

ARTICLE 6
NONDISCRIMINATION

6.1 Statement of Intent.

(a) The Board and the UFF ~~fully support all laws intended to~~ shall protect and safeguard the rights and opportunities of each employee to work in an environment free from any form of discrimination or harassment. The parties recognize their obligations under federal and State laws, rules, and regulations prohibiting discrimination, ~~and or harassment~~.

(b) The Board and the UFF also affirm ~~have made clear their support for the concepts of affirmative action and equal employment opportunity. They desire to assure equal employment opportunities within the SUS and recognize that the purpose of affirmative action is to provide equal opportunity to women, minorities, and other affected groups to achieve equality in the SUS. their commitment to create a diverse faculty, which brings new perspectives and new talent into the University. The implementation of affirmative action programs will require positive actions that will affect terms and conditions of employment and to this end the parties have, in this Agreement and elsewhere,~~

(1) To this end, the Board and the UFF shall implement programs, policies, and practices to facilitate the recruitment, appointment, and retention of women and minorities.

(2) Furthermore, the Board and the UFF shall undertake equivalent ~~undertaken~~ programs to ensure equitable and adequate opportunities for employees to receive salary adjustments, tenure, continuing multi-year appointments, successive fixed multi-year appointments, promotion, sabbaticals, and other benefits necessary to achieve equitable and adequate terms and conditions of employment free from the discrimination and harassment proscribed in this article. ~~This statement of intent is not intended to be subject to Article 20, Grievance Procedure.~~

6.2 Policy.

(a) Discrimination and Harassment.

(1) Neither the Board nor the UFF shall discriminate against any employee based upon race, color, sex, sexual orientation, gender identification, religious creed, ethnic origin, national origin, age, veteran status, medical condition, disability, political opinions or affiliation, ~~or~~ marital status, parental status, record of offenses (except where such a record is a reasonable and bona fide ground for discrimination because of the nature of employment), or any combination thereof; nor shall the Board or the UFF abridge any rights of employees related to union activity, including those 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.

(2) Employees shall also be protected from harassment on the basis of race, color, sex, sexual orientation, gender identification, religious creed, ethnic origin, national

1 origin, age, veteran status, medical condition, disability, political opinions or affiliation, or
2 marital status, parental status, record of offenses (except where such a record is a reasonable
3 and bona fide ground for discrimination because of the nature of employment), or any
4 combination thereof;

5
6 (3) Such harassment shall be defined as occurring when “the workplace is
7 permeated with ‘discriminatory intimidation, ridicule, and insult’ that is ‘sufficiently severe or
8 pervasive to alter the conditions of the victim’s employment and create an abusive working
9 environment” (Harris v. Forklift Systems, inc., 510 U.S. 17, ___ (1993), quoting Meritor, 477
10 U.S. at 65, 67).

11
12 (4) Personnel decisions shall be based on job-related criteria and performance,
13 pursuant to Article 10, Employee Performance and Evaluation.

14
15 (b) Sexual Harassment.

16
17 (1) Sexual harassment is a prohibited form of sex discrimination under
18 Section 703 of Title VII of the Civil Rights Act of 1964, 42 USC SEC. 2000E-2(A).

19
20 (2) In Meritor Savings Bank v. Vinson, 477 U.S. 57 406 S.Ct. 2399 (1986),
21 the United States Supreme Court defined recognized two types of sexual harassment: hostile-
22 environment harassment and quid-pro-quo harassment. (29 CFR 1604.11a) in the employment
23 context as including the following:

24 Unwelcome sexual advances, requests for sexual favors, and other verbal or
25 physical conduct of a sexual nature constitute sexual harassment when (1)
26 submission to such conduct is made either explicitly or implicitly a term or
27 condition of an individual's employment, (2) submission to or rejection of such
28 conduct by an individual is used as the basis for employment decisions affecting
29 such individual, or (3) such conduct has the purpose or effect of unreasonably
30 interfering with an individual's work performance or creating an intimidating,
31 hostile, or offensive working environment.

32 a. The Supreme Court defined hostile-environment harassment as
33 occurring only when “the workplace is permeated with ‘discriminatory intimidation, ridicule,
34 and insult’ that is ‘sufficiently severe or pervasive to alter the conditions of the victim’s
35 employment and create an abusive working environment” (Harris v. Forklift Systems, Inc.,
36 510 U.S. 17, ___ (1993), quoting Meritor, 477 U.S. AT 65, 67).

37
38 b. The EEOC Guidelines provide that ““quid pro quo harassment’
39 occurs when ‘submission to or rejection of [unwelcome sexual] conduct by an individual is
40 used as the basis for employment decisions affecting such individual” (EEOC, “Policy
41 Guidance on Current Issues of Sexual Harassment,” No. N-915-050 [March 19, 1990], quoting
42 29 CFR 1604.11A[2-3]).

