



## FGCU REGULATION 1.003

### Non-Discrimination, Anti-Harassment, and Sexual Misconduct

*Effective Date of  
Regulation:*

*September 10, 2019*

#### A. GENERAL STATEMENT

##### 1. Affirmation

Florida Gulf Coast University (FGCU) affirms its commitment to ensure that each member of the University community shall be permitted to work, study, and participate in educational programs, including those receiving federal funding, services, and activities, or conduct business in an environment free from any form of discrimination, based upon race, color, religion, age, disability, sex, national origin, marital status, genetic predisposition, sexual orientation, gender identity/gender expression, and veteran status, except as otherwise permitted by law. This commitment extends to protection against retaliation against individuals engaging in any protected activity under state or federal law as well as University policy or regulation. The University strives to foster a community in which diversity and inclusion are valued and opportunity is realized. This Regulation creates a mechanism for applicants, students, employees, volunteers, visitors, as well as vendors and contractors of the University community, to file a complaint of alleged discrimination or harassment, to include sexual discrimination, which covers sexual harassment, including sexual violence. Retaliation against any individual involved in reporting, or in the investigation of, a complaint is prohibited.

##### 2. Violation

It shall be a violation of this Regulation for any officer, university employee, student, visitor, agent, vendor, or contractor to discriminate against or harass, as hereinafter defined, any other officer, university employee, student, visitor, agent, vendor, contractor, or applicant. Discrimination and harassment are forms of conduct which, when established, shall result in employee and/or student disciplinary action pursuant to University Regulations, and the terms of any applicable collective bargaining agreement. University vendors and contractors found to have violated this Regulation will receive sanctions or other punitive actions consistent with the law and/or contract.

#### B. COVERAGE

##### 1. Parties

All complaints of discrimination, harassment, or sexual misconduct, including sexual violence, or retaliation, unless otherwise provided herein, shall be adjudicated under this Regulation. Complaints between students, or where one party (the Respondent) is a student and not employed by the University, shall be reported to the Office of the Vice

President for Student Success and Enrollment Management and adjudicated under FGCU Regulation 4.002, Student Code of Conduct and Student Conduct Review Process (“Student Code of Conduct”). Students who are also employees may be subject to University disciplinary action as well as disciplinary action under the Student Code of Conduct.

## 2. Scope of Prohibitions

This Regulation covers all employment practices, as well as educational, athletic, cultural, and social programs, services, and activities occurring at, or sponsored by, FGCU. Additionally, conduct that occurs off-campus can be the subject of a complaint or report and will be evaluated to determine whether it violates this Regulation, e.g. if off-campus harassment has continuing effects that create a hostile environment on-campus or sexual violence or sexual misconduct has occurred.

## C. DEFINITIONS

1. *Complainant*: A Complainant is a person or persons alleging a violation under this Regulation.
2. *Conflict of Interest*: When an individual evaluates or supervises another individual with whom he or she has, or desires to have, an amorous or sexual relationship, a conflict is created. The University discourages such potentially amorous or sexual relations between employees and students or between those employees in which one employee is the supervisor over another. Such relationships, even when consensual, may be exploitive, and jeopardize the integrity of the educational process or work environment and may lead to charges of Sexual Harassment. The University requires the resolution of any conflict of interest created by these relationships. See FGCU Policy 1.007, Consensual Relationship Policy and Procedure.
3. *Discrimination*: For the purposes of this Regulation, Discrimination is defined as the intentional or unintentional treatment of any member of the University community less favorably than those who are similarly identified based solely upon race, color, religion, age, disability, sex, national origin, marital status, genetic predisposition, sexual orientation, gender identity/gender expression, and/or veteran status.
4. *Frivolous Complaint*: A Frivolous Complaint is one that is trivial, superficial, senseless, groundless, or brought in bad faith.
5. *Harassment*: For the purposes of this Regulation, Harassment, a form of Discrimination, is defined as unwelcome conduct, including electronic and written communication that is based upon race, color, religion, age, disability, sex, national origin, marital status, genetic predisposition, sexual orientation, gender identity/gender expression, and/or veteran status. Additionally, Harassment is further defined as behavior so severe, pervasive, or persistent that it limits or denies a student’s ability to participate in or

benefit from an educational program, undermines the responsibilities of an employee, and/or creates a hostile working or learning environment.

6. *Hostile Environment*: Hostile Environment, based on a protected class, exists when Harassment is sufficiently severe, pervasive, or persistent and objectively offensive so as to deny or limit a person's ability to participate in or benefit from the University's programs, services, or activities; or when such conduct has the purpose or effect of unreasonably interfering with an individual's employment, or student's enrollment.
7. *Intimate Partner*: Persons who are, or who have been, dating, cohabitating, married, separated, or divorced, and may be of the same or opposite sex.
8. *Intimate Partner Violence (Also known as "dating violence" or "domestic violence")*: The use of physical violence, force, threats, intimidation, isolation, stalking, or other forms of emotional, sexual, or economic abuse directed towards an Intimate Partner. This can take the form of behavior(s) that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, forces, threatens, blames, hurts, injures, or wounds someone. Intimate Partner Violence can be a single act or a pattern of behavior in relationships.
9. *Respondent*: A Respondent is a person or persons whose conduct is the subject of a complaint under this Regulation.
10. *Retaliation*: Retaliation occurs when an adverse action or threat of an adverse action is taken against a Complainant, Respondent, or any individual or group of individuals involved in the complaint, investigation, and/or resolution of an allegation of Discrimination of any kind, including incidents of Sexual Misconduct, Intimate Partner Violence, Stalking, or for engaging in any activity protected by state or federal law or University policy or regulation. This includes action taken against a bystander who intervened to stop or attempt to stop Discrimination, Harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation, or adverse actions taken with respect to academic activities or work assignments, salary, or other terms of employment.
11. *Sexual Harassment*: Sexual Harassment is defined as unwelcome conduct of a sexual nature including unwelcome sexual attention, which includes requests for sexual favors, or other verbal or physical conduct of a sexual nature from any person that is so severe, pervasive, or persistent that it limits a student's ability to participate in or benefit from an educational program, undermines the responsibilities of the employee, and/or creates a hostile working or learning environment. Sexual violence is a form of Sexual Harassment.
12. *Sexual Misconduct*: Sexual Misconduct is defined as rape, sexual assault, sexual battery, sexual exploitation, and other forms of non-consensual sexual activity.

