

THE COLLEGE
ANTI-DISCRIMINATION/
ANTI-HARASSMENT POLICY

Personnel Policy 101.07
Issued: AUG 1999
Revised: FEB 2010

Preamble

We at the College share a common belief that every individual should be able to work and study in an environment free from discrimination, harassment or intimidation based on race, color, religion, gender, gender identity, age, national origin, mental or physical disability, marital status, medical condition, veteran status, sexual orientation, citizenship or any other characteristic protected under federal or state law or local ordinance.

Harassment is illegal and in direct conflict with the mission of the College. It exposes the College and the individuals involved to liability under the law. Accordingly, the College prohibits any physical, written, or spoken conduct that violates the prohibitions on harassment set forth above.

I. Statement of Policy

It is the policy of the College that no member of the College community shall be subjected to any form of unlawful discrimination, harassment, or retaliation by any other member of this institution. For the purpose of this policy, harassment is defined as sexual harassment or harassment due to race, color, religion, gender, gender identity, age, national origin, mental or physical disability, marital status, medical condition, veteran status, citizenship or sexual orientation. Inappropriate and illegal verbal or physical conduct constitutes harassment when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement;
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions affecting such individual; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment.¹

Harassment, including sexual harassment, while taking many forms, would include, but not be limited to, the following types of conduct:

Verbal: Inappropriate noises, remarks or jokes; negative stereotyping; unwelcome remarks about a person's body, color, physical characteristics or appearance; sexual propositions.

Nonverbal: Demeaning or offensive pictures, posters, calendars, objects, cartoons, cards, inappropriate gestures or offensive notes or letters. No messages with derogatory or inflammatory remarks about an individual or group's race, religion, national origin, physical attributes, disability, age, gender, or sexual preference will be tolerated or transmitted.

Physical: Aggressive or violent touching, imitating or exaggerating another's physical characteristics, threatening or intimidating behavior.

Retaliatory: Assigning low grades, changing work assignments, or refusing to cooperate with a person who has complained about or resisted harassment or discrimination.

Harassment, including sexual harassment, includes harassment of women by men, men by women, women by women and men by men. It can occur between teachers and students, teachers and staff, staff and students, and those at different levels of management, as well as between persons of the same College status, i.e., student-student, faculty-faculty, staff-staff.

Harassment, including sexual harassment, can seriously threaten the relationships between teacher and student and between supervisor and subordinate. Through grade assignments, wage increases, recommendations for graduate study, jobs, and promotion, a teacher or supervisor can have a

¹ EEOC Interpretive Guidelines on Discrimination Because of Sex under Title VII, 29 CAR 1603:00. Harassment of employees on the basis of sex is a violation of Sec. 703 of Title VII of the Civil Rights Act of 1964. Harassment of students is a violation of Section 902 of Title IX of the Education Act of 1972.

significant impact on a student's or a staff members present success and future career.

Subjection to unwanted attention, including sexual attention, creates a devastating atmosphere for both individuals and the academic community as a whole. Individuals, fearing retribution, may submit to unwanted attention, may withdraw from a course, or may change jobs, all at the expense of their own self-esteem and their plans for the future.

At the same time, however, a teacher or supervisor should not be reluctant to develop a welcoming and professionally appropriate relationship with a student, subordinate or colleague, fearing that conduct may be misinterpreted as harassment.

Many times, the person accused of harassment is unaware that behavior is inappropriate, coercive or misunderstood. Even the accusation of harassment can have a destructive impact on the academic community. As such, the College will not tolerate any form of discrimination or harassment, or false accusations of such.

In the interest of protecting the College community, Florida Southern has developed procedures to investigate and resolve harassment complaints. Those procedures are set forth under Section II of this policy.

II. Procedures

1. Definitions

Equal Opportunity Officer:

The Human Resources Director will act as Equal Opportunity Officer (EOO)/Title IX Coordinator and ensure continuity in resolving harassment complaints. The obligation of this position is:

- to distribute and make available the Anti-Discrimination/Anti-Harassment Procedures to every student and employee at the College
- to implement Anti-Discrimination/Anti-Harassment Procedures
- to keep ongoing statistics and report them annually to the President and the cabinet
- to make available a written report annually to all employees

- to train faculty and staff Anti-Discrimination/Anti-Harassment Policy Facilitators
- to maintain records of all cases noting any patterns of misconduct and advising the appropriate administrator(s)
- to insure that policies, procedures and the educational programs are properly administered.

Anti-Discrimination/Anti-Harassment Policy Facilitator Committee

(APFC): The make-up of the APFC is based on faculty and staff demographics that are re-evaluated annually. Faculty committee members are selected in the spring semester by divisional appointment with approval by the Faculty Senate for terms beginning the following fall semester. Staff committee members are appointed by senior staff. Members are primarily responsible for facilitating the initial contact with the complainant, forwarding all information to the EOO, and acting as response team members when selected.

Complainant: Any member of the College community who files a harassment complaint, based on a protected category, or sexual harassment.

