

**FLORIDA ATLANTIC UNIVERSITY  
NOTICE OF PROPOSED REGULATION AMENDMENT**

Date: May 4, 2019

**REGULATION TITLE AND NUMBER:** Anti-Discrimination/Anti-Harassment (5.010).

**SUMMARY:** The Office for Equity, Inclusion and Compliance under the Division of Administrative Affairs seeks to amend FAU Regulation 5.010, Anti-Discrimination/Anti-Harassment. The Anti-Discrimination/Anti-Harassment Regulation is a critical component of the University's efforts to ensure our campus is inclusive and free from prohibited discrimination. This regulation outlines the process by which the University defines protected groups, and the process for addressing behavior that is inconsistent with the high standards we expect from our campus community. These revisions are intended to further clarify Regulation 5.010. The proposed changes are summarized as follows:

1. Moderate reorganization of the definitions and examples in Section II to ensure clarity and consistency in the application of FAU's anti-discrimination policies.
2. Update the leadership of the EIC office from the Director to the Executive Director and revise the time-period for investigations consistent with new DOE Regulations.
3. Inform supervisory employees that failure to report any alleged violation of Regulation 5.010 may result in disciplinary action, up to and including separation or termination.

**FULL TEXT OF THE AMENDED REGULATION:** The full text of the proposed amended regulation is attached below to this notice. The full text of the existing regulation is posted on FAU's website at [www.fau.edu/regulations](http://www.fau.edu/regulations). In addition, the full text of the proposed amended regulation and current regulation are available upon request to the Office of the General Counsel, which can be contacted at (561) 297-3007 or [GeneralCounsel@fau.edu](mailto:GeneralCounsel@fau.edu).

**AUTHORITY TO AMEND THE REGULATION:** Article IX of the Florida Constitution and the Board of Governors Regulation Development Procedure dated July 21, 2005.

**UNIVERSITY OFFICIAL INITIATING THE REGULATION AMENDMENT:** Mr. Donald Kamm, Executive Director, Office of Equity, Inclusion and Compliance.

**COMMENTS CONCERNING THE PROPOSED REGULATION AMENDMENT SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW.** In response, the University may solicit additional written comments, schedule a public hearing, withdraw or modify the proposed regulation amendment in whole or in part after notice, or proceed with adopting the regulation amendment. The comments must identify the regulation(s) on which you are commenting.

**THE PERSON TO BE CONTACTED REGARDING THE REGULATION AMENDMENT**  
**IS:** Mr. Daniel Jones or Ms. Tori Winfield, Office of the General Counsel, 777 Glades Road, Boca Raton, Florida, 33431, (561) 297-3007 (phone), (561) 297-2787 (fax), [GeneralCounsel@fau.edu](mailto:GeneralCounsel@fau.edu).

Florida Atlantic University business environment free of all forms of discrimination or harassment based upon an individual's race, color, religion, origin, age, disability, veteran status, marital status, sexual orientation, expression, or other protected status is prohibited. ~~Federal~~ covered by the

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of the Education Amendments Act of 1972 ("Title IX"). This Regulation also covers the Florida Civil Rights Act and any other applicable local, state or federal laws.

- B. ~~This Regulation 5.010 ("Regulation") This policy~~ applies to all FAU students, applicants for employment, faculty, volunteers and staff (hereinafter collectively referred to as "University Community Members"), as well as third parties providing services to FAU. ~~This Regulation 5.010 ("Regulation")~~ establishes procedures for a University Community Member to file a complaint of alleged discrimination, harassment or retaliation.
- C. Discriminatory conduct in the form of sexual misconduct/sexual harassment is also

G. Those found to have violated any term, condition or provision of this Regulation will be subject to disciplinary action, up to and including suspension, expulsion, termination or separation.

