

NOTICE OF AMENDED REGULATION

August 31, 2018

DEPARTMENT OF EDUCATION

Division of Universities
University of North Florida

REGULATION TITLE:

Non-Discrimination, Equal Opportunity and Diversity

REGULATION NO.:

1.0040R

SUMMARY:

The regulation is being amended to identify those with a required responsibility to report which includes: University faculty, staff with full-time, part-time and OPS appointments. The amended regulation sets forth the only exemptions to this reporting requirement are employees within the University's Women's Center including the Victim Advocacy Program, Student Health Services, or the Counseling Center where students, faculty and staff have an expectation of confidentiality in discussing violations of this regulation.

FULL TEXT:

The full text of the regulation being proposed is attached.

AUTHORITY:

Resolution of the Florida Board of Governors dated January 7, 2003
Title VII of the Civil Rights Act of 1964
Title IX of the Education Amendments Act of 1972

UNIVERSITY OFFICIAL INITIATING THE PROPOSED REVISED REGULATION:

Marcus L. Snow, Senior Associate General Counsel

INDIVIDUAL TO BE CONTACTED REGARDING THE PROPOSED REVISED REGULATION:

Stephanie Howell, Paralegal, Office of the General Counsel, showell@unf.edu, phone (904)620-2828; fax (904)620-1044; Building 1, Room 2100, 1 UNF Drive, Jacksonville, FL 32224.

Any comments regarding the amendment of the regulation must be sent in writing to the contact person on or before Friday, September 14, 2018, to receive full consideration.

Subject: Non-Discrimination, Equal Opportunity and Diversity

Number: 1.0040R

Effective Date: 10/27/06

Date:

Revised Date: 10/21/14

Responsible Division/Department:
Director, Equal Opportunity and Diversity

- New Regulation
- Major Revision of Existing Regulation
- Minor/Technical Revision of Existing Regulation
- Reaffirmation of Existing Regulation
- Repealed Regulation

I. **OBJECTIVE & PURPOSE**

The purpose of this regulation is to set forth the University of North Florida's expectations for fostering and maintaining an environment of inclusiveness and equity for all who interact in our university community; and to reinforce the University's commitment to diversity in the recruitment, selection and retention of students, faculty and staff; and to provide procedures to file a complaint alleging discrimination, retaliation, discriminatory harassment. Sexual misconduct/harassment is covered by a separate regulation (See Sexual Misconduct Regulation 1.0050R)

II. STATEMENT OF REGULATION

The University of North Florida ("University" or "UNF") is committed to providing an inclusive and welcoming environment for all who interact in our community. In building this environment, we strive to attract students, faculty and staff from a variety of cultures, abilities, backgrounds and life experiences to achieve a diverse University community. In furtherance of the University's diversity initiatives and focus toward inclusiveness, it is expected that all in the University community will appreciate and respect the dignity, individuality, and the uniqueness of our community members. It is also expected that we will maintain an environment conducive to the pursuit of educational, scholarly, and career interests, where both the distinctiveness of each person's experience and the common humanity that unites us all will be recognized. This will allow us to take full educational advantage of the variety of talents, backgrounds, and perspectives of those who study and work at the University.

The University is equally committed to ensuring that educational and employment decisions, including but not limited to recruitment, admission, hiring, compensation and promotion, are based on the qualifications, skills and abilities of those desiring to work, study and participate in our University community.

To accomplish the intent of this regulation, the University shall not commit or permit discrimination or discriminatory harassment on the basis of race, color, religion, age, sex (inclusive of Title IX), gender identity/expression, sexual orientation, disability, marital status, national origin or veteran status under the Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA) or any other characteristic protected under applicable federal or state law, in any educational, employment, social or recreational program or activity offered by the University. Similarly, the University will not commit or permit retaliation against any individual who complains of discrimination or harassment or any individual who cooperates in an investigation of an alleged violation of this regulation.

