

# Florida Atlantic University

## **Regulation 5.010    Anti-Discrimination and Anti-Harassment Regulation**

### **1.    POLICY**

- (a) Florida Atlantic University is committed to ensuring that each member of the University community shall be permitted to work or study in an environment free from any form of unlawful discrimination or harassment that is based on race, color, religion, age, disability, sex, national origin, marital status, veteran status, sexual orientation, or any legally protected class or basis (each a “protected class”). The University recognizes its obligation to work towards a community in which diversity is valued and opportunity is equalized. This Regulation establishes procedures for a student, applicant, employee or a member of the University community to file a complaint of alleged discrimination or harassment.
- (b) It shall be a violation of this Regulation for any officer, employee, agent, or student to discriminate against or harass, as defined in this Regulation, any other officer, employee, agent, student, or applicant. Discrimination and harassment are forms of conduct that shall result in disciplinary or other action as provided by the Regulations and Policies of the University.
- (c) 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, housing supplied by the University, and employment practices between the University and its employees, including Support Personnel (“SP”) employees.
- (d) 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.
- (e) 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 will be subject to disciplinary action up to and including termination.
- (f) 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.

- (g) Every University employee has a duty to cooperate fully and unconditionally in a harassment investigation. This duty includes, among other things, speaking with the EOP investigator and voluntarily providing all documentation which relate 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.

## **2. DEFINITIONS/EXAMPLES**

- (a) For the purpose of this Regulation, discrimination is defined as unlawfully treating any member of the University community differently than similarly situated others based on 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, the Florida Civil Rights Act and other laws.
- (b) Additionally, 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.
- (c) For the purposes of this Regulation, examples of 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.
  - 2. Disparity of treatment in educational programs and related support services on the basis of membership in a protected class herein.
  - 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.
- (d) For the purposes of this Regulation, examples of conduct that fall into the definition of harassment include, but are not limited to:
1. 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. Examples of the foregoing verbal and/or physical conduct that may constitute harassment could include making "jokes" 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 discrimination on the basis of sex and is prohibited by Title IX.
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 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 affecting such individual; or
    - d. Such conduct 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.

3. 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. Gender-based harassment may be a form of sexual harassment prohibited under Title IX. 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) 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 REPORTING VIOLATIONS**

- (a) The Office of Equal Opportunity Programs is responsible for administering the complaint and investigation process set forth in this Regulation. In cases where the potential complainant chooses not to file a formal complaint, EOP will take action to inform the alleged offender of the concerns, 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:

Director Equal Opportunity Programs  
Florida Atlantic University  
Administration Building  
777 Glades Road, Room 265  
Boca Raton, Florida 33431-0991  
<http://www.fau.edu/eop/>  
(561) 297-3004

The EOP Director is the Title IX Coordinator for the University.

- (b) Any University employee who believes he/she has been harassed or discriminated against in violation of this Regulation must report the facts and circumstances thereof to the EOP Director, the University Provost, the Director of Human Resources, or to his/her College Dean or Vice President, who in turn must notify the EOP Director.
- (c) Any student who believes he/she has been harassed or discriminated against in violation of this Regulation must report the facts and circumstances thereof to the EOP Director, the University Ombudsman, the University Provost, the Dean of Students, or to his/her Department Head/Director or College Dean, who in turn must notify the EOP Director.
- (d) Reports or allegations of an alleged violation of this Regulation will be processed upon the filing of a written complaint with EOP. The Director of EOP may process an alleged violation without a written complaint if deemed necessary by the Director and enough information is available to conduct a responsible investigation.
- (e) A complaint must be filed with EOP within one-hundred eighty (180) days of the alleged act(s) of discrimination/harassment. The Director of EOP may process an alleged violation outside of this time limitation if deemed necessary by the 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 EOP 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 EOP office.

- (f) 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.

#### **4. PROCEDURE FOR INVESTIGATION OF COMPLAINTS**

- (a) EOP shall investigate all complaints that contain enough information to allege prohibited discrimination or harassment. This investigation must 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) The Office of Equal Opportunity Programs may attempt conciliation before or during the course of an investigation of a complaint. If conciliation is not achieved, then EOP shall continue to investigate the complaint, and shall issue a final report.
- (c) EOP shall conclude its investigation and issue its final report within seventy-five (75) days of the filing of the complaint. If additional time is required, the complainant and alleged offender will be notified in writing no less than ten (10) days prior to the seventy-five (75) day deadline of the reason(s) for the delay and the expected date of completion.
- (d) The final report by EOP shall be submitted to the appropriate Vice President or Associate Provost if an employee is involved, and/or to the Dean of Students if a student is involved. The alleged offender 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 EOP Director. Corrective or disciplinary action will also be considered and implemented if EOP 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.

**5. PROCEDURE FOR RECONSIDERATION**

- (a) Any party may submit a written response or statement to be attached to the EOP final report and maintained in the same file.
- (b) Either the complainant or alleged offender may request reconsideration of the finding in the EOP final report. The party must submit this request in writing to the EOP Director within ten (10) days of receipt of the EOP final report.
- (c) The request for reconsideration must be in writing and shall specify the basis of the request. Typically, reconsideration will be granted only in cases where relevant evidence was not reviewed and/or new evidence is available.

*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.*