H. Any supervisor (5P1(1)-3, (g) of (b) in 7) 4 (p) 5a (4) 2 (p) 1-24 (j) 2 (a) 65 EME 4B Tr 10 (g) 28 Trw 61 (s)

2. **Disparate Impact**  
Disparate impact occurs when an employment policy, although neutral on its face, adversely impacts persons in a protected status. Disparate treatment on the basis of a class not protected by federal, state or local law shall not constitute discrimination or harassment if such disparate treatment is required by federal or state law.
3. **Retaliation**  
Retaliation is adverse action taken against a person for engaging in protected

intimidation, or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature.

#### ~~Hostile Environment~~

~~Hostile environment harassment exists when harassment has the purpose or effect of unreasonably interfering with a person's work or educational performance or participation in a university program or activity, or is sufficiently severe or pervasive to create an intimidating, hostile, or offensive work or educational environment.~~

#### ~~Quid Pro Quo~~

~~B.~~ In all cases in which a violation of Title IX is alleged against a University Community Member, the University shall provide notice to the Complainant of his/her rights as soon as possible after it receives notification of the alleged violation. For complaints involving allegations of student misconduct by a student, Regulation 4.007 Student Code of Conduct, Regulation 4.007, and Policy 1.15 Prohibited Sex Conduct will govern.

~~1.~~ The EIC Executive Director is the Title IX Coordinator for the University.

~~2.~~ Individuals with questions or concerns about Title IX may contact the University's Title IX Coordinator and may file a complaint directly with that office consistent with the procedures outlined herein.

~~C.~~ Any University employee or applicant who believes he/she has been harassed, discriminated or retaliated against in violation of this Regulation should report the facts and circumstances thereof to the ~~EIC Executive~~ Director, or in the alternative, may report to the appropriate Vice President or Provost, College Dean, or the Director of Human Resources, who in turn must notify the ~~EIC Executive~~ Director.

~~C.~~ Any student who believes he/she has been harassed or discriminated against in violation of this Regulation should report the facts and circumstances thereof ~~to the~~ ~~EIC Executive~~ Director, or in the alternative, may report to a University Vice President or Provost, the Dean of Students, the Dean of his/her College, or to his/her Department Head, who in turn must notify the ~~EIC Executive~~ Director.

~~D.~~ Reports or allegations of an alleged violation of this Regulation will be processed the filing of a written complaint with EIC. The ~~Executive Director of EIC~~ may process an alleged violation without a written complaint if deemed necessary by the ~~Executive Director~~ and if enough information is available in the discretion of the Executive Director, to conduct a responsible investigation based on their judgment.

~~E.C.~~ A complaint must be filed with EIC within one hundred eighty (180) calendar days of the alleged act(s) of discrimination/harassment. EIC may process an alleged violation ~~outside~~ of this time limitation in the discretion of their deemed necessary by the Executive Director. The filing of a

complaint under this Regulation is independent and does not preclude the Complainant from also filing a complaint with federal, state or local enforcement agencies. The filing of a complaint with EIC does not constitute a filing with, or have any effect on the filing time limitations of those external agencies. All Complainants are urged to contact these external agencies directly to learn the filing deadlines and procedures for each agency. Contact information for these agencies is available from ~~to~~ ~~Office~~.

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remain confidential to the extent permitted by law.

IV. INVESTIGATION OF COMPLAINTS

- A. EIC shall investigate all complaints that contain enough information ~~to qualify~~  
for ~~substantiate~~



1. The ~~EIC~~ Executive Director must receive the written request within ten (10) calendar days of the date the final investigation report is published.
2. The request must include a basis for the reconsideration.
3. ~~The EIC Executive Director will consider any request for reconsideration, but~~ R reconsideration will only be granted in cases where new evidence is provided or relevant evidence was not previously considered or reviewed.
4. The ~~EIC~~ Executive Director shall notify the requesting party, in writing, of the appeal decision within twenty (20) calendar days.

Specific Authority: Article IX of the Florida Constitution; Florida Board of Governors Regulation 1.001; Formerly 6C5-012, Amended 111-87, 75-99, 119-05, 628-06, 11-16-11, 0701-15, 64-19.