Florida Gulf Coast University Board of Trustees
January 20, 2009

SUBJECT: Non-Discrimination and Anti-Harassment Regulation (FGCU-PR1.003)
Sexual Harassment (FGCU-PR1.004)

PROPOSED BOARD ACTION

Approve revisions to university regulation referenced above as well as the repeal of the Sexual Harassment Regulation (FGCU-PR1.004).

BACKGROUND INFORMATION

This regulation previously existed as the Non-Discrimination Regulation and Complaint Procedure. The proposed revisions are meant to further clarify the rights of employees in a protected class as it relates to discrimination and harassment. Additionally, the procedural aspects of this regulation have been placed in a policy for the efficient handling of complaints. This change is in conjunction with the repeal of the Sexual Harassment Regulation.

All state universities are required to utilize the Board of Governors' Regulation Development Procedure. This updated FGCU measure assists in handling matters based upon today’s current practices and expectations.

Supporting Documentation Included: (1) Notice and Text for Non-Discrimination and Anti-Harassment Regulation, and (2) Notice and Text for Sexual Harassment Regulation -- (FGCU-PR1.003 and FGCU-PR1.004)

Prepared by: Director of Institutional Equity and Compliance Cheryl Seals-Gonzales

Legal Review by: General Counsel Vee Leonard

Submitted by: General Counsel Vee Leonard
FLORIDA GULF COAST UNIVERSITY
NOTICE OF REGULATORY ACTION
DECEMBER 10, 2008

REGULATION TITLE:
Non-Discrimination and Anti-Harassment Regulation

REGULATION NO.:
FGCU-PR1.003

SUMMARY:
This Non-Discrimination and Anti-Harassment Regulation is being updated to clarify and reaffirm the University’s commitment to non-discrimination and anti-harassment. It’s related complaint procedures have been removed and will be included in a separate university policy, Non-Discrimination and Anti-Harassment Complaint Policy and Procedure.

FULL TEXT:
The full text of the regulation being proposed is attached and can also be found at http://www.fgcu.edu/generalcounsel/promulgation.asp

LAW IMPLEMENTED:
§760.10 Florida Statutes

UNIVERSITY OFFICIAL INITIATING THE PROPOSED REVISED REGULATION:
Cheryl Seals-Gonzalez, Director Institutional Equity and Compliance

UNIVERSITY OFFICIAL APPROVING THE PROPOSED REGULATION:
Wilson G. Bradshaw, President

PERSON TO BE CONTACTED REGARDING THE PROPOSED NEW REGULATION:
Diane St. John, Administrative Assistant, dstjohn@fgcu.edu; (239) 590-1101 (Phone), (239) 590-7470 (Facsimile); 10501 FGCU Blvd. South, Fort Myers, FL 33965-6565

ANY COMMENTS REGARDING THE PROPOSED NEW REGULATION SHOULD BE SUBMITTED IN WRITING ON OR BEFORE JANUARY 5, 2009 BY 5:00 P.M. THE COMMENTS MUST IDENTIFY THE REGULATION ON WHICH YOU ARE COMMENTING.

THIS NOTICE WAS POSTED ON THE FGCU WEBSITE ON: DECEMBER 10, 2008
REGULATION: FGCU-PR1.003

Non-Discrimination and Anti-Harassment Regulation and Complaint Procedures

(1) ___General Statement:

(a) ___Affirmation. Florida Gulf Coast University (FGCU) affirms its commitment to ensure that each member of the University community shall be permitted to work, or study, participate in educational programs including those receiving federal funding, services and activities, or conduct business, in an environment free from any form of illegal discrimination, including race, color, religion, age, disability (or handicap), sex, national origin, marital status, and veteran status, except as otherwise permitted by law. Admission to, and participation in, the educational programs and activities of FGCU shall be open to all qualified individuals regardless of race, color, religion, disability (or handicap), sex, national origin, marital status, or veteran status. The University strives to create—foster a community in which diversity and inclusion are valued and opportunity is realized—equalized. This Regulation establishes creates a mechanism of procedures for applicants, students, employees, volunteers, visitors as well as vendors and contractors or a member of the University community to file a complaint of alleged discrimination or harassment, and to include sexual harassment as defined in Regulation FGCU-PR1.004.

