

ARTICLE 11
NONDISCRIMINATION, EQUAL OPPORTUNITY, AND DIVERSITY

11.1 **Statement of Intent.** The Trustees, the University Administration, and the UFF fully support all laws and University regulations and policies intended to provide students, faculty, staff, vendors, visitors or others, an environment where they can work, study and interact with each other in a safe and dignified learning community free from any form of discrimination, harassment, or sexual misconduct. The parties recognize their obligations under federal and State laws, and University regulations prohibiting discrimination and harassment, and have made clear their support for diversity, affirmative action, and equal employment opportunity. They desire to assure equal employment opportunities within the University and have, in this Agreement and elsewhere, undertaken programs to ensure equitable opportunities for faculty members to receive salary adjustments, tenure, promotion, sabbaticals, and other benefits.²

The parties further recognize that a university is a unique learning environment in which its diverse community members have the right to exercise protected free speech in expressing their differing opinions as guaranteed by the First Amendment and in an environment in which its faculty has the academic freedom to provoke thought and debate and to engage in open discourse related to their individual areas of academic instruction. Thus, in exercising the standards put forth in this article, the University will not abridge either free speech or academic freedom based on its context. This statement of intent is not intended to be subject to Article 31, Grievance Procedure and Arbitration.

11.2 **Policy.**

- (a) The Trustees, the University Administration, and the UFF shall not commit or permit discrimination against any member of the University community based upon race, color, sex (inclusive of Title IX), religion, gender identity/expression, sexual orientation, national origin, age, veteran status, disability, political affiliation, or marital status, nor shall the Trustees, the University Administration or the UFF commit or permit retaliation against an individual who complains of discrimination or harassment or an individual who cooperates in an investigations of an alleged violation of law or University regulation (http://www.unf.edu/president/policies_regulations/01-General/1_0060P.aspx). Similarly, the Trustees, the University Administration, and the UFF shall not abridge any rights of faculty members related to union activity granted under Chapter 447, Florida Statutes, including but not limited to the right to assist or to refrain from assisting the UFF. Personnel decisions shall be based on job-related criteria and performance.

- (b) Sexual Misconduct.

² See the University's Non-Discrimination, Equal Opportunity and Diversity Regulation (1.0040R) (http://www.unf.edu/president/policies_regulations/01-General/1_0040R.aspx) and Sexual Misconduct Regulation (1.0050R) (http://www.unf.edu/president/policies_regulations/01-General/1_0050R.aspx) for further discussion and guidance.

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Sexual Misconduct includes sexual exploitation, sexual harassment, non-consensual sexual contact, and non-consensual sexual intercourse. Sexual misconduct violates University policy and federal civil rights law and may also be subject to criminal prosecution. The Trustees, University Administration and the UFF are committed to fostering an environment that promotes prompt reporting of all types of sexual misconduct and timely and fair resolution of sexual misconduct complaints http://www.unf.edu/president/policies_regulations/01-General/1_0050R.aspx).

As a recipient of federal funds, the university is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. §1681 *et seq.* (“Title IX”)³, which prohibits discrimination on the basis of sex in education programs or activities. Sexual misconduct, as defined in this regulation, is a form of sex discrimination prohibited by Title IX.

- (c) Sexual harassment is a prohibited form of sex discrimination. “Sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other verbal (including written and electronic communication) or physical conduct of a sexual nature from any person when:
 - (1) Submission to such conduct or request is made either explicitly or implicitly a term or condition of a student’s status in a course, program, or activity; or of academic achievement; or
 - (2) Submission to such conduct or request is made either explicitly or implicitly a term or condition of an individual’s employment, salary increase, position advancement, or other employment-related benefits; or
 - (3) Submission to or rejection of such conduct or request by an individual is used as the basis for an academic decision or employment decision affecting such individual; or
 - (4) Such conduct is sufficiently serious (i.e., severe, persistent, or pervasive) to deny or limit a student’s ability to participate in or benefit from the University’s educational programs or activities or such conduct is sufficiently severe, persistent, or pervasive so as to alter the conditions of, or have the purpose and effect of substantially interfering with, a faculty or staff member’s employment by creating an intimidating, hostile, or offensive working environment.

