

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES
FLORIDA BOARD OF GOVERNORS**

NOTICE OF PROPOSED REGULATION

REGULATION NO.: FIU-106

REGULATION TITLE: Nondiscrimination, Harassment and Retaliation (Title VII)

SUMMARY: FIU-105 Prohibited Discrimination, Harassment and Related Misconduct Including Sexual and Gender-Based Harassment, Sexual Violence, Dating Violence, Domestic Violence, and Stalking had incorporated the former FIU-103 Non-Discrimination Policy and Discrimination Complaint Procedures (which was repealed on April 16, 2015). FIU-105 is being divided into two regulations for better administration. FIU-106 addresses all discrimination claims except gender, gender expression, gender identity, sexual orientation, sexual misconduct, dating or domestic violence, and stalking. FIU-106 updated the former FIU-103 to improve the procedures.

TEXT OF REGULATION: The full text of the Proposed Regulation can be viewed below and on the website of The Florida International University Board of Trustees, <http://regulations.fiu.edu/>. If you would like a copy of the Proposed Regulation, please contact Eli Deville, Departmental Administrator, Office of the General Counsel, (305) 348-2103.

AUTHORITY: BOG 1.001(5)(a).

NAME OF PERSON INITIATING PROPOSED REGULATION: Shirlyon McWhorter, Director of the Equal Opportunity Program and Diversity/Title IX Coordinator.

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED REGULATION MUST SUBMIT COMMENTS IN WRITING TO THE CONTACT PERSON LISTED BELOW. ALL WRITTEN COMMENTS MUST BE RECEIVED BY THE CONTACT PERSON WITHIN 14 CALENDAR DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE.

CONTACT PERSON REGARDING THE PROPOSED REGULATION: Eli Deville, Departmental Administrator, Office of the General Counsel, Florida International University, 11200 SW 8th Street, PC 511, Miami, FL 33199. Email: devillee@fiu.edu Phone: (305) 348-2103, Fax: (305) 348-3272.

DATE OF PUBLICATION: May 4, 2018

THE FULL TEXT OF THE PROPOSED REGULATION IS PROVIDED BELOW:

FIU-106 NONDISCRIMINATION, HARASSMENT AND RETALIATION (TITLE VII)

Responsible University Officer: Director of the Equal Opportunity Programs and Diversity/Title IX Coordinator

Responsible Office: Equal Opportunity Programs and Diversity and Diversity

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I. POLICY STATEMENT

Florida International University (the 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 illegal discrimination, including race, color, religion, age, disability, national origin, marital status, and veteran status. The University recognizes its obligation to work towards a community in which diversity is valued and opportunity is equalized. This Regulation establishes procedures for an applicant or a member of the University community (faculty, staff, and/or student) to file a complaint of alleged discrimination or harassment. It shall be a violation of this Regulation for any member of the University community to discriminate against or harass any member of the University community or applicant. Discrimination and harassment are forms of conduct that shall result in disciplinary or other action as provided by the Regulations/policies of the University.

The University is also committed to creating a work or academic setting free from illegal discrimination based on sexual misconduct, sexual orientation, gender identity or expression which is addressed in FIU Regulation 105 Sexual Misconduct (Title IX).

II. PURPOSE AND INTENT

This Regulation applies to the conduct of University students and employees, including faculty and staff. The non-discrimination provisions also apply to contractors and other third parties under circumstances within the University's control. The Regulation provides for prompt and equitable resolution of reports of discrimination, harassment, and retaliation.

III. DEFINITION OF TERMS

Discrimination - treating any member of the University community differently than others are treated based upon race, color, religion, age, disability, national origin, marital status and/or veteran status.

1. Examples of conduct which falls into the definition of discrimination includes, but is not limited to: Disparity of treatment in recruiting, 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 one of the listed groups.

2. Disparity of treatment in educational programs and related support services on the basis of membership in one of the listed groups.

3. Limitation in access to housing, or participation in athletic, social, cultural or other activities of the University because of race, color, religion, age, disability, national origin, marital status and/or veteran status.

4. Retaliation for filing complaints or protesting practices which are prohibited under this Regulation.

Harassment - conduct which unreasonably interferes with an employee's, student's or applicant's status or performance by creating an intimidating, hostile, or offensive working or educational environment. It includes offensive or demeaning language or treatment of an individual, where such language or treatment is based typically on prejudicial stereotypes of a group to which an individual may belong. It includes, but is not limited to, objectionable epithets, threatened or actual physical harm or abuse, or other intimidating or insulting conduct directed against the individual.

IV. PROHIBITED CONDUCT

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 the University, housing supplied by the University, and employment practices between the University and its employees.