(b) ___Violation. It shall be a violation of this Regulation for any officer, university employee, student, visitor, agent, vendor, or contractor to discriminate against or harass, as hereinafter defined, any other officer, university employee, student, visitor, agent, vendor, contractor or applicant for employment or admission. Discrimination and harassment are forms of conduct which shall result in employee disciplinary action pursuant to University Regulations FGCU-PR5.016 and FGCU-PR5.023, and the terms of any applicable collective bargaining agreement. ___as to employees, or action University vendors and contractors found to have violated this Regulation will receive sanctions or other punitive actions permitted by consistent with law or contract contract as to vendors and contractors.

(2) ___Coverage:

(a) ___Parties. All complaints of discrimination or harassment, as otherwise provided herein, shall be adjudicated under this regulation. Complaints between students, or where one student (the Respondent) is a student and not employed by the University, shall be reported to the Office of the Vice President of Student Affairs and adjudicated under the Student Code of Conduct. Students who are also employees
may be subject to University disciplinary action as well as disciplinary action under the Student Code of Conduct.

(b) Scope of prohibitions. This Regulation covers all employment practices, as well as educational, athletic, cultural and social programs, services and activities occurring at or sponsored by, FGCU.

(3) Reporting: If the university becomes aware of activity which could be violative this Regulation, it will take necessary actions, which may include an investigation, even when a complaint has not been filed. While all members of the university are expected to promptly report known activity which could violate this Regulation, only those in supervisory or managerial personnel may be subject to disciplinary action pursuant to FGCU PR5.016 should they know of such activity and fail to report. Complaints will be promptly investigated, consistent with the University’s Complaint Procedure Policy. The Office of Institutional Equity and Compliance (OIEC) will be responsible for the investigation of Complaints covered under this Regulation.

(a) Responsibility of supervisors and managers: All supervisors and managers are encouraged to take steps necessary to prevent discrimination or harassment based on a protected class from occurring. They should clearly communicate to employees that such behavior will not be tolerated and periodic training on these topics should be attended. Whenever an employee, student, or non-employee files a complaint, immediate and appropriate action is advisable. Any University supervisory or managerial employee who receives a report, observes or learns of an alleged violation of this Regulation has an absolute and unqualified duty to immediately report the alleged violation to the OIEC Director in a timely manner.

(b) Responsibility of alleged victim: The person deeming any action or conduct as unwelcome is encouraged to so advise the offending party and inform him or her that it must stop. However, the alleged victim is not required to inform an alleged offender of the offensiveness of the behavior in order to make a claim under this Regulation. The University’s Complaint Procedure Policy should be used to address any concerns or issues.

(c) Responsibility of employees involving conflicts of interest: Employees in a position of authority must resolve any actual or potential conflict of interest by taking necessary steps, including removing himself or herself from evaluative decisions concerning the other individual. If the employee in authority is unable to resolve the conflict of interest, he or she is required to inform his/her immediate supervisor promptly. Failure to resolve potential or actual conflicts of interest as described in this regulation shall result in disciplinary action pursuant to University regulations.

(24) Definitions:
(a) **Discrimination.** For the purpose of this regulation, discrimination or harassment is defined as the intentional or unintentional treatment of any member of the University community differently than those who are similarly situated, or any unfair treatment solely others are treated based upon race, color, religion, age, disability (or handicap), sex, national origin, marital status and/or veteran status.

1. Disparate treatment in recruitment, hiring, training, promotion, transfer, reassignment, termination, discipline, salary and other economic benefits, and all other terms and conditions of employment on the basis of membership in one of the categories protected in paragraph (a), above.

2. Disparate treatment in or access to educational programs and related support services on the basis of membership in one of the categories protected in paragraph (a), above.

3. Limitation in access to housing, or to participation in athletic, social, cultural or other activities of the University because of membership in one of the categories protected in paragraph (a).