Formal Complaint: A complaint which may result in an imposed resolution through the hearing process.

Informal Complaint: A complaint requesting a resolution agreeable to both parties that does not require a formal hearing.

Response Team: Three-member subgroup of the Anti-Discrimination/Anti-Harassment Policy Facilitator Committee that investigates formal complaints. Members are selected as follows:

- one chosen by the complainant
- one chosen by the respondent
- one chosen by the President

Respondent: Any member of the College community who becomes the subject of a harassment complaint, based on a protected category or sexual harassment.

2. Complaints

The College provides members of the academic community with convenient and reliable mechanisms for reporting incidents of harassment, including sexual harassment, and retaliation. All reports must be made to either the EOO or a member of the APFC, with the understanding that the facilitator will immediately report the incident to the EOO (otherwise known as the Director of Human Resources) or that person's designee.

Complaints of acts of harassment, including sexual harassment, or acts of retaliation that are in violation of the Anti-Discrimination/Anti-Harassment policy will be taken seriously, will be investigated, and will be treated in a discreet manner.

A complaint need not be limited to someone who was the target of harassment, including sexual harassment or retaliation. Anyone who has observed harassment, including sexual harassment or retaliation, should report the incident(s). Furthermore, anyone in a supervisory position who has observed harassment, including sexual harassment or retaliation, or who is made aware of such actions, is **obligated** to report such incident(s).

Complaints may be filed either formally or informally. An informal complaint may be submitted in writing or orally. A formal complaint **must** be submitted in writing.

3. Confidentiality

The identity of the complainant and/or the accused will be disclosed only on a need-to-know basis to the extent feasible in light of the need to conduct an investigation unless or until formal proceedings are initiated. All parties contacted in the course of an investigation will be advised of their entitlement to respect and their obligations to honor the confidentiality of the process. Any retaliation or reprisal against an individual, who is an alleged target of harassment, including sexual harassment or retaliation, has made a complaint or has provided evidence in connection with a complaint, is a separate actionable offense as stated above.

4. Investigations

In addition to the EOO, all members of the APFC receive training about harassment, including sexual harassment, and on the procedures outlined in section II of this policy.

Immediately upon a complaint being filed, the investigation will proceed as follows:

Informal Complaints

- Verbal notification of receiving a complaint will be given within four hours to the EOO or the Vice President for Finance and Administration.
- Within one day of receiving a complaint, either the EOO or policy facilitator must submit an Investigation Intake Form to the Office of Human Resources. For a student-to-student alleged incident, refer to Student-to-Student Informal Complaint procedure below.
- The EOO or the Vice President for Finance and Administration will investigate the incident and notify the complainant as soon as practicable regarding the status of the investigation.
- The investigation will look at the totality of the circumstances, including the nature of the conduct and the context in which it occurred, and the facilitator or EOO will attempt to resolve the complaint informally within 14 days of the initial filing of the complaint.
- If the alleged incident can be resolved amicably at this stage, and a written record is warranted, the EOO or the Vice President for Finance and Administration then provides the written record to that effect, and the principal parties – complainant, respondent, and EOO or the Vice President for Finance and Administration – sign their agreement. If the signed written record is not needed, the EOO or the Vice President for Finance and Administration will complete a description of the resolution and how the complainant and respondent were informed. If the complaint cannot be resolved informally, a formal complaint may be filed.

Student-to-Student Informal Complaints

If the complaint is a student-to-student alleged incident, the EOO or the Vice President for Finance and Administration will submit the Investigation Intake Form to the discipline officer in the Department of Student Life.

The discipline officer shall investigate the incident and notify the complainant within fourteen (14) days regarding the status of the investigation.

The discipline officer shall consider the totality of the circumstances, including the nature of the conduct and the context in which it occurred. The discipline officer shall attempt to resolve the complaint informally within thirty (30) days of filing the complaint.

If the complainant, respondent, and discipline officer agree to an amicable resolution of the incident, the discipline officer shall produce a written agreement to the effect, and the complainant, respondent, and discipline officer shall sign the agreement. That agreement will be forwarded to the EOO or the Vice President for Finance and Administration. If the complainant, respondent, and discipline officer cannot agree to an amicable resolution of the incident, the complainant may file a formal complaint.

Formal Complaints

If the complaint cannot be resolved amicably informally, the formal complaint process will begin.

Within 3 business days of receiving the written record of the informal process, a three-member response team, drawn from the Anti-Discrimination/Anti-Harassment Policy Facilitator Committee (APFC), will be chosen as indicated in Section II, 1, under the definition of Response Team.

Within 3 business days of the appointment of the response team, a hearing date will be set.

Any hearing before this response team is held in private. Because such hearings are internal, attorneys have no role in the process.

Within 5 days after the hearing the response team will submit a written report of the hearing, including actions taken and recommendations to the President.

☒ The Investigation:

During this phase the response team will review materials and hear testimony.

