

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: August 26, 2022

REGULATION TITLE:

Non-Discrimination; Affirmative Action Programs

REGULATION NO.:

UCF-3.001

SUMMARY OF REGULATION AMENDMENT: This regulation sets out the university's non-discrimination statement and requirement as a federal contractor to maintain an affirmative action plan. The proposed amendments to the regulation would: include language related to UCF's commitment to free speech, update the definition of harassment, clarify the reporting obligations of Responsible Persons related to sexual misconduct, and update reasonable accommodation language consistent with the university's obligations pursuant to applicable federal laws (ADA, Section 504 of the Rehabilitation Act, and Title IX).

AUTHORITY: BOG Regulation 1.001

NAME OF PERSONS WHO INITIATED PROPOSED REGULATION AMENDMENT:

Nancy Myers, Director, Office of Institutional Equity

COMMENTS CONCERNING THE PROPOSED REGULATION AMENDMENT SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation you are commenting on.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION AMENDMENT IS:

Regulations Administrator
4365 Andromeda Loop N.
Millican Hall, Suite 360
Orlando, FL 32816-0015
Phone: (407) 823-2482
e-mail: regulations@ucf.edu

FULL TEXT OF THE PROPOSED REGULATION AMENDMENT:

UCF-3.001 Non-discrimination; Affirmative Action Programs.

(1) The University shall actively promote equal opportunity policies and practices conforming to federal and state laws against discrimination. The University shall not discriminate in offering access to its educational programs and activities or with respect to employment terms and conditions on the basis of race, color, ethnicity, national origin, religion, non-religion, age, genetic information, sex (including pregnancy, parental status, gender identity or expression, and sexual orientation), marital status, physical or mental disability (including learning disabilities, intellectual disabilities, and past or present history of mental illness), ~~political affiliations,~~ veteran status (as protected under the Vietnam Era Veterans' Readjustment Assistance Act), or

membership in any other protected classes as set forth in state or federal law (hereinafter “Protected Classes”). This commitment applies to the University’s relationships with outside organizations, including the federal government, the military, ROTC, and private employers, only to the extent of state and federal requirements. At the same time, the University is equally committed to protecting freedom of speech and academic freedom and in preserving the widest possible dialogue within its instructional and research settings. Accordingly, nothing in this regulation shall abridge an individual’s rights to free speech and expression under the First Amendment of the U.S. Constitution.

(2) It is the policy of the University that each employee and student be allowed to work and study in an environment free from unlawful discrimination, ~~discriminatory~~-harassment, and retaliation. To that end, the University prohibits specific forms of behavior that violate state and federal laws, including but not limited to Title VI of the Civil Rights Act of 1964 (“Title VI”), Title VII of the Civil Rights Act of 1964 (“Title VII”), Title IX of the Education Amendments of 1972 (“Title IX”), the Violence Against Women Reauthorization Act of 2013 (“VAWA”), the Americans with Disabilities Act, Section 503 and Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Age Discrimination in Employment Act of 1967, Genetic Information Nondiscrimination Act, Equal Pay Act, Florida’s Civil Rights Act (Florida Statutes ss. 760.10 and 110.1221), Executive Order 11246, the Florida Educational Equity Act (Florida Statute s. 1000.05) and related state and federal ~~nonanti~~-discrimination laws.

