

## **NOTICE OF REGULATION REPEAL**

**March 8, 2006**

### **DEPARTMENT OF EDUCATION**

Division of Universities  
University of North Florida

### **REGULATION TITLE:**

Sexual Harassment

### **REGULATION NO.:**

6C9-4.015

### **SUMMARY:**

The repeal is being undertaken in order to establish and implement a new regulation that is current and in accordance with present University practice and procedure.

### **FULL TEXT:**

The full text of the regulation for repeal is attached.

### **AUTHORITY:**

Resolution of the Florida Board of Governors dated January 7, 2003 and Florida Statutes 110.1221, 110.227, 1012.91, 1001.74 and 1001.75.

### **UNIVERSITY OFFICIAL INITIATING THE PROPOSED REVISED REGULATION:**

Malvelina P. Monell, Director of Equal Opportunity Programs

### **INDIVIDUAL TO BE CONTACTED REGARDING THE PROPOSED REVISED REGULATION:**

Stephanie Howell, Paralegal, Office of the General Counsel, [showell@unf.edu](mailto:showell@unf.edu), phone (904)620-2828; fax (904)620-1044; Building 1, Room 2400, 4567 St. Johns Bluff Road South, Jacksonville, FL 32224.

*Any comments regarding the repeal of the regulation must be sent in writing to the contact person on or before Wednesday, March 22, 2006 (14 days from the date of posting this Notice) to receive full consideration.*

#### **6C9-4.015 Sexual Harassment.**

(1) Policy Statement. It is the policy of the University of North Florida that each member of this community be allowed to work or attend class in an environment free from any form of sexual harassment as prohibited by state and federal statutes.

(2) Definition of Sexual Harassment.

(a) Sexual Harassment of an Employee or Applicant for Employment. Sexual harassment of an employee or applicant for employment is defined as unwelcome sexual advances, 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 employment, salary increase, position advancement, or other employment-related benefits; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or
3. Such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

(b) Sexual Harassment of a Student. Unwelcome sexual advances, requests for sexual contact, and other verbal or physical conduct of a sexual nature constitute sexual harassment, including, but not limited to, instances when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of a student's academic achievement;  
or
2. Submission to or rejection of such conduct is used as a basis for decisions regarding the evaluation of a student's academic achievement; or
3. Such conduct has the purpose or effect of interfering with an individual's academic performance or creating an intimidating, hostile, or offensive academic environment.

(3) Dissemination of Policy.

(a) Employees. It shall be the responsibility of the Director of Personnel to disseminate the Sexual Harassment Rule to all employees of the University, and they will be apprised of the rule by at least the following methods:

1. Upon adoption of the Sexual Harassment Rule, each current employee, and thereafter each new employee, shall be furnished with a copy of the rule. Said rule shall be accompanied by an implementing statement which shall include the office, address, and telephone number of the person or persons designated by the President to receive complaints arising from matters addressed by this rule as well as a list of offenses that may constitute sexual harassment and a list of penalties applicable thereto. Should this information change at any time, the University shall publish and disseminate to all employees written notice of such change.
2. Upon adoption of this rule, each current employee and thereafter each new employee, after having been furnished with a copy of this rule, shall have the opportunity to discuss and ask questions, shall be apprised of possible discipline for any violation thereof, and shall sign a written statement to that effect which shall be placed in the employee's permanent file.
3. It shall be the obligation of the University to train its administrators and supervisors in implementation of this rule.

(b) Students. Students shall be made aware of the University's Sexual Harassment Rule by its being printed in one or more publications of general availability and circulation including, but not limited to, the catalog, Student Information Handbook (or equivalent) and/or the Spinnaker (or equivalent newspaper). Information shall include the office, address, and telephone number of the person or persons designated by the President to serve to receive complaints arising from matters addressed by this rule as well as a list of offenses that may constitute sexual harassment and a list of penalties applicable thereto. Should this information change at any time, the University community will be advised as provided by Section 120.54(1)(a)1. thru 3., F.S., and additionally the University shall publish and widely disseminate notice of such change.

