

ARTICLE 11  
NONDISCRIMINATION

11.1 Statement of Intent.

(a) The Trustees and the UFF fully support all laws intended to protect and safeguard the rights and opportunities of each faculty member to work in an environment free from any form of discrimination or harassment.

(b) The Trustees and the UFF recognize their obligations under federal and State laws, regulations, and regulations prohibiting discrimination, and have made clear their support for the concepts of equal employment opportunity. They desire to assure equal employment opportunities at the University and recognize that the purpose of affirmative action is to provide equal opportunity to women, minorities, and other affected groups to achieve equality at the University. To this end the Trustees and the UFF shall implement programs, policies, and practices to facilitate proactively the recruitment, appointment, retention and professional development of such groups and to ensure equitable opportunities for faculty members to receive salary adjustments, tenure, multi-year appointments, promotion, sabbaticals, and other benefits. This statement of intent is not subject to Article 31, Grievance Procedure and Arbitrations.

11.2 Policy.

(a) Discrimination.

(1) Personnel decisions shall be based solely on job-related criteria and performance.

(2) The University of Florida acknowledges the importance of an inclusive environment for all, and shall not discriminate against any faculty member based upon race, color, sex, religious creed, national or ethnic origin, age, disability, political opinions or affiliation, sexual orientation, marital status, or veteran status as protected under the Vietnam Era Veteran's Readjustment Assistance Act, nor shall the Trustees or the UFF abridge any rights of faculty members related to union activity granted under Chapter 447, Florida Statutes, 2003, including but not limited to the right to assist or to refrain from assisting the UFF, or the exercise of any rights under this Agreement.

(3) Should state or federal law establish any additional protected category for claims of discrimination during the term of this Agreement, the Trustees and the UFF agree to modify the Agreement pursuant to the Amendment and Duration article.

(b) Harassment. Faculty members shall be protected from illegal harassment, including but not limited to harassment on the basis of race, age, gender, or disability, in accordance with federal and state law. Illegal harassment occurs when the workplace is permeated with intimidation, ridicule, and insult that is sufficiently severe or pervasive as to alter the

Approved: Michael Mattson  
For the University of Florida  
Board of Trustees

Approved: Chris Froly  
For the United Faculty of Florida

Date: 2/24/2006  
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conditions of the victim's employment or academic performance and create an abusive working environment. Workplace conduct is not measured in isolation — simple teasing, occasional incivility, off-hand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment

(1) Sexual Harassment. It is the policy of the University that each faculty member be allowed to work and study in an environment free from any form of discrimination. Sexual harassment is a prohibited form of sex discrimination under Section 703 of Title VII of the Civil Rights Act of 1964, 42 USC Sec. 2000E-2(A), and is conduct unbecoming an employee as provided in Section 110.2 27, Florida Statutes. Sexual harassment is defined as unwelcome sexual advances, or requests for sexual favors, and other verbal and physical conduct of a sexual nature when:

- a. Submission to such conduct or request is made either explicitly or implicitly a term or condition of an individual's employment or academic status;
- b. Submission to or rejection of such conduct or request by an individual is used as the basis for employment or academic decisions affecting such individual; or,
- c. Such conduct or request has the purpose or effect of unreasonably interfering with an individual's work or academic performance or of creating a workplace permeated with intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment or academic performance and create a hostile or abusive work-related or academic environment.

(2) Title VII does not proscribe all conduct of a sexual nature in the workplace (EEOC, "Policy Guidance on Current Issues of Sexual Harassment," No. N-915-050, 3/19/90). However, even consensual sexual relationships may involve a conflict of interest. Conflicts of interest are subject to the provisions of Article 25, Conflict of Interest/Outside Activity.

(3) In addition to the concern with respect to sexual harassment between faculty members or between faculty and other employees, the Trustees and the UFF recognize the potential for this form of illegal discrimination involving students, either by students against faculty or by faculty against students. Such illegal discrimination includes unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature that constitutes sexual harassment.

(4) Furthermore, the Trustees and UFF recognize that sexual relationships between students and faculty, even if consensual, may become exploitative and especially so when a student's academic work, residential life, or athletic endeavors are supervised or evaluated by the faculty member.

(5) Policies and regulations regarding harassment shall be based on the definitions specified in Section 11.2(b), above, and shall be employed to protect individuals from discrimination, not to regulate the content of speech or restrict the academic freedom or free speech rights of faculty members.

Approved: Michael Mattone  
For the University of Florida  
Board of Trustees

Approved: Chris Snodgrass  
For the United Faculty of Florida

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(c) Informal Individual Action in Response to Possible Discrimination or Harassment. Faculty members who believe that they may be victims of discrimination or harassment, including sexual harassment as defined in subsection 11.2(b)(1) above, or who witness possible discrimination or harassment may try to resolve the matter informally by taking such actions as

(1) Speaking up when the incident occurs and telling the offender in a clear and firm manner to stop the offensive behavior.

