

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

NOTICE OF PROPOSED REGULATION

REGULATION NO.: FIU-103

REGULATION TITLE: Non-Discrimination Policy and Discrimination
Complaint Procedures.

SUMMARY: The proposed regulation reflects the current non-discrimination policy of the University and the non-discrimination complaint 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://bot.fiu.edu/regulations/>. If you would like a copy of the Proposed Regulation, please contact Eli Deville, Coordinator, Administrative Services, Office of the General Counsel, (305) 348-2103.

AUTHORITY: Resolution of the Florida Board of Governors dated January 7, 2003.

NAME OF PERSON INITIATING PROPOSED REGULATION: Cristina Mendoza, Vice President and General Counsel.

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, Coordinator, Administrative Services, Office of the General Counsel, Florida International University, 11200 SW 8th Street, PC 511, Miami, FL 33199. Email: devillee@fiu.edu Fax: (305) 348-3272. Phone: 305-348-2103.

DATE OF PUBLICATION: August 12, 2008

THE FULL TEXT OF THE REGULATION IS PROVIDED BELOW:

~~6C8-1.009~~FIU-103 Non-Discrimination Policy and Discrimination Complaint Procedures.

(1) General Statement.

(a) Florida International 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, sex, sexual orientation, 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 ~~rule~~regulation 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 ~~rule~~regulation for any member of the University community, ~~officer, employee or agent~~ to discriminate against or harass, as hereinafter defined, any ~~other officer, employee, student, agent, member of the University community~~ or applicant. Discrimination and harassment are forms of conduct which shall result in disciplinary or other action as provided by the regulations/policies ~~rules~~ of the University. ~~(see Rules 6C8-4.006 and 6C8-4.019, F.A.C.).~~

(2) Definitions.

(a) For the purpose of this ~~rule~~regulation, discrimination or harassment is defined as treating any member of the University community differently than others are treated based upon race, color, religion, age, disability, sex, sexual orientation, national origin, marital status and/or veteran status.

(b) Conduct which falls into the definition of discrimination includes, but is not limited to:

1. 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 ~~to~~ participation in athletic, social, cultural or other activities of the University because of race, color, religion, age, sexual orientation, disability, national origin, marital status and/or veteran status.

4. Discrimination of the foregoing types on the basis of sex, unless based on bona fide requirements or distinctions, in housing, restrooms, athletics and other such areas.

5. Retaliation for filing complaints or protesting practices which are prohibited under this ~~rule~~regulation.

(c) Conduct which falls into the definition of harassment includes, but is not limited to, harassment based on race, color, religion, age, disability, gender, sexual orientation, national origin, marital status or veteran status. (For harassment on the basis of sex, see FIU Sexual Harassment Regulation Rule 6C8-1.010, F.A.C.). ~~Within the context of this rule~~Within the context of this regulation, harassment is defined as 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.

(d) Scope of prohibitions: Activities covered under this ~~rule~~regulation include, but are not limited to, all educational, athletic, cultural and social activities occurring on a campus of or

sponsored by ~~Florida International~~ the University, housing supplied by the University, and employment practices between the University and its employees, ~~including Other Personnel Services (“OPS”) employees.~~

(e) When referred to in this ~~rule~~regulation, “days” means calendar days unless otherwise noted.

(3) Procedures for Reporting Violations and Conducting Investigations and Complaints.

(a) Administration and Consultation. The Office of Equal Opportunity Programs shall administer the policies and procedures outlined in this ~~rule~~regulation. The Office of Equal Opportunity Programs shall answer inquiries regarding the procedures contained in this ~~rule~~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.

(b) Complaints.

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

2. A complaint must be filed within one hundred (100) days of the alleged act(s) of discrimination, or in the case of a student complaint against a faculty member, within fourteen (14) ~~ten (10)~~ University business days from ~~of the first day beginning of classes for~~ of the following semester.

3. The Office of Equal Opportunity Programs 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 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 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 Code of Conduct for students.

(c) Conciliation. The Office of Equal Opportunity Programs may attempt conciliation during the course of an investigation of a complaint. If conciliation is not achieved, then the Office of Equal Opportunity Programs shall continue to investigate the complaint, and shall issue a written finding concerning probable cause within a maximum of one hundred (100) days. If conciliation of the complaint was achieved between the parties in cooperation with the Office of Equal Opportunity Programs, 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 ~~Student Affairs and~~ Human Resources or a designee may then require the complaint to proceed as if conciliation had not been reached.

(d) Findings. The report of the Office of Equal Opportunity Programs shall be made known to the Vice President for ~~Student Affairs and~~ Human Resources or designee, the complainant, the alleged offender, the immediate supervisor of the alleged offender, and the appropriate vice president.

(e) Review.

1. Either party may seek review of the finding of the Office of Equal Opportunity Programs to the Vice President for ~~Student Affairs and~~ Human Resources or a designee by filing a request for a review (“appeal”) within twenty (20) days of receipt of the Office of Equal Opportunity Programs 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 request shall be in writing, and shall set forth the issues to be considered in the appeal. Copies of the appeal shall be provided to the opposing party and to the Director, Equal Opportunity Programs.

3. The opposing party and the Director, Equal Opportunity Programs, may file a response to the appeal to the Vice President for ~~Student Affairs and~~ Human Resources or designee within twenty (20) days of receipt of the appeal.

4. The Vice President for ~~Student Affairs and~~ Human Resources or designee shall issue a written finding no more than twenty (20) days after receipt of the appeal, or of a response to the appeal, whichever is later.

(f) Resolution. Upon final acceptance by the Vice President for ~~Student Affairs and~~ Human Resources or designee of a written finding on the complaint, the immediate supervisor of the alleged offender may 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. Disciplinary action shall be taken in accordance with the ~~rules and regulations~~ and policies affecting the class of employee and the terms of any applicable collective bargaining agreement.

g) Prohibition 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 ~~student, employee or agent for initiating a complaint~~ through any form of retaliation shall be treated as a separate allegation of discrimination.

Specific Authority ~~1001.74(4) FS. Board of Governors' Resolution dated January 7, 2003. Law Implemented 1001.74(10), (19) FS. History—New 7-6-97, Amended 11-3-02, 11-15-04, Formerly 6C8-1.009, Amended _____-08.~~