(b) **Harassment.** For the purposes of this regulation, harassment is unwelcome conduct that is based upon race, color, religion, age, disability (or handicap), sex, national origin, marital status and/or veteran status. Harassment occurs when: (1) enduring the offensive conduct becomes a condition of continued employment or educational participation, 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.

(c) **Sexual Harassment.** For the purposes of this Regulation, sexual harassment is defined as unwelcome sexual attention, to included requests for sexual contact, and other verbal or physical conduct of a sexual nature from any person when:

1. Submission to such conduct is either explicitly or implicitly a term or condition of an individual’s hire or employment, salary increase, position advancement or other employment-related benefits as well as a student’s educational experience;

2. Submission to or rejection of such conduct by an individual is used as the basis for employment or education-related decisions affecting such individuals; or

3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating or hostile working or educational environment.

(d) **Conflict of Interest.** When an individual evaluates or supervises another individual with whom he or she has, or desires to have, an amorous or sexual relationship, a conflict is created. The University discourages such amorous or sexual relations between employees and students. Such relationships, even when consensual, may be exploitive, and jeopardize the integrity of the educational process or work environment.
environment and may lead to charges of sexual harassment. The University requires the resolution of any conflict of interest created by these relationships. The employee in a position of authority must resolve any actual or potential conflict of interest by taking necessary steps, including removing himself or herself from evaluative decisions concerning the other individual. If the employee in authority is unable to resolve the conflict of interest, he or she is required to inform his/her immediate supervisor promptly. Failure to resolve potential or actual conflicts of interest as described in this regulation shall result in disciplinary action pursuant to University regulations.

(b) Conduct which falls into the definition of discrimination, includes, but is not limited to:
   1. Disparate treatment in recruitment, hiring, training, promotion, transfer, reassignment, termination, discipline, salary and other economic benefits, and all other terms and conditions of employment on the basis of membership in one of the categories protected in paragraph (a), above.

   2. Disparate treatment in or access to educational programs and related support services on the basis of membership in one of the categories protected in paragraph (a), above.

   3. Limitation in access to housing, or to participation in athletic, social, cultural or other activities of the University because of membership in one of the categories protected in paragraph ——

   4. Failure to abide by the terms of a conciliated agreement.

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

(e) Conduct which falls within the definition of harassment includes, but is not limited to, that 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 and is based upon membership in one of the categories protected in paragraph (a) above. 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, such as, objectionable epithets, threatened or actual physical harm or abuse, or other intimidating or insulting conduct directed against the individual.

(e) Complainant. A Complainant is a person or persons alleging a violation under this Regulation.

(f) Respondent. A Respondent is a person or persons whose conduct is the subject of concern under this Regulation.
(d) Scope of prohibitions: This Regulation covers all employment practices, educational, athletic, cultural and social programs, services and activities occurring on a campus of, or sponsored by, Florida Gulf Coast University and, housing supplied by the University.

(5) Retaliation: Retaliation occurs when an officer, agent or employee takes an adverse action against a covered individual because he or she engaged in a protected activity under this regulation. Therefore, a supervisory or managerial employee may not terminate, demote, harass or otherwise "retaliate" against an individual for engaging in protected activity. Neither may an employee harass or otherwise "retaliate" against an individual for engaging in protected activity. Protected activity includes filing a discrimination charge, testifying or participating in any way in an investigation, proceeding, or lawsuit, opposing employment practices that one reasonably believes discriminates against individuals or encourages someone to exercise their rights.

(6) Cooperation: All members of the university community are expected to cooperate in any university investigation of discrimination or harassment. An employee's failure to cooperate fully with an investigation will result in disciplinary action up to immediate termination for cause pursuant to FGCU-PR5.016.

(7) False Complaints and/or False Information: Knowingly making false or malicious statements or allegations under this Regulation will result in disciplinary action.

(e) When referred to in this Regulation, days means calendar days unless otherwise noted.