(c) Vendors. The Director of Purchasing is responsible for disseminating the Sexual Harassment Rule to vendors. Vendors will be apprised of the rule by the contract or purchase order.

(d) Contractors. 1. Anyone affiliated with UNF who enters into contract with others not connected with the University is responsible for informing them of the Sexual Harassment Rule.

2. Anyone not otherwise affiliated with UNF, who enters into contract with the University, is responsible for apprising others under his/her purview of the Sexual Harassment Rule. This would include but not be limited to Consultants, Sub-Contractors and employees of said contractor.

(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 will be subject to disciplinary action up to and including dismissal. The nature of the punishment shall be guided by the seriousness of the offense.

(b) Any student who engages in sexual harassment of an employee may be subject to disciplinary action up to and including expulsion.

(c) Any employee employed in a supervisory capacity who has knowledge of a complaint or a complainable offense as defined under (2), involving any of those employees he/she supervises, and who does not take corrective action or report the matter directly to the President or President's designee shall be subject to discipline up to and including dismissal. The nature of the punishment shall be guided by the seriousness of the offense.

(d) Any employee in a supervisory capacity who has knowledge of a complaint or a complainable offense involving another supervisor, or involving an employee(s) supervised by another supervisor, or involving a student(s) in the class(es) of another supervisor's employee and who does not take appropriate corrective action or report the matter directly to the President or President's designee shall be subject to discipline up to and including dismissal. The nature of the punishment shall be guided by the seriousness of the offense.

(e) Any employee or student 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. The nature of the punishment shall be guided by the seriousness of the offense.

(5) Procedure for Filing a Complaint.

(a) The President may delegate to the EEO Officer the authority and responsibility to receive, conciliate and investigate complaints of sexual harassment, and to make recommendations to the Vice President under whose administrative authority the person against whom the complaint has been lodged falls (hereinafter referred to as the appropriate Vice President).

(b) Any applicant for employment, employee or student who believes that he/she is a victim of sexual harassment may seek guidance and counseling by requesting an interview with the EEO Officer. The Complainant will be advised of the options available through University procedures, through the collective bargaining agreement, through the Florida Commission on Human Relations, through the federal Equal Employment Opportunity Commission, and any others that may currently exist or may subsequently be enacted. The EEO Officer will also provide the opportunity to resolve the complaint informally without invoking the investigatory procedures set forth below. Any discussions at this level will be handled with utmost discretion.

(c) If the complaint cannot be resolved informally, and if the Complainant desires to avail himself/herself of the formal options available pursuant to this rule, then a written complaint of sexual harassment must be filed. No formal action, including investigation, may be undertaken unless and until a formal complaint is filed. 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.

(d) After receiving the signed written complaint, the EEO Officer shall:

1. Notify the Complainant and the person against whom the complaint has been filed of the complaint, of the allegations contained therein and provide an opportunity for response thereto. At all points of the procedure, the Complainant and the person against whom the complaint has been filed shall be kept informed;
2. Review the complaint and determine if additional information is needed to supplement the complaint;
3. Conduct a full and complete investigation of the complaint;
4. File with the appropriate Vice President a written report detailing the findings of the investigation and a recommendation of appropriate action.
5. The investigation conducted pursuant to this section shall be performed on a confidential basis, and all means necessary to safeguard the rights of the person against whom the complaint has been filed, the Complainant, witnesses, and any others involved in the proceedings, shall be utilized.

(e) The report and recommendation of the EEO Officer shall be submitted to the appropriate Vice President. If, after reviewing the report and recommendation, the Vice President determines that the complaint is without merit, the Vice President shall render a written decision dismissing the complaint. If, after reviewing the report and recommendation, the Vice President determines that disciplinary action is warranted, the Complainant and the person against whom the complaint has been filed will be given written notice of the proposed disciplinary action and the reasons therefor. The written notice will also advise the person against whom the complaint has been filed that he/she has the right to appear before the Vice President at an investigatory interview and submit written or oral evidence on his/her behalf. The Complainant shall be notified of any investigatory interview and shall also have the right to appear and present evidence at the investigatory interview. After reviewing all of the evidence, including any evidence

submitted at the investigatory interview, the Vice President shall render a written decision either dismissing the complaint or taking appropriate action. A copy of the written decision shall be sent via certified mail to the Complainant and to the person against whom the complaint has been filed. The President may delegate to the appropriate Vice President the authority to take disciplinary action, including dismissal or expulsion, under this subsection.

