

FLORIDA A&M UNIVERSITY BOARD OF TRUSTEES



NOTICE OF PROPOSED NEW REGULATION

DATE: March 27, 2014

REGULATION CHAPTER NO.: Chapter 10

REGULATION CHAPTER TITLE: Personnel

REGULATION TITLE AND NUMBER: Non-Discrimination Policy and Discrimination and Harassment Complaint Procedures (10.103)

SUMMARY OF REGULATION: This amended Regulation reaffirms the University's commitment to create a more inclusive environment for all students, employees, and visitors to the campus. The Regulation ensures compliance with Title IX of the Education Amendments of 1972 (specifically sexual violence issues); Reenactment of Violence Against Women Act (VAWA); CampuSave Act; United States Department of Education "Dear Colleague Letter dated April 4, 2011; and any other related federal regulations.

AUTHORITY FOR REGULATION: Section 7, Article IX, Florida Constitution and Board of Governors Regulations 1.001 and 2.003.

UNIVERSITY OFFICIAL INITIATING THIS REGULATION: Dr. William Hudson, Jr., Vice President for Student Affairs.

PROCEDURE FOR COMMENTS: Written comments concerning this proposed regulation shall be submitted within 14 days of the date of this notice to the person identified below. The comments must specifically identify the regulation you are commenting on.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION IS: Dr. William Hudson, Jr., Vice President for Student Affairs, 308 Foote-Hilyer Administration Center, Tallahassee, Florida 32307-3100, (850) 599-3183 (phone), (850) 561-2674 (fax), william.hudsonjr@famu.edu or Carrie Gavin, Director of Equal Opportunity Programs/Labor Relations, 674 Gamble Street, Tallahassee, Florida 32307-3100, (850) 599-3076 (phone), (850) 561-2997 (fax), carrie.gavin@famu.edu.

FULL TEXT OF THE PROPOSED REGULATION: The full text of this amended regulation follows:

Regulations of Florida A&M University



10.103 Non-Discrimination Policy and Discrimination and Harassment Complaint Procedures.

- (1) Florida A&M University is committed to providing an educational and work environment free from discrimination and harassment on the basis of sex, race, color, religion, national origin, disability, age, marital status, sexual orientation, gender identity, gender expression, military veteran status, as provided by law. This commitment applies to all educational and work environments affecting students, faculty, Administrative and Professional (A&P) employees, Executive Service employees, University Support Personnel System (USPS) employees, and Other Personal Services (OPS) employees and any employment conditions and practices. Vendors, independent contractors, visitors, and others who conduct business with the University or on University policy are also expected to comply with this Regulation.
- (2) This Regulation is designed to comply with multiple laws prohibiting discrimination including: Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act Amendments Act; the Rehabilitation Act of 1973; the Age Discrimination in Employment Act of 1967; Title IX of the Education Amendments Act of 1972; the Pregnancy Discrimination Act of 1978; the Uniformed Services Employment and Re-employment Act; the Veteran's Readjustment Act of 1974; and the Genetic Information Non-discrimination Act of 2008.
- (3) **Definition of Discrimination and Harassment.**
 - (a) *Discrimination* shall include, but not be limited to:
 1. Limiting, segregating or classifying students, employees, applicants for admission, or applicants for employment, in such a way as to deprive individuals of educational or employment opportunities or otherwise adversely affect individuals because of their race, religion, color, age, handicap, disability, sex, marital status,

national origin, sexual orientation, gender identity, gender expression, or veteran status;

2. Denying educational or employment opportunities to individuals because of their race, religion, color, age, handicap, disability, sex, marital status, national origin, sexual orientation, gender identity, gender expression, or veteran status;

3. Providing unequal educational or employment opportunities to individuals because of their race, religion, color, age, handicap, disability, sex, marital status, national origin, sexual orientation, gender identity, gender expression, or veteran status;

4. Providing unnecessary separate educational programs or activities for individuals because of their race, religion, color, age, handicap, disability, sex, marital status, national origin, sexual orientation, gender identity, gender expression, or veteran status;

5. Entering into contractual or other arrangements which utilize criteria or administrative methods which have the effect of subjecting individuals to discrimination or which otherwise adversely affect individuals because of their race, religion, color, age, handicap, disability, sex, marital status, national origin, sexual orientation, gender identity, gender expression, or veteran status; or

6. The application of any policy or procedure, or taking of any admission or employment action, that adversely affects a student, employee, applicant for admission, applicant for employment, a group of students, or a group of employees based on race, religion, color, age, handicap, disability, sex, marital status, national origin, sexual orientation, gender identity, gender expression, or veteran status.