(3) Procedures for Reporting Violations and Conducting Investigations of Complaints:

(a) Administration and Consultation. The Office of Institutional Equity and Compliance shall administer the policies and procedures outlined in this Regulation, answer inquiries regarding the procedures, and provide informal advice regarding issues of discrimination. In cases where the complainant chooses not to file a formal complaint, action will be taken to inform the alleged offender of the concerns, suggesting that if the allegations are true, the alleged offender monitor and modify his/her behavior.

(b) Formal Complaint.

1. A complaint must be made in writing to the Office of Institutional Equity and Compliance using the Discrimination Complaint Form. This form, which is incorporated by reference, has been approved by the University President and is available upon request at the Office of Institutional Equity and Compliance, 10501 FGCU Blvd. South, Fort Myers, FL 33965-6565. 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 should be filed within sixty (60) days of the alleged act(s) of discrimination, or in the case of a student complaint against a faculty member, within fourteen (14) days of the beginning of class of the following semester. This provision shall not limit the University in any way from initiating its own investigation and taking appropriate action should such be deemed warranted under the circumstances presented.

3. The Office of Institutional Equity and Compliance or its designee shall be responsible for investigating or coordinating the review of the complaint. The investigation may include, but shall not be limited to, interviewing the alleged offender, and/or 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.

(c) Conciliation. The Office of Institutional Equity and Compliance may attempt conciliation during the course of an investigation of a complaint. If conciliation is not achieved, then the Office of Institutional Equity and Compliance shall continue to investigate the complaint, and shall issue a written finding within a maximum of sixty (60) days. If conciliation of the complaint was achieved between the parties in cooperation with the Office of Institutional Equity and Compliance, and the alleged offender fails to abide by the agreement or retaliates against the complainant, the complainant or supervisor shall notify the Office of Institutional Equity and Compliance.

(d) Findings. A copy of the report of the Office of Institutional Equity and Compliance shall be made to the complainant, the alleged offender, the immediate supervisor and the Vice President of the alleged offender, or in cases of allegations against a vice president or a non Vice President direct report, to the President.

(e) Review.
1. Either the complainant or the accused may seek review of the findings by filing a written appeal within fourteen (14) days of receipt, with the Vice President or designee of the alleged offender or, if the alleged offender is a Vice President or a non Vice President direct report, with the President or designee. The appeal shall be based on only one or more of the following grounds: relevant evidence was not reviewed; discovery of new evidence that was previously not available through exercise of reasonable diligence; or, the factual evidence was insufficient to support the findings.

2. Copies of the appeal shall be provided to the opposing party and to the Office of Institutional Equity and Compliance.
3. The opposing party and/or the Office of Institutional Equity and Compliance may file a response to the appeal with the Vice President or designee or the President, in cases of allegations against a Vice President or a non-Vice President direct report, within fourteen (14) days of receipt of the appeal.

4. The Vice President or designee, or the President, in cases of allegations against a Vice President or a non-Vice President direct report, shall issue a written finding not more than fourteen (14) days after receipt of the appeal, or of a response to the appeal, whichever is later. Such written finding shall be limited to a review of the grounds on which the appeal is based.

(f) Resolution. The Vice President or designee, or the President, in cases of allegations against a Vice President or a non-Vice President direct report, shall issue a finding of cause or no cause on the complaint. Where there is a finding of cause, the immediate supervisor of the alleged offender shall propose a resolution to the complaint (e.g., that a student be allowed to change sections, that the employee report to a different supervisor) and shall recommend or take disciplinary action against the offender. The proposed resolution shall be approved by the Office of Institutional Equity and Compliance. Disciplinary action shall be taken in accordance with University guidelines contained in University Regulations FGCU-PR5.016 and FGCU-PR5.022, and the terms of any applicable collective bargaining agreement.

(g) Prohibition of Retaliation. No University employee shall retaliate against a complainant witness to an investigation. Any attempt to retaliate against a student, employee, applicant, or vendor for initiating a complaint shall be treated as a separate allegation of discrimination.

(h) The procedures contained in this Regulation apply also to vendors and contractors, except that the Director of Institutional Equity and Compliance shall consult with the Office of Procurement Services to determine how the investigation will be undertaken. Upon determination of any findings that it is more likely than not discrimination occurred, the University shall take action against the vendor or contractor in accordance with the terms of the party’s contract.

