

**Board of Trustees
April 20, 2006**

Issue: Sexual Harassment Regulation

Proposed action: Approval

Background information:

Attached is a recommended revision to the University's Sexual Harassment Regulation. This regulation has been vetted by the associate vice presidents, the University's constituent groups, the Executive Staff, and the Educational Policy Committee. It is also posted for open comment from the University community. Comments received are attached.

This regulation is being presented to the Board of Trustees for approval, in compliance with the Board of Governor's policy.

Supporting documentation: Sexual Harassment Regulation



UNIVERSITY OF NORTH FLORIDA

Regulation Number	Subject	Effective Date	Revised Date
UNF-Reg 4.015	Sexual Harassment Regulation		02/02/06
Responsible Unit/Division:			
<input checked="" type="checkbox"/> New Regulation Proposal	<input type="checkbox"/> Major Revision of Existing Regulation	<input type="checkbox"/> Minor/Technical Revision of Existing Regulation	<input type="checkbox"/> Reaffirmation of Existing Regulation

I. OBJECTIVE & PURPOSE

The University of North Florida is committed to providing all members of the University community, including students, faculty, staff, vendors, visitors or others, an environment where they can work, study and interact with each other free from any form of sexual harassment.

II. STATEMENT OF REGULATION

A. Definition of Sexual Harassment

For the purposes of this regulation, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal (including written and electronic communications) or physical conduct of a sexual nature from any person when:

1. Submission to such conduct or request is made either explicitly or implicitly a term or condition of an individual's employment, salary increase, position advancement, or other employment-related benefits; or
2. Submission to such conduct or request is made either explicitly or implicitly a term or condition of an individual's status in a course, program, or activity; or of academic achievement; or

3. Submission to or rejection of such conduct or request by an individual is used as the basis for an employment or academic decision affecting such individuals; or
4. Such conduct is sufficiently severe or pervasive so as to alter the conditions of, or have the purpose and effect of substantially interfering with, an individual's work or academic performance by creating an intimidating, hostile or offensive working or learning environment.

In determining whether alleged conduct constitutes sexual harassment, the totality of the circumstances, such as the nature of the alleged conduct and the context in which the alleged conduct occurred will be considered.

B. Examples of Sexual Harassment

Sexual harassment can take many forms, but common examples of unwelcome conduct which can be found to be sexually harassing include:

- Inappropriate touching or brushing against the body of another including, but not limited to patting, fondling, massaging, caressing, pinching, attempted or actual kissing.
- Requesting sex or sexual acts in exchange for an occupational or educational benefit.
- Repetitive propositions, invitations, or pressure for sexual activity.
- Suggestive or inappropriate communications, notes, letters, e-mail, or other written materials.
- Displaying, transmitting or sending suggestive or inappropriate photographs, videos, computer images, slides, calendars, cartoons or drawings.
- Sexual innuendo, comments, or remarks about a person's clothing, body, or activities.
- Making suggestive or obscene gestures or making suggestive or insulting sounds.
- Whistling in a suggestive manner.
- Attempts at humor or the telling of jokes about sex that denigrate either gender.
- Actual or implied sexual threats.

C. Examples that do not Constitute Sexual Harassment

Sexual harassment does not include:

Verbal expression, written or other material that is *relevant* and *appropriately related* to the subject matter of a course/curriculum or to an employee's duties.

This regulation is not intended to abridge academic freedom or the University's educational mission. It is important, however, to emphasize both "relevant" and "appropriately related" to course or curriculum content because expression or material that does not meet these two requirements that that a reasonable person would find offensive or unwelcome may constitute sexual harassment. The courts have placed restraints on academic freedom at public institutions, such as UNF, in that the institutions must comply with requirements of anti-discrimination and harassment laws by not creating a learning environment which is

unwelcome. Further, while there is no “bright line” test, for the most part, as to what can and cannot be said, all employees have an obligation to conduct themselves in a “reasonable” manner to avoid others from feeling unwelcome in the University community.