- (a) For purposes of this regulation, discrimination is defined as any unlawful distinction, preference, or detriment to an individual that is based upon an individual’s Protected Class(es)~~race, color, ethnicity, national origin, religion, non-religion, age, genetic information, sex (including pregnancy, parental status, gender identity or expression, and sexual orientation), marital status, physical or mental disability (including learning disabilities, intellectual disabilities, and past or present history of mental illness), political affiliations, veteran’s status (as protected under the Vietnam Era Veterans’ Readjustment Assistant Act), or membership in other protected classes set forth in state or federal law~~ and that: (1) excludes an individual from participation in; (2) denies the individual the benefits of; (3) treats the individual differently with regard to; or (4) otherwise adversely affects a term or condition of an individual’s employment, education, living environment or participation in a university program or activity. Religious discrimination includes failing to reasonably accommodate an employee’s or student’s religious practices where the accommodation does not impose an undue hardship nor fundamentally alter a course or academic program. Disability discrimination includes ~~failing to~~not making reasonable accommodations ~~to~~ the known physical or mental limitations of an otherwise qualified individual with a disability where the accommodations ~~does~~ not impose an undue hardship nor fundamentally alter a course or academic program. Pregnancy discrimination includes failing to reasonably accommodate an employee’s or student’s pregnancy or pregnancy-related condition where the accommodation does not impose an undue hardship and does not fundamentally alter a course or academic program.
- (b) Unlawful ~~discriminatory~~-harassment ~~consists of~~ is a form of unlawful discrimination wherein an individual is subjected to verbal, physical, electronic or other conduct based upon an individual’s Protected Class(es) ~~protected class (such~~

as race, color, religion, et al.), that interferes with that individual's educational or employment opportunities, participation in a university program or activity, or receipt of legitimately requested services and meetings the description of either Hostile Environment Harassment or Quid Pro Quo Harassment, as defined below.

1. Hostile Environment Harassment: Discriminatory Harassment Unwelcome behavior based on Protected Class(es) identified in this regulation, where the frequency and severity of the alleged harassing conduct that is so severe or pervasive that it unreasonably interferes with, limits, deprives, or effectively denies the individual's ability to participate in or benefit from the alters the terms or conditions of education (e.g., admission, academic standing, grades, assignment); employment (e.g., hiring, advancement, assignment); or participation in a University program or activity (e.g., campus housing), when viewed from both a subjective and an objective perspective. For a hostile environment harassment claim, the record must establish that the Complainant(s) subjectively perceived the environment to be hostile, and that the environment was one that a reasonable person would find objectively hostile.

2. Quid Pro Quo Harassment: Discriminatory Harassment where submission to or rejection of unwelcome conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's education (e.g., admission, academic standing, grades, assignment); employment (e.g., hiring, advancement, assignment); or participation in a university program or activity (e.g., campus housing). The University is equally committed to protecting freedom of speech and academic freedom and in preserving the widest possible dialogue within its instructional and research settings. Accordingly, nothing in this policy shall abridge an individual's rights to free speech and expression under the First Amendment of the U.S. Constitution.

(c) Retaliation is defined as taking an adverse action against an individual because that individual, in good faith: (i) reported or threatened to report unlawful discrimination, discriminatory harassment, sexual harassment, or Title IX Sexual Harassment; or (ii) participated in any capacity, including as a witness or party, in a discrimination-related investigation or proceeding.

(3) Sexual harassment is a form of sex discrimination. Sexual harassment is defined as any unwelcome sexual advances, request for sexual favors, and other unwanted verbal, graphic or physical conduct of a sexual nature, ~~whether verbal, non-verbal, graphic, physical, or otherwise,~~ when the conditions for Hostile Environment Harassment or Quid Pro Quo Harassment (as defined above) are present.

(4) Title IX Sexual Harassment is a form of sex discrimination specifically defined under Title IX regulations. Title IX Sexual Harassment is defined as any conduct ~~on the basis of sex~~ which ~~that~~ occurs within a University education program or activity against a person located in the United States on or after August 14, 2020 and that satisfies one or more of the following:

(a) An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo);