(4) Election of Remedies; Complainant’s Right to Seek Remedy Outside the University:

(a) The doctrine of election of remedies shall apply to complaints filed pursuant to this Regulation. Should a complainant elect to pursue an alternative remedy available to them, including the filing of a grievance pursuant to the collective bargaining agreement, or pursuant to University Regulation FGCU-PR5.016 or FGCU-PR5.020, the filing of any such grievance shall operate as a waiver of the Complainant’s right to file a complaint and avail themselves of the procedures available under this
regulation. Should a grievance be filed pursuant to an alternative internal 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. As an exception to this provision, a complainant may file an EEOC charge while the complaint is in progress when such filing becomes necessary to meet federal filing deadlines pursuant to 42 U.S.C. § 2000e et seq.

(b) The doctrine of election 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 internal remedy by a person against whom a complaint has been filed, including the filing of a grievance under the collective bargaining agreement shall operate as a waiver of the right to appeal to the President the decision of a Vice President or a non-Vice President direct report pursuant to this Regulation.

(5) Frivolous or Malicious Complaints:
In the event that a claim of discrimination, harassment or sexual harassment is found to be frivolous or malicious, disciplinary action shall be taken against the complainant, pursuant to University Regulations FGCU-PR5.016 and FGCU-PR5.022, and the terms of any applicable collective bargaining agreement as to employees, and University Regulation FGCU-PR4.002, as to students.
FLORIDA GULF COAST UNIVERSITY
NOTICE OF REGULATORY ACTION
DECEMBER 10, 2008

REGULATION TITLE:
Sexual Harassment

REGULATION NO.:
FGCU-PR1.004

SUMMARY:
This FGCU regulation is being repealed and consolidated with FGCU-PR1.003, Non-Discrimination and Anti-Harassment.

FULL TEXT:
The full text of the regulation being proposed is attached and can also be found at http://www.fgcu.edu/generalcounsel/promulgation.asp

LAW IMPLEMENTED:
§760.10 Florida Statutes

UNIVERSITY OFFICIAL INITIATING THE PROPOSED REVISED REGULATION:
Cheryl Seals-Gonzalez, Director Institutional Equity and Compliance

UNIVERSITY OFFICIAL APPROVING THE PROPOSED REGULATION:
Wilson G. Bradshaw, President

PERSON TO BE CONTACTED REGARDING THE PROPOSED NEW REGULATION:
Diane St. John, Administrative Assistant, dstjohn@fgcu.edu; (239) 590-1101 (Phone), (239) 590-7470 (Facsimile); 10501 FGCU Blvd. South, Fort Myers, FL 33965-6565

ANY COMMENTS REGARDING THE PROPOSED NEW REGULATION SHOULD BE SUBMITTED IN WRITING ON OR BEFORE JANUARY 5, 2009 BY 5:00 P.M. THE COMMENTS MUST IDENTIFY THE REGULATION ON WHICH YOU ARE COMMENTING.

THIS NOTICE WAS POSTED ON THE FGCU WEBSITE ON: DECEMBER 10, 2008
(1) General Statement.

a. Sexual harassment underlines the integrity of the academic and work environment, and prevents its victims and their peers from achieving their full potential. All members of the University community are entitled to work and study in an atmosphere free from sexual overtures or innuendoes that are unsolicited and unwelcome. It is the particular responsibility of those members of the University community who hold positions of authority over others to avoid actions that are or can be considered sexually abusive or unprofessional.

b. It shall be a violation of this rule for any officer, employee, student, or agent to sexually harass, as sexual harassment is hereinafter defined, any other officer, employee, student visitor or agent. Sexual harassment is a type of misconduct which shall result in disciplinary action pursuant to University Regulation FGCU-PR5.016 and FGCU-PR5.022, and the terms of any applicable collective bargaining agreement, or other corrective measures such as a requirement to undergo training or counseling.