III. REGULATION REQUIREMENTS

A. Responsibility to Comply with the Sexual Harassment Regulation.

All members of the University community are responsible for ensuring that their conduct does not sexually harass any other member of the University community. This same responsibility extends to, vendors, contractors (including the employees of third parties), visitors or others on the University’s campus or at any University sponsored or University related function or activity.

B. Responsibility to Report Potential or Actual Violations of the Sexual Harassment Regulation.

- 1. Required Reporting:** All supervisors (defined for purposes of this Regulation as supervising 1 or more employees) are required to promptly report to the Office of Equal Opportunity Programs (EOP) (either verbally or through written communications) allegations, reports or instances of alleged sexual harassment by or against any person covered by this regulation. Additionally, all faculty with instructional responsibilities are required to promptly report to the EOP or alternatively to their department chair, dean or applicable academic administrator allegations, reports or instances of alleged sexual harassment by or against a student in violation of the University’s Sexual Harassment Regulation. As supervisors, all academic administrators must then report the matter to the EOP (either verbally or through written communications).
- 2. Responsibility of Community members:** To maintain an environment free from sexual harassment, the responsibility for reporting incidents of sexual harassment rests with all members of the University community. Thus, any employee, staff or faculty member, or student who believes another community member is being subjected to sexual harassment in violation of this Regulation is strongly encouraged to report it to their supervisor or directly to the EOP any incident of sexual harassment they believe to be in violation of the University’s Sexual Harassment Regulation. (As discussed above, all supervisors must report alleged incidents of conduct in violation of the University’s Sexual Harassment Regulation to the EOP).

C. Amorous and Sexual Relationships

It is not uncommon for University community members who study, work or interact together to develop caring relationships. However, when persons in positions of unequal power engage in amorous or sexual relationships (e.g., between a supervisor and an employee, faculty member and student, or staff member and student) the person of greater power places themselves at risk of being accused of sexual harassment, either

during the relationship or after the relationship ends. Accordingly, the University has adopted a policy prohibiting amorous or sexual relationships where one individual in the relationship is in a position to exercise authority such that it would impact the educational or work performance of the other individual. (*see* Amorous or Sexual Relationships Policy _____).

IV. REGULATION PROCEDURES

A. Seeking Guidance Regarding this Regulation.

Any member of the University community who believes that he or she has been subjected to sexual harassment; any member of the community who believes that he or she has been subjected to retaliation related to an allegation of sexual harassment; or any member of the community who believes that others have been subjected to sexual harassment in violation of this regulation, may seek guidance, counseling or file a complaint in accordance with this regulation by contacting: **Director, Office of Equal Opportunity Programs**, University of North Florida, J. J. Daniel Hall, Room 2100, 4567 St. Johns Bluff Road South, Jacksonville, Florida 32224-2645, (904) 620-2507 Voice & TDD and (904) 620-1004 Fax.

B. Complaint Procedure.

Allegations of violation of this regulation including the actual filing of a complaint of sexual harassment will be addressed by the Director in accordance with the EOP Complaint and Investigation Procedures. A copy of the EOP Complaint and Investigation Procedures can be obtained at the EOP Office, on the EOP website or as posted with the comprehensive listing of the University's regulations and policies.

V. WHERE TO GET HELP

In addition to contacting the EOP office, any of the following offices at the University of North Florida may be contacted for information or assistance regarding matters involving sexual harassment:

UNF Counseling Center

Founders Hall (Building 2)
Room 2068
(904) 620-2602

UNF Women's Center

Andrew A. Robinson Student Life Center (Building 14)
Room 2623
(904) 620-2528

Office of Human Resources

J.J. Daniel Hall (Building 1)

Room 1000

(904) 620-2903

Office of Student Affairs

Founders Hall (Building 2)

Room 2091

(904) 620-2600

Office of the General Counsel

J.J. Daniel Hall (Building 1)

Room 2400

(904) 620-2828

If fear of physical safety, threats, or assault is involved contact:

