

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

**REGULATION NUMBER AND TITLE:** FPU-1.005 Discrimination and Harassment Complaint and Investigation Procedures.

**SUMMARY OF THE REGULATION:** This regulation provides the procedures and related guidelines for handling and investigating complaints filed with the University alleging unlawful discrimination, harassment, and/or retaliation in violation of the University's Sexual Harassment Policy and Non-Discrimination/Equal Opportunity Regulation and applicable federal and state laws. The changes to the previous proposed regulation are printed in red font below.

**TEXT OF REGULATION:** The full text of the Proposed Regulation can be viewed below and on the Florida Polytechnic University Board of Trustees website, at <http://floridapolytechnic.org/board-of-trustees/university-policies-and-regulations/>.

If you would like a copy of the Proposed Regulation, please contact Bacogie Luke, Administrative Assistant to the VP and General Counsel at (863)583-9061.

**AUTHORITY:** Board of Governors Regulation 1.001.

**NAME OF PERSON INITIATING PROPOSED REGULATION:** Gina DeIulio, VP 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.

**THE CONTACT PERSON REGARDING THIS REGULATION IS:** Bacogie Luke, Administrative Assistant to the VP and General Counsel at 439 South Florida Avenue, Suite 300, Lakeland, Florida 33810, Email: [bluke@floridapolytechnic.org](mailto:bluke@floridapolytechnic.org), Phone: (863)583-9061, Fax: (863)583-9070.

**DATE OF PUBLICATION:** December 6, 2013

THE FULL TEXT OF THE REVISED PROPOSED REGULATION IS PROVIDED BELOW:

## **FPU-1.005 Discrimination and Harassment Complaint and Investigation Procedures.**

**(1) Policy.** The purpose of this regulation is to allow the University to maintain its commitment to provide an environment free from any form of unlawful discrimination and to ensure compliance with the various applicable federal and state laws that prohibit discrimination. This regulation provides the procedures and related guidelines for handling and investigating complaints filed with the University that allege discrimination, harassment, and/or retaliation in violation of the University's Sexual Harassment Policy and Non-Discrimination/Equal Opportunity Regulation.

**(2) Complaint and Investigation Process.** The University President or his/her designee ("President") is responsible for administering the complaint and investigation procedures detailed in this regulation. All reports and complaints, whether formal or informal, must be reported to the President. Reports or allegations of discrimination will be processed upon the filing of a complaint with the President. However, the President may initiate or continue an internal investigation of an allegation of discrimination when the President deems it necessary, even if the alleged victim has decided not to file a complaint, but will only do so when enough information is available to conduct a responsible investigation.

Filing a complaint with the University in no way limits or precludes an individual from also filing a complaint with federal, state, or local enforcement agencies, even if an internal investigation of the complaint has already commenced. Employees have the right to proceed directly to the Equal Employment Opportunity Commission (EEOC) to file a complaint and students may proceed directly to the Office for Civil Rights (OCR), U.S. Department of Education. All individuals have the right to report allegations to law enforcement officials at any time. The filing of a complaint with the President does not constitute a filing with, or have any effect on the filing time limitations of those external agencies. Any individual who believes that he/she is a victim of unlawful discrimination is urged to contact these external agencies directly to determine the filing deadlines and procedures for each agency. Contact information for these external agencies is available from the President.

**(3) Procedure for Filing and Handling Complaints.** All complaints filed with the President must include the name of the victim of the alleged discrimination, harassment or retaliation ("Complainant"), the name(s) of the alleged offender ("Respondent"), the date or approximate date on which the offending act occurred, details regarding the nature of the alleged offending act, the name(s) of any witnesses, and the desired resolution.

The President may attempt conciliation by way of informal resolution if it is deemed appropriate, but only if the parties agree to such, at any time before or during an investigation of a complaint. In the event informal resolution cannot be achieved, the President will continue to investigate the complaint in accordance with this regulation. A Complainant may, at any time, request the informal process to end so that a formal complaint process may begin. Mediation or any other means utilized to seek informal resolution are not appropriate for complaints alleging sexual assault or sexual violence.

