

## ARTICLE 11

### NONDISCRIMINATION

#### 11.1 Statement of Intent.

(a) It is the intent of the parties that each faculty member work in an environment free from any form of discrimination or harassment.

(b) The parties recognize their obligations under federal and state laws and regulations prohibiting discrimination. 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 parties shall implement programs, policies, and practices to facilitate 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 28, Grievance Procedure and Arbitration.

#### 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, gender identity, 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.

(b) Harassment. Faculty members shall be protected from illegal harassment, in accordance with federal and state law.

(1) Sexual Harassment. It is the policy of the University that each faculty member be allowed to work in an environment free from any form of discrimination. Sexual discrimination is prohibited by Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Under these laws, sex discrimination includes sexual harassment and sexual misconduct. Sexual harassment is unwelcome conduct of a sexual nature and includes but is not limited to unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature. Types of sexual harassment include:

a. "Quid pro quo harassment" assumes a power differential and occurs when an employee or student is subject to unwelcome sexual behavior or advances, and submission is made a condition of hiring, advancement, admission, or evaluation in the work or academic setting. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

b. "Hostile environment harassment" occurs when unwelcome sexual behavior unreasonably interferes with an individual's job performance or creates an intimidating, hostile, or offensive work environment. Hostile environment harassment generally requires a

severe and pervasive pattern of behaviors to constitute sexual harassment. Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual's employment.

(2) Sexual misconduct is defined as a sexual act perpetrated against a person's will or where a person is incapable of giving consent. Sexual misconduct includes but is not limited to sexual violence, sexual exploitation, non-consensual sexual contact and non-consensual sexual intercourse. Sexual violence includes rape, domestic violence, dating violence, stalking, sexual assault, sexual battery and sexual coercion.

(3) Consensual sexual relationships may involve a conflict of interest. Conflicts of interest are subject to the provisions of Article 26, Outside Activity and Conflict of Interest.

(4) In addition to the concern with respect to sexual harassment between faculty members or between faculty and other employees, the University and 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, sexual misconduct, or other verbal or physical conduct of a sexual nature that constitutes sexual harassment.

(5) The University 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 a faculty member.

(6) Policies and regulations regarding harassment 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.

(c) Where appropriate, informal resolution of concerns is encouraged. Such resolution may include such things as speaking up when the incident occurs, communicating with the individual and asking him or her to stop the offensive behavior, or consulting with a professional counselor in the employee assistance program.

(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 this Article involving an individual over whom the faculty member has direct official authority, must contact Office of 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 may file a formal complaint directly with the Office of Human Resource Services.

(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 University 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 27, Disciplinary Action and Job Abandonment.

(g) Disciplinary Action.

(1) If an investigation finds that discrimination or harassment has occurred, the University may, in appropriate cases, prescribe counseling instead of formal disciplinary action. If the university imposes discipline, it shall be done in accordance with the provisions of Article 27. The complainant shall be advised of the action taken against the faculty member.

(2) 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.

11.3 Investigation of Formal Complaints of Discrimination or Harassment. Charges of discrimination or harassment shall be investigated according to the following principles and procedures:

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

(1) The Office of Human Resource Services shall appoint trained professionals to investigate the alleged discrimination or harassment. The Office of Human Resource Services shall notify the accused, the complainant, the dean of the appropriate college/unit, and UFF. Such notification shall occur within fifteen (15) days.

(2) The Office of Human Resource Services shall inform the accused of the content of the accusation (including any complaints redacted as required by law, the time frame of the alleged actions, and the name of the complainant as allowed by law) 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 Office of Human Resource Services shall 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.

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

(4) The alleged conduct shall be considered in the context of the circumstances.

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

(6) At any time the Office of Human Resource Services, the complainant, and the accused may agree to a resolution of the complaint.

(7) Upon completion of the investigation, the investigators shall make a report of their findings to the Office of Human Resource Services, which shall forward the report to the

accused individual, the accused individual's representative (if any), the complainant, the dean of the appropriate college/unit, and UFF.

(b) The investigative report shall contain at least the following information: The nature of the complaint, all formal statements by the parties, a summary of the facts, and a conclusion as to whether the alleged action or incident has occurred. The faculty member has the right to append a response to the investigation report.

(c) The University 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.

(d) The Office of Human Resource Services shall notify the complainant, the accused individual, the accused individual's representative (if any), the dean of the appropriate college/unit, and UFF of any proposed action to be taken, including a counseling letter or disciplinary action.

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

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

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

(f) In instances where no findings 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. A faculty member shall have the right 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 119, Florida Statutes.

#### 11.5 Grievance Procedures.

(a) Claims of discrimination or harassment brought against the University may be presented as grievances pursuant to Article 28, 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 28.

(b) Appeals of adverse employment decisions made against faculty members accused of discrimination or harassment may be presented as grievances pursuant to Article 28, Grievance Procedure and Arbitration.

11.6 Neither the University nor UFF shall abridge any rights of faculty members related to union activity granted under Florida law including but not limited to the right to assist or to refrain from assisting UFF.