The University recognizes that it is a unique learning environment in which its diverse community members have the First Amendment right to free speech and expression of differing opinions. The University also recognizes that it is an environment in which its faculty have the academic freedom to provoke thought and debate and to engage in open discourse related to their individual areas of academic instruction. Thus, in exercising the standards put forth in this regulation, the University will not abridge either free speech or academic freedom based on its context.

The University understands that only by eliminating discrimination, discriminatory harassment and retaliation can we ensure that all community members, especially our students, have the opportunity to work and achieve excellence. Accordingly, the University expects that all community members including students, faculty, staff, vendors, contractors, visitors or others who interact at the University will observe and comply with these equal opportunity and diversity principles.

As a recipient of federal funds, the University is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX")[1], which prohibits discrimination on the basis of sex in education programs or activities. The responsibility for communicating, interpreting and monitoring this Equal Opportunity and Diversity Regulation and the University's Affirmative Action compliance obligations rests with the EOD Director and University Title IX Administrator, University of North Florida, J.J. Daniel Hall, Suite 1201, 1 UNF Drive, Jacksonville, FL 32224-7699, (904)620-2507 or via 711 Florida Relay for persons who are deaf or hard of hearing or those with speech impairments and/or limitations.

It must also be understood that some acts of discrimination and/or harassment constitute criminal conduct. Faculty, administrators, managers and supervisors are required to report criminal activity on University property, University-controlled property or at University sponsored events to law enforcement (See contact information in Section IX below). Other University Community members who witness discrimination and/or harassment that places individuals or groups in fear for their health or safety are strongly encouraged to contact law enforcement. The health, safety and welfare of all members of University community should be a shared concern of all who interact in our learning community.

A. DEFINITIONS

For purposes of this regulation, the following definitions are controlling:

1. "Discrimination" means treating another individual unfavorably compared to other similarly situated individuals, whether intentional or unintentional, based solely upon their membership in a protected class as defined by this regulation. To be actionable, the discriminatory treatment must be severe, persistent or pervasive so that it limits or denies a community member's ability to participate in or to realize the intended benefits of an institutional activity, opportunity, or resource.
2. "Harassment" means unwelcome conduct about an individual or protected class covered by this regulation that is sufficiently serious (i.e., severe, persistent or pervasive) to deny or limit a student's ability to participate in or benefit from the University's educational programs or activities or such conduct is sufficiently severe or pervasive so as to alter the conditions of, or have the purpose and effect of substantially interfering with, a faculty or staff member's employment by creating an intimidating, hostile or offensive working environment. Harassment can include such acts as making slurs, physical assaults or threats, and intimidation, when such conduct rises to the level of the definition provided above.
3. "Retaliation" means when an officer, agent, contractor or employee takes an adverse action against any individual for their participation in protected activity under this regulation.
4. "Protected activity" means actions that include, but are not limited to, filing a discrimination charge, testifying or participating in any way in an investigation, proceeding, or lawsuit, and opposing employment practices that one reasonably believes discriminates against individuals or encourages someone to exercise their rights.
5. "Protected classes" means individuals who are provided protection against discrimination or harassment under this regulation because of race, color,

religion, age, sex (inclusive of Title IX), gender identity/expression, sexual orientation, disability, marital status, national origin or veteran status under the Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA) or any other characteristic protected under applicable federal or state law.

B. Preventing Discrimination and/or Harassment – Bystander Intervention

Achieving the University's commitment to providing an inclusive and welcoming environment for all who interact in our community is a ***shared responsibility*** that requires all community members to act when they observe discriminatory or harassing behavior. This means not only reporting behavior in violation of this regulation but if a community member can safely intervene to encourage others engaging in actions in violation of this regulation to cease their inappropriate conduct. Examples of how to safely intervene, include, but are not limited to the following:

- Educate yourself and others by reading and understanding this regulation.
- Make sure you know to whom and where to report incidents, the services available to victims/survivors as detailed in the regulation and discussing these issues with others to raise awareness in the campus community.
- Gain awareness of the challenges and experiences of others different than you by interacting and communicating with them and/or reading articles and books regarding cultural and other diversity initiatives.
- When you hear friends or acquaintances making discriminatory or harassing remarks, encourage them to refrain from such behaviors and explain to them why their actions may be harmful to others.
- Don't assume someone else will take action when you observe discriminatory or harassing behavior
- When you see something that is wrong, don't be afraid to speak up.

