 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.
 - 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; provided, however, that reports of allegations of an alleged violation pertaining to BOG Regulation 10.005 will be processed upon the

receipt of a complaint by OEI and consistent with the requirements of BOG Regulation 10.005. 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, OEI 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. The OEI 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
Florida Atlantic University
Administration Building
777 Glades Road, Room 265
Boca Raton, Florida 33431-0991
compliance@fau.edu
<http://www.fau.edu/oei/>
(561) 297-3004

- B. Any University employee or applicant who believes they have been harassed, discriminated or retaliated against in violation of this Regulation should report the facts and circumstances thereof to 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 they have been harassed or discriminated against in violation of this Regulation should report the facts and circumstances thereof to 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 their College, or to their Department Head, who in turn must notify the Executive Director.

- C. A complaint of discrimination or harassment not related to Title IX or BOG Regulation 10.005 must be filed with OEI within one-hundred eighty (180) calendar days of the alleged act(s) of discrimination or harassment. OEI 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 does not constitute a filing with, or have any effect on the filing time limitations of those external agencies. All Complainants are 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 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

- A. OEI shall investigate all complaints, as permitted or required by law, which 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 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, and analysis of the facts and evidence presented based on a preponderance of the evidence standard.
- B. OEI may attempt conciliation or informal resolution before or during an investigation of a complaint, consistent with the requirements of University Policy 1.15, as applicable. If conciliation or informal resolution is not achieved, OEI shall continue to investigate the complaint, and shall issue a final investigation report.
- C. OEI 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 extended for good cause as determined by the Executive Director.
- 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 and voluntarily providing all documentation and information that relates to the claim being investigated.
- E. The final report by OEI 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, as applicable. 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 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), University Regulation 4.007 (Student Code of Conduct), University Policy 1.15, BOG Regulations, including but not limited to BOG Regulation 10.005 (Prohibition of Discrimination in University Training or Instruction) and applicable collective bargaining agreements. In the event the investigation finds that an instruction or training is inconsistent with requirements of this Regulation with regards to the concepts set forth in BOG Regulation 10.005(1)(a), the University's Chief Compliance & Ethics Officer shall inform the BOG Office of Inspector General.

Specific Authority: Article IX of the Florida Constitution; Florida Board of Governors Regulation 1.001 and 10.005; 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, 8-14-20, 11-15-22.