- (b) Unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity (i.e., hostile environment); or
 - (c) Sexual assault, dating violence, domestic violence, ~~or~~ and stalking (as defined by the Jeanne Cleary Act).
- (5) Employee & Responsible Person Reporting Responsibilities.
- (a) Responsible ~~person~~employees are required to immediately report to the university's Office of Institutional Equity all relevant details known (obtained directly or indirectly) or should have been known about an incident of sex/gender-based discrimination or harassment, sexual harassment, Title IX Sexual Harassment, sexual assault, sexual exploitation, relationship violence, and/or stalking (as defined in the University's ~~*Nondiscrimination Prohibition of Discrimination, Harassment and Related Interpersonal Violence Policy*~~, No. 2-004) that involves any student as a complainant, respondent, and/or witness, including dates, times, locations, and names of parties and witnesses. ~~Reporting is required when the responsible employee knows (by reason of a direct or indirect disclosure) or should have known of such sex/gender-based discrimination or harassment, sexual harassment, Title IX Sexual Harassment, sexual assault, sexual exploitation, relationship violence, and/or stalking. A responsible person's failure to do so may result in disciplinary action, up to and including termination of employment. Responsible persons are not required to report information disclosed (1) at public awareness events (e.g., "Light Up the Night," Clothesline Project, candlelight vigils, protests, "survivor speak-outs" or other public forums in which students may disclose incidents of this nature; (2) during a student's participation as a subject in an Institutional Review Board-approved human subjects research protocol; or (3) as part of coursework submitted to an instructor in connection with a course assignment or capstone experience (such as a paper, thesis, or dissertation).~~
 - (b) Deans, directors, department heads and supervisors are required to report to the Office of Institutional Equity all relevant details about an incident of discrimination, ~~discriminatory~~ harassment, sexual assault, sexual exploitation, relationship violence, stalking, sexual, gender-based, or Title IX Sexual Harassment, aiding and abetting in the commission of any act prohibited by the University's Nondiscrimination Policy (No. 2-004) or Title IX Grievance Policy (No. 2-012), or retaliation where ~~either the complainant or~~ the respondent is an employee or Direct Support Organization employee. Reporting is required when such deans, directors, department heads, and supervisors know (by reason of direct or indirect disclosure) or should have known of the discrimination, ~~discriminatory~~ harassment, or retaliation.
- (6) Disciplinary Action.
- (a) Any employee or student of the University who is found to have unlawfully discriminated or retaliated against an employee, an applicant for employment, a student, or other member of the University community will be subject to disciplinary action up to and including termination or expulsion. Any contractor or other visitor to the University who is found to have engaged in unlawful discriminatory or retaliatory conduct in violation of this regulation will be subject

to removal from University facilities, may be denied reentry, and may provide cause to terminate any applicable contract.

- (b) Any employee or responsible person who fails to fulfill their duty to report to the Office of Institutional Equity as set forth in section (5)(a) and (5)(b) above ~~in a supervisory capacity who has actual knowledge by direct observation or by receipt of a report of discrimination, discriminatory harassment, sexual harassment, or Title IX Sexual Harassment, and who does not report the matter to the Office of Institutional Equity~~ shall be subject to disciplinary action up to and including termination ~~or expulsion~~.

(7) Complaint and Investigation Procedures. Any employee, student, or other member of the university community who believes that he or she is a victim of unlawful discrimination, ~~discriminatory-unlawful~~ harassment, sexual assault, sexual exploitation, relationship violence, stalking, sexual, gender-based, or harassment, Title IX Sexual Harassment, aiding and abetting in the commission of any act prohibited by the University's Nondiscrimination Policy (No. 2-004) or Title IX Grievance Policy (No. 2-012), or retaliation may take formal or informal action. The individual may report the conduct to ~~their~~^{his or her} supervisor or a higher-level employee for further action; pursue informal resolution of the complaint under certain circumstances; or pursue an investigation in accordance with Regulation UCF-3.0134 with the Office of Institutional Equity. The Office of Institutional Equity is available to assist employees, students, and members of the university community with reporting ~~discriminatory conduct~~, obtaining information about the options to informally resolve a complaint, or pursuing an investigation by the Office of Institutional Equity.

(8) The University, in affirming equal opportunity practices, is committed to a continuing program of promotion and maintenance of an affirmative action program. The University, as a federal contractor, is required by law to maintain a current affirmative action plan for the University. For further information about that plan, contact the Office of Institutional Equity, University of Central Florida, Orlando, Florida 32816.

Authority: BOG Regulation 1.001. History—New 10-8-75, Amended 1-10-82, 1-9-83, 12-27-83, 12-27-84, Formerly 6C7-3.01, Amended 3-27-86, 1-6-93, 3-16-03, 11-07-07, 07-10-08. Formerly 6C7-3.001, Amended 3-25-09, 1-3-11, 10-26-17, 11-14-19, 10-22-20, 9-23-21, _____-22.