University Police Department

Police Station (Building 41)

(904) 620-2801

or

University's Office of the Victim Advocate (located within the Women's Center)

Andrew A. Robinson Student Life Center (Building 14)

Room 2623

(904) 620-2528

From: Serwatka, Tom

Sent: Tuesday, April 11, 2006 7:08 AM

To: Wilfredo J. Gonzalez (E-mail); Chair Carol C. Thompson (E-mail); Edythe M. Abdullah (E-mail); Kevin M. Twomey (E-mail); Luther W. Coggin (E-mail); R. Bruce Taylor (E-mail); Steven T. Halverson (E-mail); Toni Crawford (E-mail); Wanyonyi Kendrick (KendWJ@jea.com); Solano, Judith; Ann Hicks; Foran, Tom (SGAPRES); Joan Wellhouse Newton

Cc: Handerson, Melonie; Stone, Karen; Snow, Marc; Howell, Stephanie; sshields@cogginauto.com; ekstubbs@thehaskellco.com; Carla Cannon (ccannon@taylorengeering.com); kmoore@joe.com; Lois Fuqua (Lois.Fuqua@bmcjax.com); Vivie Stamper; Brenda Mills; Jeri Brewer

Subject: Regulations Items on April 20 Consent Agenda

To: UNF Trustees

From: Tom Serwatka

Subject: Regulations on the BOT Consent Agenda

At the March 16 Educational Policy Committee, trustees reviewed two proposed regulations which the University submitted as substitutions for our current rules: (a) an Equal Opportunity and Diversity Regulation and (b) a Sexual Harassment Regulation. The committee was also asked to repeal a set of ten rules which included the existing version of the above two regulations and a rule on students' rights to observe religious holidays. The rationale for the repeal of the rule on the observance of religious holidays was that these practices were now codified in a university policy.

At the EPC meeting, a group of concerned members of the university community presented a compelling case for keeping our practices on student observance of holidays as a rule (aka regulation) as opposed to a policy, signaling an even stronger university commitment for these practices. With the committee's approval, the university withdrew this recommended repeal.

Since the time of the EPC meeting, we have received one other set of comments from a member of the university community. This individual raised objection to the approval of the revisions to our Sexual Harassment and Equal Opportunity and Diversity regulations, as well as our repeal of the rule on student observance of religious holidays. (As stated above, this repeal was withdrawn at the committee meeting).

In keeping with our format of placing items that come out of committee with unanimous approval on the consent agenda, these two proposed regulations will appear on the consent agenda. However, we also wanted to ensure that the staff member who sent the administration her comments was heard by members of the Board. As a result, I am copying you with Ms. Craddock's comments about the regulations as well as Marc Snow, our associate general counsel, and my responses to Ms. Craddock. These appear below. Neither Marc nor I received any additional responses to our emails. I am also appending the proposed revised regulations and current rules.

As described in our bylaws, should a Board member request we could move these items to the regular agenda at the time of the meeting. If the items are kept on the consent agenda, the Board would approve the new regulations (revision of current rules) having been informed of the comments. If the items are moved to the regular agenda, the Board could more fully discuss the comments or exercise any of your other options: solicit additional comments; schedule an open public hearing; withdraw, modify, or amend the regulation; repeal the regulation in whole or in part after notice; or proceed with adopting the regulation.

You will, of course, be receiving the whole agenda and links to all of the materials later this week.

If you need any additional information on any of the items, please contact me.