(b) *Harassment* shall include, but not be limited to:

1. Any slurs, innuendoes or other verbal or physical conduct reflecting on an individual's race, ethnic background, gender, sexual orientation, gender identity, gender expression, or handicapping condition which has the purpose or effect of creating an intimidating, hostile or offensive educational or work environment; has the purpose or effect of unreasonably interfering with the individual's work or school performance or participation; or otherwise adversely affects an individual's employment or educational opportunities.

2. The denial of or the provision of aid, benefits, grades, rewards, employment,

faculty assistance, services, or treatment on the basis of sexual advances or requests for sexual favors.

3. Sexual harassment such as sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or educational career; submission to or rejection of such conduct is used as a basis for educational or employment decisions affecting the individual; or such conduct has the purpose or effect of unreasonably interfering with an individual's work or educational performance or creating an intimidating, hostile or offensive working or educational environment.

4. Sexual misconduct including sexual assault, sexual violence, inducing incapacitation for sexual purposes, sexual exploitation, relationship or domestic violence, or stalking.

a. Sexual assault means an actual or attempted sexual contact with another person without that person's consent. This includes, but is not limited to:

- i. Involvement in any sexual contact when the victim is unable to consent;
- ii. Intentional unwelcome touching of, or coercing, forcing, or attempting to coerce or force another to touch a person's genital area, groin, inner thigh, buttocks, or breast; or
- iii. Sexual intercourse without consent.

b. Inducing incapacitation for sexual purposes includes drugs, alcohol, or other means with the intent to affect or having an actual effect on the ability of an individual to consent or refuse to consent to sexual consent.

c. Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples include, but are not limited to:

- i. Prostitution of another person;
- ii. Non-consensual visual or audio-recording of sexual activity;

- iii. Non-consensual distribution of photos, other images, or information of an individual's sexual activity, in
- d. Relationship or domestic violence is abuse or violence between partners or former partners involving one or more of the following elements:
 - i. Battering that causes bodily injury;
 - ii. Purposely or knowingly causing reasonable apprehension of bodily injury;
 - iii. Emotional abuse creating apprehension of bodily injury or property damage;
or
 - iv. Repeated telephonic, electronic, or other forms of communication – anonymously or directly – made with the intent to intimidate, terrify, harass, or threaten.
- e. Stalking includes repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device, or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death.

(4) Dissemination and Implementation of the Regulation.

- (a) The Office of Equal Opportunity Programs shall disseminate this Regulation or portions of it to the University community which shall comply and adhere to its provisions. All units shall also take appropriate action to implement the provisions set forth in this Regulation.
- (b) All questions or concerns about this Regulation or conduct that may violate this Regulation should be directed to the Director of Equal Opportunity Programs/Title IX Coordinator:

Carrie Gavin
Director of Equal Employment Opportunity Programs/ Title IX Coordinator
Florida A&M University
674 Gamble Street
Tallahassee, Florida 32307
(850) 599-3076
carrie.gavin@famuedu

(5) Procedures for Filing a Complaint.

(a) Any individual who believes that he/she is a victim of discrimination or harassment may seek guidance from the Equal Opportunity Programs (EOP) Officer who has been delegated authority by the President to receive and investigate EEO and other protected class discrimination and harassment complaints based on a protected class issue. The EOP Officer shall inform prospective complainants of the formal and informal options by which his/her concern can be addressed and resolved. Issues handled informally will not normally invoke the investigatory procedures set forth in this Regulation. Issues handled formally, shall include the full range of processes and reviews that are necessary to ascertain the facts.

1. Complaints and reports against students may also be reported to the Office of Judicial Affairs. Students referred to the Office of Judicial Affairs for alleged violation of this Regulation will be subject to investigation and disciplinary action as provided by Regulation 2.012 – Student Code of Conduct and Regulation 2.013 – Due Process, Rights, and Responsibilities.

(b) A formal complaint shall be filed on the Charge of Discrimination/Harassment Form and submitted to the EOP Officer within sixty (60) calendar days after the alleged occurrence of the discrimination/harassment incident. The form may be obtained from the EOP Office.

(c) No formal action may be undertaken unless and until a formal complaint is filed. This provision shall not limit the University in any way from initiating its own review of the complaint and taking appropriate action should such be deemed warranted under the circumstances presented.

(d) After receiving the signed written complaint, the EOP Officer shall notify, in writing, the complainant and the person against whom the complaint was filed of the allegations; provide the person against whom the complaint was filed an opportunity to respond; conduct a complete investigation; and, determine a resolution to the complaint within thirty (30) University business days of receipt of the written complaint. This time period

may be extended by the EOP Officer should an extension be necessary in order to ensure a full, fair and complete investigation. The EOP Officer shall give notice to the parties if such an extension is deemed necessary.