(2) Communicating with the offender by writing a letter detailing your concerns and asking the person to stop the offensive behavior.

(3) Keeping a written record and any evidence that would corroborate your perception of the events.

(4) Consulting with a professional counselor in the Employee Assistance Program (EAP).

a. The EAP counselor shall provide necessary information, various options, confidential advice, as well as counseling services, if requested.

b. The EAP counselor shall keep strictly confidential all particulars, including names, and shall not participate in the formal investigation or any subsequent reporting of the alleged incident.

(5) Seeking assistance to informally resolve the possible discrimination or harassment by contacting the Director for Equal Employment Opportunity Programs. The Director of Equal Employment Opportunity Programs may be required to report the matter to the Vice President for Human Resource Services.

However, faculty members should be aware that if they make a formal accusation of discrimination or harassment to an administrator or a faculty member with direct official authority over them, then that faculty member or administrator is required to report the accusation to the Vice President for Human Resource Services, who must then conduct an investigation.

(d) Responsibilities of Faculty Members Regarding Formal Accusations of Possible Discrimination or Harassment. A faculty member who has actual knowledge by direct observation or who receives a formal accusation of discrimination, or of harassment as defined in Section 11.2(b), involving an individual over whom the faculty member has direct official authority, must contact the Vice President for Human Resource Services, who shall investigate the matter to determine whether the observation or accusation has substance and, if appropriate, take corrective action.

(e) Formal Complaints of Discrimination or Harassment. Faculty members who believe that they may be victims of discrimination or harassment, including sexual harassment as defined in subsection 11.2(b)(1) above, or who witness what they believe to be discrimination or harassment, may take one of the following official actions:

(1) Have the Director of Equal Employment Opportunity assist in filing a

Approved: Michael Patton  
For the University of Florida  
Board of Trustees

Approved: Chris Fudge  
For the United Faculty of Florida

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formal complaint, which shall be referred to the Vice President for Human Resource Services; or

(2) File a formal complaint directly with the Vice President for Human Resource Services.

All formal complaints shall be investigated in accordance with the procedure described in Section 11.3, below.

(f) Retaliation. Retaliation for exercising civil rights is prohibited by federal and state law. No harassment, intimidation, threats, coercion, discrimination, or other form of retaliation shall be made by a faculty member, the Trustees or UFF against any party, witness or representative arising from their good faith participation in the investigation of a complaint of discrimination or harassment. Retaliation shall be regarded as seriously as discrimination itself and shall justify discipline pursuant to the procedures established in Article 30, Disciplinary Action.

(g) Disciplinary Action.

(1) If an investigation according to the procedures in Section 11.3, below, finds that discrimination or harassment has occurred, some level of formal sanction shall be imposed. The range of sanctions could include an oral reprimand, written reprimand, removal of supervisory authority or duties, suspension, or termination; the proper remedy has to be determined on a case-by-case basis. The sanctions shall be communicated in writing as a part of the faculty member's personnel file. In appropriate cases, counseling may be prescribed instead of disciplinary action. The complainant shall be advised of the action taken against the faculty member.

(2) Any faculty member in a position of direct official authority over other employees who has actual knowledge by direct observation or by receipt of a formal accusation of discrimination, or of harassment as defined in Section 11.2(b), involving any of those employees must report the matter directly to the Vice President for Human Resource Services. Failure to do so shall subject such faculty member to disciplinary action up to and including dismissal pursuant to the Disciplinary Action article of this Agreement.

(3) No faculty member shall be disciplined for discrimination or harassment until the investigation of the charges according to the procedures described in Section 11.3 is complete and a finding of discrimination or harassment has been issued and, if a timely grievance is filed, until the grievance process ends with a finding of just cause that permits the discipline. During the investigation, the faculty member may be placed on administrative leave pursuant to the Leaves article of this Agreement.

(4) Disciplinary actions shall follow the policy of progressive discipline, pursuant to Article 30, Disciplinary Action.

11.3 Investigation of Formal Complaints of Discrimination or Harassment. Charges of discrimination or harassment, including charges alleging a failure of the Trustees to protect faculty

Approved: Michael Mattenne  
For the University of Florida  
Board of Trustees

Approved: Chris Furdge  
For the United Faculty of Florida

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members from unlawful discrimination or harassment by students, shall be promptly investigated according to the following principles and procedures:

(a) An investigation of alleged discrimination or harassment shall be initiated when the offended individual files a formal complaint with the Vice President for Human Resource Services.

(b) Formal Investigation Procedure. All formal complaints that have been filed in accordance with this Article shall be promptly investigated according to the following procedures.