V. COMPLAINT AND INVESTIGATIVE PROCESS

The Office of Equal Opportunity Programs and Diversity shall administer the policies and procedures outlined in this Regulation. The Office of Equal Opportunity Programs and Diversity shall answer inquiries regarding the procedures contained in this Regulation and may provide informal advice regarding issues of discrimination. In cases where the potential complainant chooses not to file a formal complaint, action will be taken to inform the alleged offender of the concerns, suggesting that the individual monitor and modify (if necessary) his/her behavior.

A. Complaints.

1. A complaint must be made in writing to the Office of Equal Opportunity Programs and Diversity. The complaint 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, 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).

2. A complaint must be filed within three hundred (300) calendar days of the alleged act(s) of discrimination.

3. The Office of Equal Opportunity Programs and Diversity shall investigate the formal complaint. This investigation may include, but shall not be limited to, interviewing the person complained about regarding the allegations, 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 report shall be prepared which includes a summary of the complaint, a description of the investigation, the findings, and recommendations.

4. There may be instances in which a potential complainant is unable or unwilling to pursue a complaint of discrimination, but where the University administration is aware of the behavior. In such instances, the Office of Equal Opportunity Programs and Diversity may choose to pursue an investigation of the alleged offense. The decision of whether or not to pursue an administrative complaint will be based on the egregiousness of the alleged offense, the basis for the aggrieved party's decision not to pursue a complaint, and the apparent evidence supporting the allegations. The decision to pursue an administrative complaint shall be made by the director of the Office of Equal Opportunity Programs and Diversity in consultation with the Vice President in charge of the aggrieved party's unit and the Vice President in charge of the alleged offender's unit, in the event that the two parties are in different units. An administrative complaint will follow the same procedures as formal complaints except that no complainant will be named.

5. In the event that a claim of discrimination is found to be frivolous or malicious, appropriate University sanctions shall be taken against the complainant, including disciplinary action where appropriate. Disciplinary action against students shall be taken in accordance with the University's Student Code of Conduct.

B. Conciliation.

The Office of Equal Opportunity Programs and Diversity may attempt conciliation during the course of an investigation of a complaint. If conciliation of the complaint was achieved between the parties in cooperation with the Office of Equal Opportunity Programs and Diversity, and the alleged offender fails to abide by the agreement or retaliates against the complainant, the complainant or supervisor should notify the Office of Equal Opportunity Programs. The Vice President for Human Resources or a designee may then require the complaint to proceed as if conciliation had not been reached.

If conciliation is not achieved, then the Office of Equal Opportunity Programs and Diversity shall continue to investigate the complaint. The investigation by the Office of Equal Opportunity Programs and Diversity will be conducted expeditiously, but in a manner consistent with the complexity and severity of the matter and availability of witnesses. The office will attempt to complete its investigation and recommendation within sixty (60) days of initiation of the formal complaint, if possible.

C. Findings.

The report of the Office of Equal Opportunity Programs and Diversity shall be made known to the Vice President for Human Resources or designee, the complainant, the alleged offender, the immediate supervisor of the alleged offender, and the appropriate Vice President.

D. Review.

1. Either party may seek review of the finding of the Office of Equal Opportunity Programs and Diversity to the Vice President for Human Resources or a designee by filing a request for a review ("appeal") within seven (7) business days of receipt of the Office of Equal Opportunity Programs and Diversity finding. It shall specify the basis of the appeal. The appeal shall be based on one or more of the following: relevant evidence was not reviewed and/or new evidence is available, or the factual evidence was insufficient to support the findings.

2. The appeal shall be in writing, and shall set forth the issues to be considered in the appeal.

3. Copies of the appeal shall be provided to the opposing party and to the Director, Equal Opportunity Programs and Diversity.

4. The opposing party may file a response to the appeal to the Vice President for Human Resources or designee within seven (10) business days of receipt of the appeal.

5. The Vice President for Human Resources or designee shall issue a written finding no more than ten (10) calendar days after receipt of the appeal, or of a response to the appeal, whichever is later.

6. Upon final acceptance by the Vice President for Human Resources or designee of a written finding on the complaint, the Office of Employee and Labor Relations along with the immediate supervisor of the alleged offender shall provide a reasonable resolution to the complaint (e.g., that a student be allowed to change sections, that the employee report to a different supervisor) and may also recommend or take disciplinary action against the alleged offender. The proposed resolution shall be approved by the Office of Equal Opportunity Programs and Diversity. Disciplinary action shall be taken in accordance with the Regulations and policies affecting the class of employee and the terms of any applicable collective bargaining agreement.

VI. Retaliation Prohibited

Retaliation is expressly prohibited by this Regulation, and the University will take immediate and responsive action to any report of Retaliation. No University employee shall retaliate against a complainant or any person involved in the process. Any attempt to penalize a complainant or anyone involved in the process through any form of retaliation shall be treated as a separate allegation of discrimination.

Specific Authority: Board of Governors Regulation 1.001 (5)(a). History-- Formerly FIU-104 (repealed) and FIU-103 (repealed).