- (e) The complaint will be dismissed if it is determined that the allegations are without merit. If disciplinary action is warranted, the EOP Officer shall prepare written notices to both parties (complainant and person against whom the complaint was filed). The written notice shall include the proposed disciplinary action, the reasons for the disciplinary actions, and the right of the person against whom the complaint has been filed to request, within ten (10) University business days of receipt of the proposed disciplinary action, an investigatory interview before a University hearing board.
- (f) The University hearing board, when charged to review the complaint, shall file with the President or President's designee their findings and recommendations. The hearing board will notify both parties of its recommendations.
- (g) The Complainant or the person against whom the complaint has been filed may upon receipt of the hearing board's decision make an appeal to the President, or the President's designee, for a review of the decision. Any appeals to the President or President's designee must be filed in writing within ten (10) University business days of receipt of the hearing board's written decision. Any additional information provided to the President or President's designee can only be provided in conjunction with the written appeal addressed to the President or President's designee. The President or President's designee shall render, within ~~working~~ twenty (20) University business days of receipt of the hearing board's recommendation, a final written decision either dismissing the complaint or taking appropriate disciplinary action. The President or President's designee shall have the right to affirm, modify or reverse any prior decisions.

(6) Disciplinary Actions.

- (a) Any employee or student of the University who is found to have discriminated against or harassed a student, an employee or an applicant for admission or employment will be subject to counseling or disciplinary action. Disciplinary action may include a written reprimand, probation, suspension, expulsion, or termination, ~~or dismissal~~. The nature of the counseling or disciplinary action shall be guided by the seriousness of the offense.

(b) Any employee in a supervisory capacity who has knowledge of a complaint involving another supervisor, subordinate, employee(s) supervised by another supervisor, or student(s) in the class(es) of another supervisor and who does not take appropriate corrective action or report the matter directly to the President or University EOP Officer will be subject to counseling or disciplinary action. Disciplinary action may include a written reprimand, suspension, or termination ~~dismissal~~. The nature of the counseling or disciplinary action shall be guided by the seriousness of the offense.

(c) All University employees must, within twenty-four (24) hours of receiving information, report information they have about alleged or possible sex-based discrimination, sexual harassment, and sexual misconduct discrimination involving students to the Director of EOP, the Office of Judicial Affairs, or the Department of Public Safety. Employees who are statutorily prohibited from reporting such information are exempt from this reporting requirement.

1. This subsection does not exempt the statutory obligation for any person who knows or has reasonable cause to suspect child abuse, abandonment, or neglect to report such information to the Department of Children and Families.

(d) Any employee or student who knowingly files a false complaint of discrimination or harassment or who knowingly provides false testimony under this Regulation shall be subject to disciplinary action. Disciplinary action may include a written reprimand, probation, suspension, expulsion, or terminated ~~or dismissal~~. The nature of the disciplinary action shall be guided by the seriousness of the offense.

(7) Retaliation Procedure.

(a) Complainants who feel that they have been retaliated against for exercising their rights under this Regulation shall have the right to file a retaliation complaint with the EOP Officer.

(b) Retaliation complaints shall be handled in the same manner and utilizing the same procedures set forth above in Section 5 of this Regulation.

(8) Election of Remedies.

- (a) The doctrine of election of remedies shall apply to complaints filed pursuant to this Regulation. Should a Complainant elect to pursue an available alternative remedy, including the filing of a grievance pursuant to the collective bargaining agreement, the filing of any such grievance shall operate as a waiver of the Complainant's right to file a complaint and avail the Complainant of the procedures available under this Regulation. Should a grievance be filed pursuant to an alternative remedy and subsequent to the filing of a complaint under this Regulation but before proceedings under this Regulation have been completed, the filing of any such grievance nonetheless will act as a waiver, and proceedings pursuant to this Regulation shall be terminated.
- (b) The doctrine of election of remedies shall also apply to appeals filed by persons against whom a complaint has been filed. The filing of an appeal pursuant to an alternative remedy by a person against whom a complaint has been filed, including the filing of a grievance under the collective bargaining agreement or the filing of a petition for a hearing pursuant to Section 120.569, F.S., shall operate as a waiver of the right to appeal to the President or President's designee pursuant to this Regulation.

Specific Authority ~~1001.74(4), Article IX, Section 7(c), Florida Constitution and Board of Governors' Regulation 1.001 and 2.003., 1006.60(5), 1012.92(3), Board of Governors Regulation Development Procedure dated July 21, 2005 FS. Law Implemented 1000.05, 1001.74(10)(a),(19),(20) and (34) FS. History- New 5-6-82, Amended 7-15-87, 6-27-96, 12-1-05, _____-14.~~