Ms. Craddock's comments on the proposed regulations

To Whom It May Concern:

I'm deeply disturbed by the latest personnel policy changes. The repeal of the regulations regarding accommodation of religious practices for students seems especially antagonistic (and I am concerned about what further "changes" may be imposed the way these changes are being imposed incrementally) but the new vague and subjective sexual harassment policies are really threatening. It opens up the door for all sorts of false or exaggerated claims of feeling "threatened" or "harassed" or being made to feel "unwelcome", and has a chilling effect on free speech, open inquiry, and free association. If the university handles these complaints with equity, recognizing the rights of individuals not to have an ideology imposed on them while recognizing the rights of other individuals to be treated with equity and courtesy by their colleagues, then probably nothing will come of it. But that is not the pattern of recent history in these matters. I will illustrate by including two articles that elucidate my point:

<http://www.zetetics.com/mac/articles/reeducation.html>

<http://www.tgcrossroads.org/news/archive.asp?aid=440>

I admit that when I learned that there were (probably) two discrimination suits on campus, I felt sympathy for at least one of those cases. I don't know the nature of the discrimination, but jokes, isolation and treating someone like they are unwelcome as a person is repellant to almost everyone, and of course I would expect the university to enforce a code of civility and cooperation. UNF has always had a diverse community, and it has been a rewarding experience working here. But the fairly recent imposition of a hot-button political agenda to our work environment and our community is antagonistic, to say the least. My concern is with the ideological conformity that may be imposed on members of the community who object to the political agenda of some groups on campus, and to the double standard being imposed through the new "Sexual Harassment" policy, in combination with other policies being imposed at this time. Specifically, a special interest group has united (that is, faculty, staff, and students) to promote their interests, but the new policies prevent the same activity among other groups who have interests which may differ from those. This amounts to a speech code

that is very one-sided and prejudicial, permitting one group to have free rein to impose their views (which could also be deemed “sexual harassment” by some if the kind of things described in the articles above are put into effect) while the rest of the community is compelled by threat of discipline and/or termination to refrain from expressing a different viewpoint—in effect, criminalizing political speech and viewpoint, and even historical discourse, by treating it as “sexual harassment”. In addition, the stated agenda of the “Diversity Committee” to “

“[Recommend] ways in which the University can broaden opportunities for all members of the to participate in institutional efforts to enhance the diversity among faculty, students and staff; and,

[Propose] programs that foster greater appreciation of and sensitivity to the importance of diversity within the University community”

has an ominous threat of social indoctrination to secular humanist ideologies that many may not believe in and some may even find repellant. “Diversity” then becomes only a euphemism for enforced ideological conformity, which I do not believe an employer has the right to impose on people.

Is there any way to get a delay on the implementation of these policies? You’d think changes that have such drastic and far-reaching implications for the university community would merit more than merely “sneaking” them into a bulletin most people don’t even take time to read. Of course any discussion would have to include the interests of ALL parties, recognizing the rights of individuals to be free from indoctrination, pressure to conform, religious discrimination, or harassment. I told President Hopkins several years ago that I didn’t feel it was a good idea for faculty and staff to be involved in the politics of the student community, but obviously that wasn’t heeded. There is more to this than meets the eye, but the concerns I have expressed here are valid, and I hope you will address them.

Alisa Craddock
UNF Library – ILL Borrowing (staff)

Marc Snow’s Response to Ms. Craddock

From: Snow, Marc
Sent: Wednesday, March 22, 2006 1:39 PM
To: Craddock, Alisa
Cc: Howell, Stephanie
Subject: RE: New personnel policies.

Ms. Craddock:

Your message was referred to me for response. Your first concern regarding the repeal of the regulation regarding Religious Observances has been addressed. Despite the Religious Observances being in policy form in both the Student Handbook and Faculty Handbook as required by Florida law, specifically Section 1006.53, Florida Statutes, the decision was made last week to pull the regulation from those that had been proposed to

be repealed. This action was taken based on feedback that was provided by different groups and/or individuals within the University community. Nevertheless, there was never any intent to lessen the protection afforded to students relating to religious observances. Rather, as discussed above, the issue did not need to be covered in regulation form as the University was already complying with the statutory requirement that the religious observances requirements be in policy form.