(f) Subject to the limitations set forth below in subsections (8)(a) and (b), either the Complainant or the person against whom the complaint was filed may appeal the decision of the Vice President to the President. After reviewing the decision of the Vice President, and all other evidence upon which the decision was based, the President shall render a final written decision, affirming, modifying, or reversing the decision of the Vice President. A copy of the President's written decision shall be sent via certified mail to the Complainant and to the person against whom the complaint has been filed.

(g) All of the above procedures apply to vendors and non-employee contractors, except that the EEO Officer may consult with the appropriate administrative officer of the University to determine procedures for investigation and the action that will be taken. Action can include revocation of the contract when it is deemed necessary.

(6) Time Limitation for Receipt of Formal Complaints, Investigation, and Disposition.

(a) Any written complaint filed under this section must be filed with the EEO Officer within sixty (60) calendar days after the alleged occurrence of the harassment incident.

(b) Upon receipt of a written complaint, the EEO Officer shall render a written report and recommendation within twenty (20) working days. This time period may be extended at the discretion of the EEO Officer should an extension be necessary in order to ensure a full, fair and complete investigation. The EEO Officer shall give notice to the parties if such an extension is deemed necessary.

(c) The Vice President shall render a written decision dismissing the complaint or initiating formal disciplinary action within ten (10) working days of receipt of the EEO Officer's report and recommendation. The person against whom the complaint has been filed shall notify the Vice President within five (5) working days of receipt of the notice of proposed disciplinary action of his/her desire to appear before the Vice President and present written or oral evidence at an investigatory interview. In cases where an investigatory interview is conducted, the Vice President shall render a written decision dismissing the complaint or taking appropriate disciplinary action within ten (10) working days after the investigatory interview.

(d) Any appeal to the President must be filed with the President within ten (10) working days of receipt of the Vice President's decision. The President shall render a final written decision within fifteen (15) working days of receipt of the notice of appeal.

(7) Retaliation Procedure.

(a) Complainants who feel that they have been retaliated against for exercising their rights under this Sexual Harassment Rule shall have the right to file a retaliation complaint with the EEO Officer.

(b) Retaliation complaints shall be handled in the same manner and utilizing the same procedures set forth above in subsection (5).

(8) 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 rule. Should a Complainant elect to pursue an alternative remedy available to him/her,

including the filing of a grievance pursuant to the collective bargaining agreement, or pursuant to the University's Career Service rules, the filing of any such grievance shall operate as a waiver of the Complainant's right to file a complaint and avail himself /herself of the procedures available under this rule. Should a grievance be filed pursuant to an alternative remedy and subsequent to the filing of a Complaint under this rule but before proceedings under this rule have been completed, the filing of any such grievance nonetheless will act as a waiver, and proceedings pursuant to this rule shall be terminated.

(b) The doctrine of election of 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 remedy by a person against whom a complaint has been filed, including the filing of a grievance under the collective bargaining agreement, the filing of an appeal to the Career Service Commission, or the filing of a petition for a hearing pursuant to Section 120.57, F.S., shall operate as a waiver of the right to appeal to the President the decision of a Vice President pursuant to this rule.

(c) The filing of a complaint under this rule shall not affect a Complainant's right to file a timely charge of discrimination pursuant to an appropriate federal or state statute, including the filing of a timely charge with the Florida Commission on Human Relations or the Equal Employment Opportunity Commission.

*Specific Authority 120.53(1)(a), 240.227(1) FS. Law Implemented 110.105, 110.112, 120.53(1)(c), 228.2001, 240.227(6), 240.261(2), 287.093, 287.094, 760.01, 760.10 FS. History—New 12-21-83, Amended 5-15-85, Formerly 6C9-4.15.*