At this stage, the investigation process may include any or all of the following, or such other elements as the response team deems appropriate:

- Confirm name and position of the complainant.
- Identify the respondent.
- Thoroughly ascertain all facts in connection with the alleged incident, beginning by interviewing the complainant and the respondent. Questions of all parties should be asked in a non-judgmental manner.
- Upon first interviewing the parties, assure the complainant and remind the respondent of The College's policy against retaliation.
- Determine frequency/type of objectionable behavior and, if possible, the dates and locations where the behavior purportedly occurred.
- Find out if any witnesses observed the alleged harassment. If the complainant and the respondent present conflicting versions of the facts, interview any witnesses.
- Ask both parties how each responded to the alleged objectionable conduct.
- Determine what efforts, if any, at informal resolution of the matter were made, the result, and any witnesses.
- Determine whether the complainant consulted anyone else about objectionable behavior, ascertain those witnesses and their response to the disclosure.

- Develop a thorough understanding of the professional relationship between the respondent and complainant.
- Determine whether the respondent has made and carried out any threats or promises directed at the complainant.
- Determine whether the complainant knows of or suspects that there are other individuals who have been subjected to similar conduct by the respondent. Receipt of any complaint shall be cause for a file review to determine if a prior complaint against the same person is on file.

Resolving the Complaint

Upon completing the investigation of a complaint, the response team will report to the President of the College. They will summarize findings and decide upon appropriate action to be recommended. After the decision is made by the President, the President or his/her representative will communicate the College's findings and intended actions to the complainant and respondent.

If the College's appointed response team finds that harassment, including sexual harassment, and/or retaliation misconduct occurred, the respondent will be subject to appropriate disciplinary procedures implemented by the President of the College as listed below. The complainant will be informed of the disciplinary action taken.

If the College's appointed team determines that no harassment, including sexual harassment, retaliation or other sexual conduct has occurred, this finding will be communicated to the complainant in an appropriately sensitive manner.

If either party directly involved in the investigation is dissatisfied with the outcome or resolution, that individual has the right to appeal the decision, in a timely manner, in writing, to the President of the College. This written appeal must specifically identify the elements of the decision not agreed to and what other factors should have been considered.

In the event that the President determines that there was insufficient evidence to support the team's conclusion by a review of the process undertaken, or there was a defect in the proceedings, the President may promptly remand the matter to the team for reconsideration. In the event that the President determines that there was sufficient evidence and no defect in the proceedings, then the President shall implement the recommendation of the team.

5. Sanctions

Individuals found to have engaged in sexual misconduct or behavior constituting harassment (including sexual harassment), as defined in this policy, will be disciplined, up to and including discharge, removal or expulsion from the College. Appropriate sanctions will be determined by the team. In addressing incidents of harassment (including sexual harassment), the College's response at a minimum will include reprimanding the offender and preparing a written record. Additional action may include: referral to sensitive or other relevant training, reassignment, temporary suspension without pay, reduction in duties, discharge, or removal or expulsion from the College.

6. False Accusations

If an investigation results in a finding that the complainant intentionally falsely and maliciously accused another of harassment (including sexual harassment) or sexual misconduct, the complainant will be subject to appropriate sanctions, as described above, including the possibility of expulsion, suspension and/or termination. The fact that no action is taken as a result of the complaint against the respondent does not mean that the complaint was false or malicious.

7. Possible Illegal Activities/Behavior

Any actions reported to a facilitator, or other member of the faculty or administration, which may be interpreted to be a violation of Florida law, will be reported to the appropriate law enforcement agency for investigation and further action. Any doubt as to whether the conduct does or does not violate Florida law will be resolved in favor of the party reporting the matter.

8. Reprisals - Definition

No individual will suffer any reprisals or retaliation for truthfully reporting any incidents of harassment (including sexual harassment), for making any complaints of harassment (including sexual harassment), or for participating in any investigation of incidents of harassment or perceived harassment.

9. Maintaining a Written Record of the Complaint

The College shall maintain a complete written record of each complaint and how it was investigated and resolved. Written records shall be maintained in a confidential manner to the extent practical and appropriate in the Office of the President of the College for formal investigations and the Office of Human Resources for informal investigations and incident reports.

Written records will be maintained for ten (10) years from the date of the resolution, unless new circumstances dictate that the file should be kept for a longer period of time. These records shall document that a complaint was filed and the resolution of the complaint.

10. Conclusion

The College has developed this policy so that all members of its community can work and study in an environment free from harassment (including sexual harassment). The College will have as one of its duties the immediate dissemination of this policy to all members of this community and will provide this policy to all new members upon their arrival. The College will conduct information sessions and training concerning the policy so as to ensure that all members understand the College's commitment, are familiar with the policy, and know that any complaint received will be investigated and appropriately resolved.

The Committee has the responsibility to follow this policy and to accord dignity to all the parties involved. Each fall, upon completion of all pending cases, newly appointed and returning committee members will be trained, provided a copy of the policy, and a list of facilitators appointed with them.