As you have noticed, the University is in the process of updating its regulations and/or policies by repealing those that are no longer necessary while updating others to bring them into accordance with the current state of the law. This occurring at this time based on the restructuring of Florida's State University System, which has been in process for several years, and the enactment of different statutory provisions that control the University's operations. Specifically, the state statutes that governed the University's obligation to establish regulations and/or policies were repealed and replaced with the Education Code, Chapters 1000 through 1013, Florida Statutes. An additional change that occurred only recently is that the University's "rules" as published in the Florida Administrative Code (FAC) have now been converted to "regulations". While this is a change in name, it is not a change in requirements for the University community. Similarly, there is no difference between "regulations" and "policies" regarding the required conduct of UNF students, faculty and staff.

You also expressed concern over the "incremental" approach to the University's actions in repealing and updating the regulations. The incremental approach has been taken because it is such a large undertaking to review, modify or repeal each of the existing regulations. As a result, the University has been taking selected sections and making the necessary changes. For example, the University has already repealed Personnel (6C9-4), Miscellaneous, which consisted of Traffic and Parking (6C9-5) and other selected portions of the FAC such as the Student Conduct Code and replaced the old regulations in these areas with updated regulations and/or policies. Additionally, the University will continue with this process until all regulations and/or policies are appropriately updated.

Regarding your concerns about the Sexual Harassment Regulation and the Equal Opportunity and Diversity Regulation, I do believe the University will handle these matters with equity and will further require that individuals be treated with equity and courtesy by other members of the University community. In fact, that is the exact reason that the regulations were drafted and that the University is seeking to have them be formally adopted. These proposed regulations are also simply updated versions of the prior regulations incorporating the changes in the law in the United States (except for the issue of sexual orientation) regarding interactions between employees in the workplace. As such, these regulations, and their underlying concepts, are in no way exclusive to the University. I have reviewed each of the articles you cited in your message and do not see the University attempting to "reeducate" its community members. Further, I understand your concerns regarding free speech. However, there is a balancing between free speech and the federal anti-discrimination laws (regardless of whether they are in "regulation" form) as what cannot act in a manner that creates a hostile or offensive work or learning environment. Consequently, the University is not attempting to "pave a new road" with these regulations. Rather, the University is formally adopting, or more precisely readopting, criteria regarding community members' obligations to treat others with respect and to prevent individuals from engaging in unlawful conduct. I am uncertain if you view that as some sort of "speech code", but to reiterate, this is the

current law regardless of whether it is in regulation form. Nevertheless, having required behaviors in regulation form is the best method the University has to place all on notice of required conduct.

Finally, you asked whether there is anyway to delay the implementation of these policies. The regulations will only be implemented if the University's Board of Trustees approves of the regulation after review of the record. The concerns you have raised will be part of the record; therefore, the Board will take your concerns into consideration before deciding whether to adopt the regulations.

Marcus L. Snow, Jr.

Associate General Counsel
University of North Florida
Phone - (904) 620-2866
Facsimile - (904) 620-2868

Tom's Response to Ms. Craddock

From: Serwatka, Tom
Sent: Wednesday, March 22, 2006 7:05 PM
To: Craddock, Alisa
Cc: Delaney, John; Snow, Marc; Craddock, Alisa
Subject: RE: New personnel policies.

Ms. Craddock,

Thanks for writing us with your concerns about our proposed adoption and repeal of UNF rules/regulations. I just read Mr. Snow's response to your email and found that it contains some points that I had planned to include in my own response (e.g. the Trustees' decision to not repeal the current rule on observance of religious holidays), so I won't repeat what has already been said. I would, however, add or reinforce two ideas in the discussion:

First, if there are specific wording changes or additions you can offer to make any of these regulations better, please do not hesitate to send them to us. We post these policies to the web as one method of soliciting such input. In keeping with our current process, proposed changes are probably best sent to Ms. Howell, but please feel free to copy me.

Second, should you become aware of any possible abuses of our implementation of these or other policies please do not hesitate to call our attention to them. We recognize that we not only need well written policies on these topics, we also need to ensure appropriate and fair review of any allegations brought as a result of these policies.

I look forward to hearing from you with any ideas or concerns you have.

Tom Serwatka