

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES
FLORIDA BOARD OF GOVERNORS
NOTICE OF CHANGE TO PROPOSED REGULATION**

REGULATION NO.: FIU-109

REGULATION TITLE: Prohibition of Discrimination in University Training or Instruction

SUMMARY: This regulation implements recent amendments to section 1000.05(4), Florida Statutes, section 1001.92, Florida Statutes, and Florida Board of Governor Regulation 10.005, which expand the definition of discrimination based on race, color, national origin or sex to include certain concepts and prohibit endorsing such concepts through mandatory training or instruction. This regulation provides for definitions, a review of procedure of any complaints, and a review of the regulation, policies, and training materials.

The change is to delete Chapter II (and renumbered accordingly) because the purpose was already covered in the Policy Statement; clarify the definition of Student; add definition of Individual Freedom Oversight Team (IFOT); clarify the standard for a complaint's initial review; clarify the effect of a determination that the complaint did not meet the initial review standard; and clarify when the IFOT would be effectuated.

TEXT OF REGULATION: The full text of the changes to 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 Regulation, please contact Eli Deville, Departmental Administrator, Office of the General Counsel, devillee@fiu.edu, 305.348.2103.

AUTHORITY: Section 1000.05, Florida Statutes; Section 1001.92, Florida Statutes; Board of Governors Regulation 10.005

NAME OF PERSON INITIATING PROPOSED REGULATION: El pagnier Hudson, Sr. Vice President, Human Resources, Vice-Provost, Diversity, Equity, and Inclusion.

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.

THE CONTACT PERSON REGARDING THIS REGULATION IS:

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: November 10, 2022

THE FULL TEXT OF THE PROPOSED REGULATION IS PROVIDED BELOW WITH THE CHANGES HIGHLIGHTED IN YELLOW:

FIU-109 Prohibition of Discrimination in University Training or Instruction

Responsible University Offices: Office of Civil Rights Compliance and Accessibility, Office of Compliance and Integrity, Office of Internal Audit, Academic Affairs, Office of Employee and Labor Relations.

<u>CONTENTS</u>		<u>PAGE</u>
<u>Chapter I</u>	<u>Policy Statement</u>	<u>1</u>
<u>Chapter II</u>	<u>Definition of Terms</u>	<u>1</u>
<u>Chapter III</u>	<u>Prohibited Conduct</u>	<u>2</u>
<u>Chapter IV</u>	<u>Reports, Review, Investigation and Corrective Action</u>	<u>2</u>

I. POLICY STATEMENT

This policy implements recent amendments to section 1000.05(4), Florida Statutes, which expand the definition of discrimination based on race, color, national origin or sex to include certain concepts and prohibit endorsing such concepts through mandatory training or instruction.

It shall be a violation of this Policy for any University employee, or person authorized to provide Training or Instruction by or for the University, to discriminate 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 as defined in paragraph (III)(A).

II. DEFINITION OF TERMS

For purposes of this regulation, the enumerated terms are defined as follows:

A. "Concepts" are the following:

1. Members of one race, color, national origin, or sex are morally superior to members of another race, color, national origin, or sex.
2. A person, by virtue of his or her race, color, national origin, or sex is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
3. A person's moral character or status as either privileged or oppressed is necessarily determined by his or her race, color, national origin, or sex.
4. Members of one race, color, national origin, or sex cannot and should not attempt to treat others without respect to race, color, national origin, or sex.
5. A person, by virtue of his or her race, color, national origin, or sex bears responsibility for, or should be discriminated against or receive adverse treatment because of, actions committed in the past by other members of the same race, color, national origin, or sex.
6. A person, by virtue of his or her race, color, national origin, or sex should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion.
7. A person, by virtue of his or her race, color, sex, or national origin, bears personal responsibility for and must feel guilt, anguish, or other forms of psychological distress because of actions, in which the person played no part, committed in the past by other members of the same race, color, national origin, or sex.
8. Such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by members of a particular

race, color, national origin, or sex to oppress members of another race, color, national origin, or sex.