(1) Once a complaint has been properly filed, the Vice President for Human Resource Services shall appoint one or two trained professionals to investigate the alleged discrimination or harassment. Upon the appointment of the investigators, the Vice President shall immediately notify the accused, the complainant, the administrator responsible for the appointment and assignment of the accused if the accused is an employee, the dean of the appropriate college/unit, and the UFF that an investigation has begun.

(2) When notifying the accused, the Vice President for Human Resource Services shall inform the accused of the content of the accusation and the date of any scheduled initial interview with the accused, which shall not be less than seven (7) days after the date of notification, during which time the accused shall not speak to the complainant about any aspect of the complaint. The accused and the Vice President for Human Resource Services may mutually agree to a shorter waiting period before the initial interview takes place. The Vice President for Human Resource Services shall also inform the accused that he/she has the right to have a UFF Grievance Representative or legal counsel present during any interviews involving the accused. During these interviews the Vice President for Human Resource Services may instruct the accused not to speak to the complainant about any aspect of the complaint during the investigation except in the presence of an investigator.

(3) The investigation shall be conducted in as confidential a manner as possible, and special care shall be taken to protect the confidentiality of the alleged victim, the accused party, and witnesses.

(4) In the process of investigating discrimination or harassment the alleged conduct shall be considered in the context of the entire circumstances.

(5) The investigation shall include interviewing the complainant, the accused, any pertinent witnesses, and reviewing any relevant documentation.

(6) At any time during the investigation the Vice President for Human Resources, the complainant, and the accused may agree to a resolution of the complaint, which shall end the investigation.

(7) Upon completion of the investigation, the investigators shall make a report of their findings to the Vice President for Human Resource Services, who shall forward the report to the accused individual, the accused individual's representative (if any), the complainant, the administrator responsible for the appointment and assignment of the accused if the accused is an

Approved: Michael Mattione  
For the University of Florida  
Board of Trustees

Approved: Chris Sinden  
For the United Faculty of Florida

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employee, the dean of the appropriate college/unit, and the UFF.

(c) The investigative report shall contain at least the following information:

- (1) The nature of the complaint;
- (2) All formal statements by the parties;
- (3) A summary of the facts; and
- (4) A conclusion as to whether discrimination or harassment has occurred.

(d) The Trustees shall take appropriate remedial measures to correct any discrimination or harassment that is found. The remedial measures shall not adversely affect the faculty member who was found to be the object of discrimination or harassment.

(e) The Vice President for Human Resource Services shall notify the complainant, the accused individual, the accused individual's representative (if any), the administrator responsible for the appointment and assignment of the accused if the accused is an employee, the dean of the appropriate college/unit, and the UFF of the results of the investigation and any proposed action to be taken, including counseling or disciplinary action.

(f) Records maintained for the purposes of investigating formal complaints of discrimination or harassment shall be confidential until a final decision is made in the proceedings.

(1) For harassment investigations, portions of the records that identify the complainant, a witness, or information that could reasonably lead to the identification of the complainant or a witness, shall retain their confidential status even after the investigation is closed and the final decision is made.

(2) However, the records shall be open to University personnel conducting the investigation, the accused individual or designee, and the administrator responsible for the appointment and assignment of the accused if the accused is an employee, the dean of the appropriate college/unit, and the UFF.

(3) Pursuant to state and federal law, the findings shall be maintained in the University's Office of Human Resource Services.

(g) In instances where no finding of discrimination or harassment is made, no record of any allegations or the formal complaint shall be placed in the faculty member's evaluation or personnel file unless the faculty member requests in writing that a record of the complete investigation be placed in the evaluation or personnel file.

11.4 Access to Documents. No faculty member shall be refused a request to inspect and copy documents relating to any claim of discrimination or harassment to which the faculty member is a party except for records that are exempt from the provisions of the Public Records Act, Chapter

Approved: Michael Mattone  
For the University of Florida  
Board of Trustees

Approved: Chris Frydman  
For the United Faculty of Florida

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119, Florida Statutes.

11.5 Consultation. As part of the consultation process described in Article 6, the parties agree to discuss efforts made to appoint and retain women, minorities, and other affected groups.

11.6 Grievance Procedures.

(a) Claims of discrimination or harassment brought against the Trustees or their representatives may be presented as grievances pursuant to Article 31, Grievance Procedure and Arbitration. However, no grievance may be maintained under this section if the faculty member has also initiated a complaint arising from the same issue(s) filed with any court or fair employment practices agency, except as specifically provided for in Article 31.

(b) Appeals of adverse employment decisions made against faculty members accused of discrimination or harassment may be presented as grievances pursuant to Article 31, Grievance Procedures and Arbitration.

Approved: Michael Malton  
For the University of Florida  
Board of Trustees

Date: 2/24/2006  
38764

Approved: Chris Sullivan  
For the United Faculty of Florida

Date: 2/24/2006