13. *Stalking*: Stalking occurs when one is repeatedly following, harassing, threatening, or intimidating another by any action, including, but not limited to, use of telephone, mail, electronic communication, social media, or any other device or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death.

## **D. REPORTING**

### 1. University Response

If the University becomes aware of activity which could be a violation of this Regulation, it will take prompt, appropriate, and equitable actions, which may include an investigation, even when a complaint has not been submitted. While all members of the University community are expected to promptly report known activity which could violate this Regulation, only supervisory or managerial personnel may be subject to disciplinary action pursuant to FGCU-PR5.016, Disciplinary Actions, should they know of such activity and fail to report. Complaints will be promptly investigated, consistent with the University's Complaint Policy and Procedure. The Office of Institutional Equity and Compliance or, as necessary, the Office of the General Counsel will be responsible for ensuring the investigation of complaints covered under this Regulation.

### 2. Responsibility of Supervisors and Managers

- a. All supervisors and managers are encouraged to take steps necessary to prevent Discrimination, Harassment, or Sexual Misconduct, as defined in this Regulation, from occurring. They should clearly communicate to employees that such behavior will not be tolerated and that periodic training on these topics should be completed. Whenever an employee, student, or non-employee makes allegations of Discrimination, Harassment, or Sexual Misconduct which may violate this Regulation, supervisors and managers are required to take prompt and appropriate action to report the alleged violations. Any University supervisory or managerial employee who receives a report, observes, or learns of an alleged violation of this Regulation has an absolute and unqualified duty to immediately report the alleged violation to the Director of the Office of Institutional Equity and Compliance/Title IX Coordinator as soon as possible.
- b. All University employees must report information they have about alleged Sexual Misconduct to the Director of the Office of Institutional Equity and Compliance/Title IX Coordinator. This reporting requirement excludes those University employees who are statutorily prohibited from reporting such information, including, but not limited to, mental/healthcare professionals.

### 3. Responsibility of Alleged Victim

The alleged victim is not required to inform an alleged offender of the offensiveness of

the behavior in order to make a complaint under this Regulation. FGCU Policy 1.006, Non-Discrimination, Anti-Harassment, and Sexual Misconduct, and the procedures therein, should be used to address any concerns or issues. Frivolous Complaints are a violation of this Regulation and may be cause for disciplinary action.

#### 4. Responsibility of Students

The University strongly encourages students to report instances of Discrimination and Sexual Misconduct involving students, whether occurring on or off campus, to the Director of the Office of Institutional Equity and Compliance/Title IX Coordinator and/or the University's Dean of Students Office.

#### 5. Amnesty Provision for Students

Allegations of off-campus Sexual Misconduct involving students are of equal concern as those on campus, and should be brought to the University's attention as soon as possible, regardless of whether or not it occurred at a University-sponsored event. Therefore, students who make a good faith report, on their own behalf or on behalf of another person, of sex Discrimination or Sexual Misconduct will not be subject to disciplinary actions related to intoxication or possession under the Student Code of Conduct in connection with the reported situation, provided that any such violations did not, and do not, place the health or safety of any other person at risk.

- a. However, students should understand that this directive applies only to the Student Code of Conduct and does not preclude or prevent action by police or other legal authorities. As such, any violation of state or federal criminal law involving the use or possession of alcohol or illegal drugs may result in prosecution, and FGCU cannot grant amnesty from proceedings in the state or federal criminal justice system.
- b. Law enforcement agencies may act within their jurisdiction in enforcing any applicable local, state, or federal laws.

#### 6. Responsibility of Employees Involving Conflicts of Interest

Employees in a position of authority must resolve any actual or potential Conflict of Interest by taking necessary steps, including removing himself or herself from evaluative decisions concerning the other individual and disclosing the consensual relationship to his/her immediate supervisor. Failure to resolve potential or actual conflicts of interest as described in this Regulation may result in disciplinary action pursuant to University regulations.

#### 7. Retaliation

- a. Any University student, employee, visitor, or group that engages in Retaliation against a University student, employee, or visitor who has filed a complaint alleging

Discrimination, participated in an investigation, or otherwise exercised their rights and privileges against Discrimination, will be subject to disciplinary action pursuant to University regulations. This prohibition against Retaliation applies regardless of the merits of the initial complaint of Discrimination.

- b. The prohibition against Retaliation extends to protected activity covered by state or federal law or University policy or regulation. An investigation of Retaliation will be conducted by the Office of Institutional Equity and Compliance or the Office of the General Counsel depending on the circumstances surrounding the allegation of Retaliation.

*Authority*

*20 U.S.C. §§1681-1688*

*42 U.S.C. §2000e, et.seq.*

*Section 760.10, Florida Statutes*

*History of Regulation*

*New 01/15/08; Amended 01/20/09; Amended 01/19/10; Amended 09/17/13; Amended 04/15/14; Amended 06/07/16; Amended 09/10/19*

*Approved by Florida Gulf Coast University Board of Trustees  
September 10, 2019*