c. When an individual evaluates or supervises another individual with whom he or she has an amorous or sexual relationship, a conflict is created. The University discourages such amorous or sexual relations between employees and students. Such relationships, even when consensual, may be exploitive, and jeopardize the integrity of the educational process or work environment and may lead to charges of sexual harassment. The University requires the resolution of any conflict of interest created by these relationships.

d. The employee in a position of authority must resolve any actual or potential conflict of interest by taking necessary steps, including removing himself or herself from evaluative decisions concerning the other individual. If the person in authority is unable to resolve the conflict of interest, he or she is required to inform his/her immediate supervisor promptly. Failure to resolve potential or actual conflicts of interest as described in this rule shall result in disciplinary action pursuant to University Regulations FGCU-PR5.016 and FGCU-PR5.011 and the terms of any applicable collective bargaining agreement.

e. It is expected that Deans, Chairs, Department Heads, Directors and other supervisors shall continue to monitor and take corrective action whenever instances of sexual harassment are either observed or reported to them. While the decision regarding resolution remains within the unit, all allegations of sexual harassment are to be immediately reported to the Office of Equal Opportunity Programs, which shall provide advice and monitor the administrator's actions and/or take action as required by Title VII of the Civil Rights Act of 1964, as amended, and Chapter 760, F.S.
(2) Definition of Sexual Harassment.
   a. For the purpose of this rule, sexual harassment is defined as conduct of a sexual nature which includes:
      i. Verbal harassment or abuse of a sexual nature, including intimating by way of suggesting a desire for sexual relations, or making jokes or remarks of a sexual nature which are not germane to the workplace or to academic course content.
      ii. Displaying or posting through any medium, including, but not limited to, electronic communication, offensive sexually suggestive pictures or materials in the workplace.
      iii. Use of sexually suggestive terms or gestures to describe a person's body, clothing, or sexual activities.
      iv. Unwelcome physical contact of a sexual nature such as patting, pinching or unnecessary touching.
      v. Overt or implied threats against an individual to induce him or her to provide sexual favors or to engage in an unwelcome sexual relationship.
   b. For purposes of employment, sexual harassment is defined as unwelcome sexual advances, requests for sexual contact, and other verbal or physical conduct of a sexual nature from any person when:
      i. Submission to such conduct is either explicitly or implicitly a term or condition of an individual's hire or employment, salary increase, position advancement or other employment-related benefits; or
      ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or
      iii. Such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
   c. For purposes of enrollment as a student at the University, sexual harassment is defined as any unwelcome sexual advances, requests for sexual contact, and other verbal or physical conduct of a sexual nature, including, but not limited to, instances where:
      i. Submission to such conduct is made either explicitly or implicitly a term or condition of a student's academic achievement; or
      ii. Submission to or rejection of such conduct is used as a basis for decisions regarding the evaluation of a student's academic achievement; or
      iii. Such conduct has the purpose or effect of interfering with an individual's academic performance or creating an intimidating, hostile, or offensive academic environment.
   d. Retaliation. It shall be a violation of the University's policy against sexual harassment for an employee or student to retaliate against someone who has made or filed a complaint against them alleging they have engaged in sexual harassment.
(3) Dissemination of Policy.
   a. Employees. It shall be the responsibility of the Director of Human Resources to disseminate the University's Sexual Harassment policy to all employees of the University through the following means:
      i. Each employee shall be furnished with a copy of this rule. The University shall publish and disseminate notice of changes to the rule to all employees.
      ii. Employees shall have the opportunity to discuss and ask questions about the interpretation and application of the policy, and shall be apprised of possible discipline for any violation thereof during periodic seminars.
      iii. It shall be the obligation of the University to train its administrators and supervisors in implementation of this rule.
   b. Students. The University's Sexual Harassment Policy shall be published in the University's academic catalog(s), Student Information Handbook or in other publications of general circulation to students. The University shall publish and widely disseminate notice of changes in the policy.
   c. Vendors. The Director of Purchasing is responsible for disseminating the University's Policy against Sexual Harassment to university vendors by means of its incorporation by reference in contracts and purchase orders.
   d. Contractors.
      i. Any authorized employee or student who enters into a contract with third parties for the provision of goods or services to the University is responsible for informing them of the University's policy against Sexual Harassment.
      ii. Contractors to the University are responsible for apprising others under their purview, including but not limited to consultants, subcontractors and employees, of the University's policy against Sexual Harassment.