**(4) Procedure for Investigating Complaints.** The President is responsible for handling all investigations of complaints that contain enough information to allege an act of discrimination.

Each investigation shall include, at a minimum, interviewing the Respondent and the Complainant. Every investigation will allow both the Respondent and the Complainant equal opportunity to present relevant witnesses and other evidence. An investigation may also include interviewing other persons who may have information relevant to the allegations, preparing witness statements for all persons interviewed during the investigation, and reviewing any documents relevant to the allegation. Upon completion of an investigation, a final report shall be prepared by the President. The report will contain a summary of the complaint; the findings of the investigation; a determination as to whether a violation of University regulation or policy was found based on a totality of the circumstances and using a preponderance of the evidence standard; and a recommendation for disposition.

Every investigation will be evaluated from the perspective of a reasonable person in the alleged victim's position and will consider the totality of the circumstances, such as the nature of the alleged conduct and the context in which the conduct took place. A determination on the allegations will be made based on the facts and on a case-by-case basis. Investigations of conduct occurring in an academic setting will take into consideration principles related to free speech and academic freedom.

All University employees have an **absolute** duty to cooperate fully **and unconditionally** in an investigation pursuant to this regulation. This responsibility includes, among other things, speaking with the investigator and voluntarily providing all **information and/or** documentation which relates to the claim being investigated, whether it is requested or not. Failure and/or refusal to cooperate in an investigation will result in disciplinary and other action up to and including termination. **It is a violation of this regulation for any University employee or student to knowingly mislead, impede, impair, obstruct, disrupt, or delay the progress of an investigation or to attempt the same.**

The President shall conclude the full investigation and issue the final report within sixty (60) working days of the date the complaint was filed. If additional time is required for the investigation, the Complainant and Respondent will be notified, in writing, no later than ten (10) days prior to the sixty (60) day deadline of the reasons for the delay and the expected date of completion. The final report will be submitted to the Director of Student Affairs, when the Complainant or Respondent is a student, and to the Provost, when the Complainant or Respondent is an employee.

The Complainant and Respondent shall each be notified, in writing, of the outcome of the complaint, investigation, and appeal, if any, within ten (10) days of the final determination. Disciplinary action for students, up to and including expulsion, will be considered and implemented, if appropriate, by the Director of Student Affairs in consultation with the President. Disciplinary action for employees, up to and including termination, will be considered and implemented, if appropriate, by the Provost in consultation with the President. All disciplinary action will be handled in accordance with applicable University regulations, policies, and procedures.

(5) **Confidentiality.** Any portion of a complaint record that is exempt from public disclosure under Florida Public Records law shall remain confidential to the extent permitted by law. All

parties involved in an investigation or proceeding under this regulation, including witnesses, shall keep information concerning the investigation or proceeding confidential. Violations may result in disciplinary or other action.

(6) **Frivolous or Malicious Complaints.** Any person that has made a claim or filed a complaint in bad faith that is determined to be frivolous and/or malicious in nature may be subject to disciplinary and other action including and up to expulsion and termination.

(7) **Retaliation.** Retaliation, or otherwise taking adverse action, against any member of the University Community because that individual reported or filed a complaint alleging a violation, testified or participated in an investigation or proceeding, or opposed discriminatory practices, is strictly prohibited. Conduct that is determined to violate this provision will be subject to disciplinary and other action up to and including expulsion or termination.

(8) **Reconsideration.** A Complainant or Respondent may submit a request for reconsideration of the findings of an investigation contained in the President's final report. Either party must submit a request for reconsideration to the President, in writing, within ten (10) days of receipt of the issued final report and must specify the basis of the request. Generally, reconsideration will only be granted in cases where relevant evidence was not reviewed and/or new evidence is available.

Any party may submit a written response or statement to the President. Such response or statement will be attached to the final report and maintained in the same file.

Authority: BOG regulation 1.001.

History: New: \_\_\_\_\_