

FIU-106 Nondiscrimination, Harassment and Retaliation

Responsible Office: Office of Civil Rights Compliance and Accessibility (CRCA)

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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, sex, pregnancy, religion, age, disability, national origin, marital status, and veteran status as provided by law. The University recognizes its obligation to work towards a community of fairness and equal opportunity. This Regulation establishes procedures for an applicant or a member of the University community (faculty, staff, affiliated third parties, and/or student) to file a report 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.

This regulation ensures compliance with federal and state laws including, but not limited to, Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, the Americans with Disabilities Act of 1990 as amended, Sections 503 and 504 of the Rehabilitation Act of 1973, Age Discrimination in Employment of 1967, Pregnancy Discrimination Act of 1978, and Pregnant Workers Fairness Act (PWFA).

This Regulation shall not be implemented in a manner that restricts or prohibits speech protected by the First Amendment or the principles of academic freedom.

II. PURPOSE, SCOPE, AND INTENT

This Regulation applies to the conduct of University students and employees, including faculty, staff, applicants for employment, as well as certain affiliates under University control. The non-discrimination provisions apply to conduct occurring within the scope of University employment or University programs and activities. The Regulation provides for prompt and equitable resolution of reports of discrimination, harassment, and retaliation.

Programs and activities covered under this Regulation include, but are not limited to, all educational, athletic, cultural, and social activities occurring on a University campus or sponsored by the University, housing supplied by the University, and employment practices between the University and its employees.

III. DEFINITION OF TERMS

Alternative Resolution Process – An alternative to the Formal Complaint and Resolution process is a voluntary, structured interaction between involved parties and a facilitator that can be utilized to resolve the allegations at any time prior to reaching a final determination. The Alternative Resolution Process is intended to be flexible while also providing for a full range of possible outcomes.

Complainant - Any individual who is alleged to be a victim of conduct that could constitute behavior prohibited by this Regulation.

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

Examples of conduct which falls into the definition of discrimination include, but are 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.
- Disparity of treatment in educational programs and related support services on the basis of membership in one of the listed groups.
- Limitation in access to housing, or participation in athletic, social, cultural, or other activities of the University on the basis of membership in one of the listed groups.
- Retaliation for submitting a report, filing a Formal Complaint, participating in the complaint process, or reasonably opposing an unlawful and discriminatory practice prohibited under this Regulation.

Formal Complaint – A document filed by a Complainant alleging a Respondent engaged in discrimination and/or harassment based on race, color, sex, pregnancy, religion, age, disability, national origin, marital status, and/or veteran status and requesting an investigation of the alleged act(s).

- A Formal Complaint filed by a Complainant is a document or electronic submission that contains the Complainant's physical or electronic signature or otherwise indicates the Complainant is the person filing the complaint. Note: Submitting a report is distinct from filing a Formal Complaint.

Harassment - Harassment is unwelcome conduct that is based on a protected status, which includes offensive or demeaning language or treatment of an individual. Harassment becomes unlawful where:

- 1) enduring the offensive conduct becomes a condition of continued employment, or participation in an educational program, and/or related support services, or
- 2) the conduct is severe or pervasive enough to create a work or educational environment that a reasonable person would consider intimidating, hostile, or abusive.

Respondent - Any individual or group, including student organizations, that has been accused of violating this Regulation.

Retaliation – Occurs when adverse action is taken or threatened against an individual covered by this Regulation for submitting a report, filing a Formal Complaint, participating in the complaint process, or reasonably opposing an unlawful and discriminatory practice prohibited under this Regulation

Student – Any person who participates in any course or program of the University, either full-time or part-time, in-person or online, and whether degree-seeking or non-degree seeking. Students are also considered:

- Persons who are academically dismissed or withdraw after allegedly violating this regulation,
- Persons who are not officially enrolled at the University for a particular term but who have a continuing relationship with the University,
- Persons who have been notified of being accepted for admission, and
- Persons who are living in the residence halls but not enrolled at the University.

IV. FORMAL COMPLAINT, INVESTIGATION, RESOLUTIONS, AND DISMISSAL

CRCA shall administer the policies and procedures outlined in this Regulation. Members of the University community are encouraged to report conduct that may constitute prohibited discrimination or harassment and concerns that may rise to the level of prohibited discrimination or harassment if not addressed. The identity of any individual who reports discrimination, harassment, or other personally identifiable information will be kept confidential to the extent possible and permitted by law. In cases where the potential Complainant chooses not to file a Formal Complaint, CRCA may speak with the Respondent and discuss this Regulation, possible violations based on their behavior, monitoring and modifying (if necessary) their behavior, and what is expected of them as a member of the University Community.

A. Reporting

1. The University's Central Reporting Page, located at <https://report.fiu.edu> provides a method of reporting alleged violations this Regulation to the Office of Civil Rights Compliance and Accessibility. Please note that submitting a report is distinct from filing a Formal Complaint.

