

**THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES
NOTICE OF REGULATION AMENDMENT**

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

SUMMARY OF THE REGULATION: This regulation is being amended to update the University's discrimination and harassment complaint and investigation procedures. Specifically, complaints of alleged discrimination or harassment will be reported to the Chief Compliance Officer, the investigative report will recommend a determination and disposition, and in instances where the respondent is a student, the investigative report will be provided to the Office of Student Conduct for processing. Additionally, provision have been added to address procedures related to alleged complaints of discrimination in University training or instruction.

TEXT OF REGULATION: The full text of the Regulation Amendment can be viewed below and on the Florida Polytechnic University Board of Trustees website, at <https://floridapoly.edu/university-notices.php>. If you would like a copy of the Proposed Regulation, please contact Sherri Pavlik, Executive Assistant to VP and General Counsel, (863) 874-8412.

AUTHORITY: Board of Governors Regulations 1.001 University Board of Trustees Powers and Duties (5)(a).

NAME OF PERSON INITIATING REGULATIONAMENDMENT: Melaine Schmiz, Associate General Counsel

ANY PERSON SEEKING TO COMMENT ON THE REGULATION AMENDMENT 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: Sherri Pavlik, Executive Assistant to VP and General Counsel, spavlik@floridapoly.edu, (863) 874-8412, 4700 Research Way, Lakeland, Florida 33805, and Fax: (863) 874-8716.

DATE OF PUBLICATION: August 29, 2022

THE FULL TEXT OF THE REGULATION AMENDMENT IS PROVIDED BELOW:

THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES

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 or harassment and to ensure compliance with the various applicable federal and state laws that prohibit discrimination and harassment. 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 Policy FPU-1.005P²s Sexual Harassment-Misconduct, Policy and University Regulation FPU-1.004 Non-Discrimination/Equal Opportunity, and University Regulation FPU-1.0041 Prohibition of Discrimination in University Training or Instruction Regulation.

(2) **Complaint and Investigation Process Responsibility.** The ~~University President~~ Chief Compliance Officer ~~or his/her~~ their designee (“~~CCO~~ 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~~ CCO. Reports or allegations of discrimination will be processed upon the filing of a complaint with the ~~President~~ CCO. However, the ~~President~~ CCO may initiate or continue an internal investigation of an allegation of discrimination when the ~~President~~ CCO 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.

(3) Chief Compliance Officer Contact Information.

Physical Location: University Audit and Compliance
3425 Winter Lake Rd, LTB 1146
Lakeland, Florida 33803

Fax: 863-874-8509
Phone: 863-874-8441

Mailing Address: P.O. Box 1808
2615 Ellis Ave.
Eaton Park, Florida 33840

Office of Audit and Compliance Website: <https://floridapoly.edu/university-audit-compliance.php> ~~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.~~

(43) Procedure for Filing and Handling Complaints. All complaints filed with the President CCO 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 Complainant is encouraged to use the online reporting form available on the Office of Audit and Compliance website.

The President CCO 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 CCO 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.~~

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

~~Each investigation shall~~ must 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.

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.

~~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 a duty to cooperate fully 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.

(6) Investigative Report and Recommendations. Upon completion of an investigation, an investigative report is prepared by the CCO. The report will contain a summary of the complaint; the findings of the investigation; a recommended 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.

The ~~President-CCO shall will~~ conclude the full investigation and issue the ~~final~~-investigative 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. When the Respondent is a student, tThe ~~final~~-investigative report will be submitted to the Office of Student Conduct for processing following the procedures in University Regulation FPU-3.006 Student Code of Conduct. Director of Student AffairsWhen the Respondent is an employee, the investigative report will be submitted to the appropriate Vice President. If the Respondent is a Vice President, the investigative report is submitted to the President. ~~, when the Complainant or Respondent is a student, and to the Provost, when the Complainant or Respondent is an employee.~~

(7) Final Determination- Employees. When the Respondent is an employee, the appropriate Vice President reviews the investigative report to make a final 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 disposition of the allegation. If the Vice President does not accept the recommendations in the investigative report, the Vice President must provide a written rationale that explains the basis for their decision.

The Complainant and Respondent ~~shall will~~ 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. De~~Disciplinary action for employees, up to and including termination, will be considered and implemented, if appropriate, by the ~~Provost~~ appropriate Vice President ~~and~~ in consultation with the President. All disciplinary action will be handled in accordance with applicable University regulations, policies, ~~and~~ procedures, and applicable collective bargaining

agreements.

(8) Additional Procedures for Allegations of Discrimination in University Training or Instruction.

- (a) When an allegation of discrimination in University training or instruction involves an allegation related to course content, the CCO may consult with the Provost to convene an ad hoc committee comprised of faculty and experts in the subject area to serve in an advisory role to the COO during the investigation and to provide a written statement that provides feedback and context for the subject area. The committee does not make a recommendation as to disposition or consequences.
- (b) In the event the investigation finds that an instruction or training is inconsistent with University Regulation FPU-1.0041 Prohibition of Discrimination in University Training or Instruction, the University will inform the Board of Governors through the Office of Inspector General and take prompt action to correct the violation by mandating that the employee(s) responsible for the instruction or training modify it to be consistent with University Regulation FPU-1.0041 Prohibition of Discrimination in University Training or Instruction, issuing disciplinary measures where appropriate and remove, by termination if appropriate, the employee(s) if there is a failure or refusal to comply with the mandate.

(9) Reporting to Other Agencies. 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~~ CCO 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~~ CCO.

(10~~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~~ must keep information concerning the investigation or proceeding confidential. Violations may result in disciplinary or other action.

(11~~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.

(12~~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.

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

When a Respondent is a student, the Respondent and Complainant must follow the appeal process described in University Regulation FPU-3.006 Student Code of Conduct.

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, 10.005.

History: Revised ~~New: 2.5.14~~