

**FLORIDA ATLANTIC UNIVERSITY
NOTICE OF PROPOSED REGULATION AMENDMENT**

Date: April 10, 2006

REGULATION TITLE AND NUMBER: Anti-Discrimination and Anti-Harassment (5.010).

SUMMARY: This regulation amendment adds anti-discrimination to the existing anti-harassment regulation, sets forth the University's policy statement and definitions related to the Equal Opportunity Programs Office, and streamlines and improves the procedures for complaint filing and investigation.

FULL TEXT OF THE REGULATION: The full text of the proposed regulation is attached below to this Notice. The full text of the existing regulation is posted on FAU's website at www.fau.edu/regulations. In addition, the full text of the proposed regulation and current regulation are available upon request to the Office of the General Counsel, which can be contacted at (561) 297-3007 or GeneralCounsel@fau.edu.

AUTHORITY TO AMEND THE REGULATION: Article IX of the Florida Constitution and the Board of Governors Regulation Development Procedure dated July 21, 2005.

UNIVERSITY OFFICIAL INITIATING THE REGULATION AMENDMENT: Paula Behul, Director, Equal Opportunity Programs

COMMENTS CONCERNING THE PROPOSED REGULATION AMENDMENT SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. In response, the University may solicit additional written comments, schedule a public hearing, withdraw or modify the proposed regulation amendment in whole or in part after notice, or proceed with adopting the regulation amendment. The comments must identify the regulation(s) on which you are commenting:

THE PERSON TO BE CONTACTED REGARDING THE AMENDMENT/REPEAL OF REGULATIONS IS: Valerie Laine, Coordinator, Office of the General Counsel, 777 Glades Road, Boca Raton, Florida, 33431, (561) 297-3007 (phone), (561) 297-2787 (fax), GeneralCounsel@fau.edu.

PROPOSED

Florida Atlantic University

Regulation 5.010 Anti-Discrimination and Anti-Harassment Regulation

1. POLICY

- (a) Florida Atlantic University affirms its commitment to ensure 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 a legally protected class, including race, color, religion, age, disability, sex, national origin, marital status, veteran status or any other basis protected by law. The University recognizes its obligation to work towards a community in which diversity is valued and opportunity is equalized. This rule establishes procedures for an applicant 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 or agent to discriminate against or harass, as defined in this Regulation, any other officer, employee, student, agent, or applicant. Discrimination and harassment are forms of conduct which shall result in disciplinary or other action as provided by the Regulations and Policies of the University.
- (c) Activities covered under this rule 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 Other Personnel Services (“OPS”) 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 Director of the Equal Opportunity Programs 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

- (a) For the purpose of this rule, discrimination is defined as unlawfully treating any member of the University community differently than similarly situated others based on a legally protected class. Harassment based on certain legally protected classes is a form of unlawful discrimination under Title VII of the Civil Rights Act of 1964 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, is included in this Regulation's definition of prohibited discrimination.
- (c) Conduct which falls into the definition of discrimination includes, but is not limited to:
 - 1. Unlawful 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 legally protected class.
 - 2. Unlawful disparity of treatment in educational programs and related support services on the basis of membership in a legally protected class.

3. Unlawful limitation in access to housing, or of participation in athletic, social, cultural or other activities of the University because of membership in a legally protected class 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) Conduct which falls into the definition of harassment includes, but is not limited to:
1. Harassment is defined to include verbal and/or physical conduct based on a legally protected characteristic which: (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 harassment could include making "jokes" based on a legally 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 legally protected characteristic or membership.
- (e) Sexual harassment includes unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:
1. Submission to such conduct or request is made either explicitly or implicitly a term or condition of an individual's employment; or
 2. Submission to such conduct or request is made either explicitly or implicitly a term or condition of academic achievement; or
 3. 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
 4. 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.

- (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.

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.
- (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 Director of Equal Opportunity Programs, the University Ombudsman, the University Provost, the Director of Personnel Services, or to his/her College Dean or Vice President, who in turn must notify the Director of Equal Opportunity Programs.
- (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 Director of Equal Opportunity Programs, 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 Director of Equal Opportunity Programs.
- (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. 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, 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. 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, policies and collective bargaining agreements.

5. PROCEDURE FOR RECONSIDERATION

- (a) Any party may submit a written response or statement to be attached to the 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.
- (d) Any disciplinary action imposed as a result of an EOP investigation may be reviewed subject to University Regulation 5.009 (Grievance Procedure), University Regulation 4.007 (Student Disciplinary Procedures), or an applicable collective bargaining agreement.

Specific Authority: Florida Board of Governors Resolution dated January 7, 2003; Formerly 6C5-5.012, Amended 11-11-87, 7-5-99, 11-9-05, 5-10-06.