(4) Disciplinary Actions.
   a. Any employee of the University who is found to have sexually harassed a student, another employee or an applicant for employment shall be subject to disciplinary action up to and including dismissal in accordance with University Regulation FGCU-PR5.016 and FGCU-PR5.022, and the terms of any applicable collective bargaining agreement. The level of the punishment shall be guided by the seriousness of the offense.
   b. Any student who engages in sexual harassment of an employee or another student shall be subject to disciplinary action up to and including expulsion as provided in University Regulation FGCU-PR4.003.
   c. Any employee with supervisory authority who fails to take corrective action or report a complaint or incident of sexual harassment shall be subject to discipline up to and including dismissal as provided in University Regulation FGCU-PR5.016 and FGCU-PR5.022, and the terms of any applicable collective bargaining agreement. The level of the punishment shall be guided by the seriousness of the offense.
d. Anyone who knowingly files a false complaint of sexual harassment or who knowingly provides false testimony shall be subject to discipline up to and including dismissal or expulsion as provided in University Regulation FGCU-PR5.016 and FGCU-PR5.022, and the terms of any applicable collective bargaining agreement as to employees, and Regulation FGCU-PR4.003, as to students. The level of the punishment shall be guided by the seriousness of the offense.

(5) Procedure for filing a Complaint.
   a. The procedures described in Regulation FGCU-PR1.003, Non-discrimination Policy and Discrimination Complaint Procedures shall be followed.
   b. Any formal written complaint filed under this section must be filed with the President’s designee within sixty (60) calendar days after the alleged occurrence of the harassment incident, or in the case of a student complaint against a faculty member, within fourteen (14) calendar days of the beginning of class of the following semester.

(6) Frivolous or Malicious Complaints. In the event that a claim of sexual harassment is found to be frivolous or malicious, disciplinary action shall be taken against the complainant, in accordance with University Rules FGCU-PR5.016 and FGCU-PR5.022, and the terms of any applicable collective bargaining agreement as to employees, and Regulation FGCU-PR4.003, as to students.

Law Implemented:
§240.261, 760.10 FS.
History of Rule:
New 4-17-97
History of Regulation:
New 1-15-08
Effective Date of Regulation:
January 15, 2008
Comment on Regulation

From: Paine, Morgan  
Sent: Wednesday, December 10, 2008 4:09 PM  
To: St. John, Diane  
Cc: St. Hill, Dr. Halcyon  
Subject: Re: FGCU-PR1.003 Non-Discrimination and Anti-Harassment

Diane St. John, Administrative Assistant  
10501 FGCU Blvd. South, Fort Myers, FL  
33965-6565

Dear Ms. St. John:

I have serious concerns about some of the language in the current proposed FGCU-PR1.003 REGULATION TITLE: Non-Discrimination and Anti-Harassment Regulation.

I am most concerned with the failure to include “Sexual Orientation” in the specific list of classes for both discrimination and harassment. This omission means that it is not possible to prove discrimination and harassment solely based upon sexual orientation, because it is not a kind of discrimination recognized by this regulation. This community should not enshrine in regulation the ability to discriminate and harass students and staff members of this community based upon sexual orientation. The specific passages that cause me concern are:

(a) Discrimination. For the purpose of this regulation, discrimination or harassment is defined as the intentional or unintentional treating treatment of any member of the University community differently than those who are similarly situated, or any unfair treatment solely others are treated based upon race, color, religion, age, disability (or handicap), sex, national origin, marital status and/or veteran status.

Similarly under 4b) it will not be provable that “Sexual Orientation” Harassment has taken place under any circumstances, as it is not listed as a condition from which harassment might arise.