- B. “Training” is defined as a planned and organized activity conducted by the University as a mandatory condition of employment, enrollment, or participation in a University program for the purpose of imparting knowledge, developing skills or competencies, or becoming proficient in a particular job or role.
- C. “Instruction” is defined as the process of teaching or engaging students with content about a particular subject by a University employee or a person authorized to provide instruction by the University within a course.
- D. “Substantiate” is defined as establishing the existence or truth of a particular fact through the use of competent evidence.
- E. “Administrator” means the following high level University personnel who have been assigned the responsibilities of University-wide academic or administrative functions: University president, provost, senior/executive vice presidents, vice presidents, associate vice presidents, assistant vice presidents, associate/vice provosts, deans, Title IX Coordinator, chief audit executive, and chief compliance officer.
- F. “Student” means a person admitted and enrolled in a University program or course for the purpose of receiving instruction.
- G. “Employee” means a person employed by and working for the University.
- H. “Individual Freedom Oversight Team (IFOT)” is composed of representatives from across the University, including Academic Affairs, Faculty Senate, Student Affairs, Office of the General Counsel, Office of Employee and Labor Relations, and the Office of Civil Rights Compliance and Accessibility, and any other relevant representative depending on the reported conduct (e.g., Student Government). IFOT is charged with determining whether a complaint is a credible allegation, overseeing the investigation of such allegations, and taking corrective action in instances where a violation is substantiated.

III. PROHIBITED CONDUCT

- A. No University employee, or person authorized to provide Training or Instruction by or for the University, shall discriminate 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 as defined in paragraph (III)(A).
- B. The prohibition in section (IV)(A) does not prohibit discussion of the Concepts as defined in paragraph (III)(A) 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.

IV. REPORTS, REVIEW, INVESTIGATION, AND CORRECTIVE ACTION

- A. Reports of alleged violation of this regulation should be submitted at report.fiu.edu by selecting the “Report a Concern” button in the “Individual Freedom Act” tab.
- B. Any Administrator who receives a report of an alleged violation of this regulation shall immediately submit the report at report.fiu.edu.
- C. The Board of Governors may also receive and refer alleged violations to the University through the University’s Chief Audit Executive. Upon receipt, the University’s Chief Audit Executive will submit the report to the University’s Office of Civil Rights Compliance and Accessibility (CRCA).
- D. Upon receipt of a report, CRCA will conduct an initial assessment of the allegation to determine whether the reported conduct if taken to be true would violate section (IV)(A) of

- this Regulation. As noted, the prohibition in section (IV)(A) does not prohibit discussion of the Concepts defined in paragraph (III)(A) 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.
- E. If the initial assessment reveals that the reported conduct if taken as true would not violate section (IV)(A), CRCA will advise the known reporter in writing to that effect.
 - F. If CRCA determines that the conduct alleged in the report if taken to be true would violate section (IV)(A), CRCA will refer the matter to the Individual Freedom Oversight Team (IFOT). Based on the nature of the conduct reported, CRCA will determine the composition of the IFOT for that particular complaint. IFOT will review the complaint as well as gather or obtain any additional information to aid in the review of the report to determine if the complaint is a credible allegation.
 - G. If IFOT determines the complaint is a credible allegation of section (IV)(A), IFOT shall assign an investigator and direct, supervise, and coordinate the investigation of the complaint.
 - H. In the event that an investigation determines that a violation of section (IV)(A) is substantiated, IFOT will take prompt action to correct the violation by mandating that the employee(s) responsible for the instruction or training modify it to be consistent with this regulation and/or taking disciplinary actions, where appropriate, consistent with University disciplinary protocol, up to and including termination if an employee fails or refuses to comply with the mandate.
 - I. In the event that an investigation determines that a violation of section (IV)(A) is substantiated, IFOT shall inform the Board of Governors through their Office of Inspector General and shall also inform the Board of Governors of any and all corrective actions that have been undertaken or are in process.

Specific Authority: Section 1000.05, Florida Statutes; Section 1001.92, Florida Statutes; Board of Governors Regulation 10.005; History: New