- (d) **Amorous and Sexual Relationships.** When persons in positions of unequal power engage in amorous or sexual relationships (e.g., between a supervisor and an employee, faculty member and student, or staff member and student) the person of greater power places him/herself themselves at risk of being accused of sexual harassment, either during the relationship or after the relationship ends.

³ Title IX requires that the University have a statement of policy and procedure for handling complaints of Sexual Misconduct. 20 U.S.C. § 1092 (1) (7) and 1681 (a). The University’s Sexual Misconduct Regulation constitutes that statement.

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Accordingly, the Trustees, University Administration and the UFF prohibit amorous or sexual relationships where an individual in the relationship is in a position to exercise authority such that it would impact the educational or work performance of the other individual, unless an alternative mechanism for effective oversight has been provided at the next higher level to ensure no conflict of interest is present. (see Amorous or Sexual Relationships Policy 13.0060P http://www.unf.edu/president/policies_regulations/01-General/1_0070P.aspx) (see also the Academic Freedom and Responsibility Article, Section 10.3). These relationships may also involve a conflict of interest (see Article 28 Conflict of Interest/Outside Activity).

- (e) **Retaliation.** Retaliating, or otherwise taking adverse employment or educational action, against a member of the university community because they in good faith reported sexual misconduct, or participated in an investigation or review regarding a complaint, is strictly prohibited. Those found to have violated this prohibition against retaliation will be subject to disciplinary action up to and including termination.
- (f) **Reporting Discrimination, Harassment, or Sexual Misconduct.** All faculty are required to promptly report to the University's Office of Equal Opportunity and Diversity (EOD) or alternatively to their department chair, dean, or applicable academic administrator allegations, reports, or instances of alleged discrimination, harassment or sexual misconduct by or against a student, staff, or faculty member in violation of the University's Non-Discrimination, Equal Opportunity and Diversity and Sexual Misconduct regulations. Persons to whom alleged acts of discrimination, harassment, or sexual misconduct are reported must then promptly report the matter to the EOD (either verbally or through written communications).
- (g) **Investigation of Charges of Discrimination.** Charges of discrimination, including those filed by faculty members against students, alleging unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature that constitutes sexual harassment, shall be promptly reviewed/investigated according to established University procedures. No faculty member reviewed/investigated under such procedures shall be disciplined until such review is complete and a finding of discrimination has been issued.

Notwithstanding the provisions of Article 18.2(b), whenever the University receives information that a faculty member is engaging in behavior in the classroom which could create potential liability to the University, and in order to protect the interests of both the University and the faculty member, a chair/supervisor or other University representative may conduct unannounced observation/visitation of that faculty member's classroom for the purpose of investigating the allegations.

If after the completion of the review/investigation, any finding of discrimination is made, a record of the complete findings will be placed in the

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faculty member's evaluation file. If no finding of discrimination on any charge or complaint is made, no record of the charge or complaint will be placed in the faculty member's evaluation file unless the faculty member requests in writing that a record of the complete review/investigation be placed in the evaluation file.

11.3 **Access to Documents.** No faculty member shall be refused a request to inspect and copy documents relating to the faculty member's claim of discrimination, except for records which are exempt from the provisions of the Public Records Act, Chapter 119, Florida Statutes, provided, however, that the University Administration may charge for copies of documents in accordance with law, rule, University procedures, and this Agreement.

11.4 **Consultation.** As part of the consultation process described in the Consultation article, the parties agree to discuss efforts made to appoint and retain women and minority faculty members.

11.5 **Grievance Procedures.** Claims of discrimination by the Trustees or the University Administration may be presented as grievances pursuant to Article 33, Grievance Procedure and Arbitration. It is the intent of the parties that matters which may be presented as grievances under Article 33, Grievance Procedure and Arbitration, be so presented and resolved thereunder instead of using other procedures. The UFF agrees not to process cases arising under this Article when alternate procedures to Article 33 are initiated by the grievant, except as specifically provided for in the Grievance Procedure and Arbitration Article, Section 33.1(b).