(b) Harassment. For the purposes of this regulation, harassment is unwelcome conduct that is based upon race, color, religion, age, disability (or handicap), sex, national origin, marital status and/or veteran status. Harassment occurs when: (1) enduring the offensive conduct becomes a condition of continued employment or educational participation, 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.
This lack is easily remedy by adding, as the Faculty Senate has endorsed both in 2005-6 and at its last meeting in December of 2008, the inclusion of Sexual Orientation in the list of classes or conditions that are worthy of identification in these regulations. I do not believe we ought to be codifying the ability to commit discrimination or harassment based upon “Sexual Orientation” and I believe that this document as currently written is granting exactly that opportunity. I believe all members of our community need the protections offered by this regulation in order to fully participate in our community.

Please amend to include “Sexual Orientation” within the list of classes or conditions or revoke this proposed regulation.

Thank you for your attention.

Morgan T. Paine

On 12/10/08 10:42 AM, "St. John, Diane" <dstjohn@fgcu.edu> wrote:

A new Notice has been added to the FGCU Office of the General Counsel web site. This notice can be viewed at http://www.fgcu.edu/generalcounsel/promulgation.asp. The PDF of this notice can be downloaded directly from http://www.fgcu.edu/generalcounsel/files/notices/FGCU_PR1_003_Notice_and_Text.pdf
-----Original Message-----
From: St. Hill, Dr. Halcyon
Sent: Friday, December 05, 2008 11:30 AM
To: Bradshaw, President Wilson G.; Leonard, Vee; Toll, Dr. Ronald; Evans, Susan
Cc: Shepard, Dr. Joe; Rollo, James M.; Magiera, Steve; Deschene, Catherine;
Krell, Barbara; All Faculty
Subject: FW: Non-Discrimination and Anti-Harassment Resolution

Dear Colleagues,

Attached is a resolution regarding the proposed revisions to the University's Non-Discrimination and Anti-Harassment policy (PR1.003). This resolution was passed by the Senate by a majority vote at today's meeting. This resolution serves as an official notification for the Board of Trustees of the faculty Senate's formal position on the proposed changes to PR1.003 and its companion policy and procedures document.

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ESTABLISHING SEXUAL ORIENTATION AS A FGCU POPULATION PROTECTED FROM DISCRIMINATION AND HARASSMENT UNDER FGCU BOT REGULATION PR1.003 AND COMPANION NON-DISCRIMINATION AND ANTI-HARASSMENT COMPLAINT POLICY AND PROCEDURE

FGCU Faculty Senate
Draft Resolution
December 5, 2008

The Faculty,

CONSIDERING that proposed FGCU Regulation PR1.003, a revised Non-Discrimination and Anti-Harassment Regulation, and its companion Non-Discrimination and Anti-Harassment Complaint
Policy and Procedure, have been submitted to the University community for consideration and discussion and will be likely considered for adoption by the FGCU Board of Trustees;

CONSIDERING that the revised Regulation and its companion Policy and Procedure document do not recognize sexual orientation as a class of the University community protected from discrimination and harassment;

HAVING SEEN that the 2007-2010 FGCU Collective Bargaining Agreement, negotiated between United Faculty of Florida and FGCU Administration, ratified by FGCU Faculty and approved by the FGCU Board of Trustees, states that “Neither the University nor the UFF shall discriminate against any employee based upon race, color, sex, sexual orientation, religion, national origin, age, veteran status, disability, political affiliation, or marital status”;

RECOGNIZING the importance of an inclusive work environment in recruiting and retaining a diverse and qualified faculty who can speak to the broadest range of perspectives and experiences that students need to encounter in order to become fully engaged and responsible citizens of a healthy democracy;

HAVING SEEN the University’s stated commitment as articulated in revised PR1.003 “to foster a community in which diversity and inclusion are valued and opportunity is realized”;

RESOLVES that proposed, revised Section 1.a and 4.a of the Non-Discrimination and Anti-Harassment Regulation; and the “definition of terms” section of the companion Non-Discrimination and Anti-Harassment Complaint Policy and Procedure, be amended to include “sexual orientation” as a protected class of the University community against which discrimination and harassment are prohibited.

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