B. Formal Complaints

1. A Formal Complaint must be made in writing to CRCA. 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 Respondent, 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 Formal Complaint must be filed within three hundred (300) calendar days of the alleged act(s) of discrimination.
3. If the Respondent is a student and portions of the Formal Complaint include allegations that violate the Student Conduct and Honor Code, those allegations may be investigated and/or addressed separately by Student Conduct and Academic Integrity (SCAI) before, during, or after the investigation coordinated by the Director of CRCA.

Similarly, if the Respondent is an employee or faculty member or other member of the University Community and portions of the Formal Complaint include allegations that violate University regulations, policies, and procedures applicable to personnel then those allegations may be investigated and/or addressed either together or separately by Human Resources before, during, concurrent with, or after the investigation coordinated by the Director of CRCA.

4. Where a potential Complainant is unable or unwilling to pursue a submitted complaint of discrimination, the Director of CRCA may nevertheless choose to pursue an investigation of the alleged offense or take any other appropriate action based on:
 - The egregiousness of the alleged offense,
 - The basis for the Complainant's decision not to pursue a complaint, and
 - The availability of apparent evidence supporting the allegations.
5. In the event that a claim of discrimination is found to be frivolous or malicious, the Complainant will be subject to appropriate University disciplinary action pursuant to applicable University regulations, policies, and procedures.

C. Resolution and Findings

1. Formal Resolution - Investigation

- Should the Complainant select the Formal Resolution Process, the investigation may include, but shall not be limited to, interviewing the Respondent regarding the allegations, interviewing other individuals 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 that includes a summary of the complaint, a description of the investigation, the findings, and recommendations.
- The investigation will be conducted expeditiously, but in a manner consistent with the complexity and severity of the matter and the availability of witnesses. CRCA will attempt to complete its investigation and recommendation within ninety (90) calendar days of filing of the Formal Complaint, if possible.
- Respondents found to be in violation of this Regulation are subject to appropriate sanctions and/or disciplinary action.
The findings shall be shared with the Complainant, the Respondent, the Vice President for Human Resources, and/or Director of Student Conduct and Academic Integrity or their designee(s), and all other appropriate University officials. All disciplinary actions and sanctions shall be subject to applicable University Regulations and Policies, including but not limited to University Regulation 2501.

2. Alternative Resolution Process

- CRCA may attempt an Alternative Resolution at any time before or during an investigation .
- If the Alternative Resolution of the complaint was achieved between the parties

in cooperation with CRCA, and the Respondent fails to abide by the terms of the resolution or retaliates against the Complainant, the Complainant or supervisor shall immediately notify CRCA.

- If the Alternative Resolution is not achieved, then CRCA may continue to investigate through the Formal Resolution process at the request of the Party.

D. Dismissal

1. The University may dismiss a Formal Complaint in the following circumstances:
 - The conduct would not constitute a violation of this Regulation, even if proved;
 - Upon completion of the investigation, the CRCA Director concludes that there is no reasonable cause to believe that a violation of this Regulation occurred. Reasonable cause is a lower standard than preponderance of the evidence;
 - The Complainant notifies the CRCA Director in writing that the Complainant would like to withdraw the Formal Complaint or any allegations, therein;
 - The Respondent is no longer enrolled or employed by the University;
 - Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein;
 - A final written decision either dismissing the complaint or taking appropriate disciplinary action.
2. The Vice President for Human Resources or a designee shall have the right to affirm, modify, or reverse any prior decisions.

E. Appeal.

1. Either party may seek to appeal the finding made by CRCA to the Vice President for Human Resources or Chief Student Affairs Officer or their designees by filing a request for a review (“appeal”) within seven business days of the date of CRCA’s finding. The appeal must be in writing and must 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 that was not reasonably available at the time the finding was made, that could affect the outcome of the matter
2. CRCA will distribute copies of the appeal to the opposing party and to the Director of CRCA.
3. The opposing party may file a response to the appeal to the Vice President for Human Resources or Chief Student Affairs Officer or designee within seven (7) business days of receipt of the appeal.
4. The Vice President for Human Resources or Chief Student Affairs Officer or designee shall issue a written finding no more than seven (7) business days after receipt of the appeal, or of a response to the appeal, whichever is later.
5. Upon final acceptance by the Vice President for Human Resources or Chief Student Affairs Officer or designee of a written finding on the complaint, the office of Employee and Labor Relations along with the immediate supervisor of the

Respondent 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 Respondent. In the case of students, this will occur in collaboration with the office of Student Conduct and Academic Integrity. The proposed resolution shall be approved by CRCA. 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. Student Conduct and Academic Integrity (SCAI) will oversee disciplinary sanctions for students and student organizations found in violation of this regulation.

V. RETALIATION PROHIBITED

Retaliation because an individual submitted a report, filed a Formal Complaint, participated in the complaint process, or reasonably opposed an unlawful and discriminatory practice is prohibited by this Regulation. The University will take responsive action to any report of Retaliation, which may include, but is not limited to, interim action and investigating consistent with the process outlined above.

Specific Authority: Board of Governors Regulation 1.001 (5)(a). History-- Formerly FIU-104 (repealed) and FIU-103 (repealed). New -- June 8, 2018, Amended 6.10.24, 9.18.25.