It cannot be emphasized enough that community members should only personally intervene when they feel it is safe to do so; therefore, if a community member has concerns about safely intervening, do not condone objectionable actions but instead intervene by reporting the inappropriate behavior to an administrator or other University official.

III. STATEMENT OF REQUIREMENTS

A. Responsibility to Comply with this Regulation.

All members of the University community are required to comply with and are responsible for ensuring that their conduct does not violate this regulation. This same responsibility extends to, vendors, contractors (including the employees of third parties), visitors or others on the University's campus and

at any University sponsored or related function or activity. EOD shall consult with the vendor or contract manager to determine how any investigation, if necessary, will be undertaken. The University shall take action against the vendor or contractor, when warranted, in accordance with the terms of the governing contract or agreement.

B. Required Responsibility to Report.

All ~~supervisors and managers (defined for purposes of this regulation as supervising 1 or more employees)~~ University faculty and staff with full-time, part-time and OPS appointments, excluding student employees except those identified below, are required to promptly report to the EOD (either verbally or through written communications) allegations, reports or instances of alleged discrimination and harassment by or against any person covered by this regulation.

Students employees required to report potential violations of this regulation are:

- Graduate Teaching Assistants and Graduate Research Assistants.
- Those employed in the Athletics department.
- Those employed in UNF Housing and Residence Life.

The only exemptions to this reporting requirement is employees working in the University's Women's Center including the Victim Advocacy Program, Student Health Services, the Counseling Center and other mental health professionals at the University who learn of allegations of sexual misconduct while working in their counseling capacity. In such situations, these confidential employees may only contact EOD regarding alleged violations of this regulation with the student, faculty or staff member's consent.

If an individual believes they have been subjected to discriminatory or retaliatory treatment in violation of this regulation and has safety and welfare or concerns, the first contact should be to the UPD.

1. Responsibility of Faculty

~~All faculty are required to promptly report to the EOD or their department chair, dean or applicable administrator any allegations, reports or instances of alleged discrimination, retaliation and/or harassment by or against a student in violation of this Regulation. Persons to whom alleged acts of discrimination, retaliation and harassment are reported must then promptly report the matter to the EOD (either verbally or through written communications). If safety and welfare are concerns, the first contact should be to the UPD.~~

2. Responsibility of Community Members

While all University faculty and staff are required to report instances of alleged discrimination and retaliation in violation of this regulation, to~~To~~ maintain an environment free from discrimination, retaliation and harassment, the responsibility for reporting incidents rests with all members of the University community. Thus, any ~~employee, staff or faculty member,~~ student, applicant or other community member who believes an individual is being treated in a manner that is in violation of this Regulation is strongly encouraged to report the alleged violations to their supervisor, manager, or directly to the EOD (As discussed above, all alleged incidents of conduct in violation of the University's Equal Opportunity and Diversity Regulation must be reported to the EOD).

32. Responsibility of Victim

The alleged victim is not required to inform an alleged offender of the offensiveness of their behavior in order to make a claim under this Regulation. However, any person who deems any action or conduct as unwelcome is encouraged to advise the offending party that their conduct is unwelcome and seek help.

IV. CONFIDENTIALITY

The University recognizes the importance of confidentiality and understands that some individuals filing complaints of harassment/discrimination or who are otherwise involved in an investigation may want their identity to remain anonymous and/or confidential. In all cases, issues of confidentiality must be balanced against the University's need to investigate and take appropriate action. The University will respect the privacy and confidentiality of individuals involved in an investigation to the fullest extent possible. If you have concerns about this please contact the EOD.

V. RETALIATION

Retaliation or otherwise taking adverse employment or educational action against a member of the University community because they in good faith reported discrimination or harassment, or participated in an investigation or review regarding a complaint, is strictly prohibited. Those found to have violated this prohibition against retaliation will be subject to disciplinary action up to and including termination.

VI. VIOLATION

Taking all the above into consideration, it shall be a violation of this regulation for any officer, university employee, student, visitor, agent, vendor or

contractor to discriminate against, harass, or retaliate against any person covered by this regulation. Prohibited behavior constitutes conduct that limits or denies one's ability to participate in, interact with, or benefit from an academic program, event or activity or to otherwise participate in campus life. Potential violations of this regulation will be evaluated from the perspective of a reasonable person in the alleged victim's position, considering the totality of the circumstances, such as the nature of the alleged conduct and the context in which the alleged conduct occurred.

VII. ENFORCEMENT

As mentioned above, in some situations harassing behavior may lead to criminal prosecution. Any individual, student, faculty or staff, found to have violated this regulation will also be subject to discipline through the appropriate procedures. For example, students will be referred to Student Conduct. Faculty and staff will be subject to disciplinary action in accordance with UNF's personnel program and any applicable collective bargaining agreements. The University has an obligation to promptly respond to allegations of sexual misconduct and will proceed, unless exceptional circumstances dictate otherwise, with its own investigative and disciplinary procedures while criminal charges are pending.

VIII. STATEMENT OF PROCEDURES

A. Seeking Guidance Regarding This Regulation.

Any member of the university community who believes that they have been subjected to discrimination, discriminatory harassment, retaliation and/or sexual misconduct, or observed or witnessed any member of the community being subjected to the same, may seek guidance, counseling or file a complaint in accordance with this regulation by contacting EOD. Information regarding EOD can be found on its website at <http://www.unf.edu/eod> and information the University's regarding ADA – Section 504 Coordination, including website accessibility, requesting accommodations and filing complaints can be accessed at the link on the bottom of each of the University's webpages.

B. Complaint Procedure.

Allegations of violation of this regulation including the actual filing of a complaint of discrimination, harassment or retaliation will be addressed by the EOD in accordance with the Non-Discrimination EOD Complaint and Investigation Procedures, UNF Policy 1.0060P which can be found on the policies and regulations website at http://www.unf.edu/president/policies_regulations/01-General/1_0060P.aspx and on the EOD's website at <http://www.unf.edu/eod>.

IX. ON AND OFF-CAMPUS SERVICES

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

A. On Campus

University Police Department

Martin P Garris Building (Building 41)
911 or (904) 620-2800

UNF's Victim Advocacy Program (located within the Women's Center)

Founders Hall (Building 2)
Room 2100
(904) 620-1010

B. Off Campus

Jacksonville Sheriff's Office
501 E. Bay Street
Jacksonville, FL
911 or (904) 630-0500

In addition to contacting the EOD, any of the following offices at the University may be contacted for information or assistance:

UNF Counseling Center

Founders Hall (Building 2)
Room 2300
(904) 620-2602

Disability Resource Center

Tom and Betty Petway Hall (Building 57)
Room 1500
(904) 620-2769

Lesbian, Gay, Bisexual, Transgender Resource Center

Student Union East (Building 58)
Room 1111
(904) 620-4720

Division of Student Affairs

Student Union East (Building 58)
Room 2309
(904) 620-2600

Office of Student Conduct

Tom & Betty Petway Hall (Building 57)

Room 2700

(904) 620-3979

Office of the Student Ombudsman and Dean of Students

Tom & Betty Petway Hall (Building 57)

Room 2700

(904) 620-1491

UNF Women's Center

Founders Hall (Building 2)

Room 2100

(904) 620-2528

Amended 12/16/12; Amended and approved by BOT October 21, 2014.