1 (3) Title VII does not proscribe all conduct of a sexual nature in the
2 workplace (EEOC, "Policy Guidance on Current Issues of Sexual Harassment," No. N-915-
3 050, 3/19/90). In addition to the parties' concern with respect to sexual harassment in the
4 employment context, the parties also The Board and the UFF recognize, however, that sexual
5 relationships between employees and students, even if consensual, may become exploitative,
6 and especially so when a student's academic work, residential life, or athletic endeavors are
7 supervised or evaluated by the employee (see section 5.3) (see Article 5). These relationships
8 may also involve a conflict of interest and should be addressed, pursuant to (see Article 19).

9
10 (c) Harassment policies and regulations are intended to protect individuals from
11 discrimination, not to regulate the content of speech, or restrict the academic freedom or free
12 speech rights of employees. No activities within the scope of Article 5 may be subject to a claim
13 of harassment.

14
15 ~~(e) 6.3~~ Investigation of Charges of Discrimination or Harassment. Charges of discrimination or
16 harassment, including those filed by employees against students the Board, alleging unwelcome
17 sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual
18 nature that constitutes sexual discrimination or harassment by students, shall be promptly
19 reviewed/investigated according to established university procedures the following principles:

20
21 (a) Prohibition of Reprisal.

22
23 (1) No reprisal of any kind shall be made by an employee, the Board, or
24 UFF against any party, any witness, any UFF representative, or any other participant in this
25 process or in any grievance arising from this process by reason of such participation.

26
27 (2) Any officer(s) of the Board or the UFF found to have committed such
28 reprisal shall be fined thirty (30) days salary and shall not be eligible for salary increases for a
29 period of one year.

30
31 (b) Remedial measures shall correct the effects of the discrimination or harassment.

32
33 (c) The remedial measures shall not adversely affect the employee who was the
34 object of discrimination or harassment.

35
36 (d) In determining whether the alleged conduct constitutes sexual harassment,
37 consideration shall be given to the record of the incident as a whole and to the totality of the
38 circumstances, including the context in which the alleged incidents occurred.

39 (e) The investigative report of the complaint of sexual harassment shall contain at
40 least the following information:

41
42 (1) A statement of the issues under review.

43
44 (2) All statements by the parties.

1 (3) A summary of the results of the investigation.

2
3 (4) Conclusion as to whether there is probable cause to believe that sexual
4 harassment, as defined in this Article, has occurred.

5
6 (f) In cases alleging discrimination or harassment by an employee and in which no
7 finding of discrimination on any charge or complaint is made, no record of the charge or
8 complaint shall be placed in the employee's evaluation file unless the employee requests in
9 writing that a record of the complete review/investigation be placed in the evaluation file.

10
11 (g) In cases alleging discrimination or harassment by an employee and in which,
12 after the completion of the review/investigation, any finding of discrimination or harassment is
13 made against the employee, a record of the complete findings shall be placed in the employee's
14 evaluation file.

15
16 (e h) ~~No employee reviewed/investigated under such procedures shall be disciplined~~
17 ~~until such review is complete, and no faculty member shall be disciplined and unless a finding~~
18 ~~of discrimination or harassment by the employee has been issued.~~

19
20 (i) Disciplinary actions shall follow the policy of progressive discipline, pursuant to
21 Article 16.

22 (j) An employee may bring a grievance under Article 20 or a formal appeal under
23 Article 16, challenging a finding of discrimination or harassment. In such a grievance, if the
24 defense of academic freedom is raised, the burden is on the Board to establish that the
25 complained of activity was not covered by Article 5, and in the absence of such proof, the
26 finding of discrimination or harassment shall be rescinded.

27
28 (d) ~~— Should state or federal law establish sexual orientation as a~~
29 ~~protected category for claims of discrimination during the term of this Agreement, the Board~~
30 ~~and the UFF agree to modify the Agreement pursuant to Section 30.2.~~

31
32 ~~6.3~~ 6.4 Access to Documents. No employee shall be refused a request to inspect and copy
33 documents relating to the employee's claims of discrimination under this Article, to which the
34 employee is a party, except for records which are exempt from the provisions of the Public
35 Records Act, Chapter 119, Florida Statutes, 2003, provided, however, that a university may
36 charge for copies of documents in accordance with law, rule, university procedures, and this
37 Agreement. The Board shall provide copies of all requested documents within fourteen (14)
38 days of its receipt of an employee's written request.

39
40 ~~6.4 — Consultation. As part of the consultation process described in Article 2, the parties~~
41 ~~agree to discuss efforts made to appoint and retain women and minority employees.~~

42
43 ~~6.5 — Grievance Procedures. Claims of such discrimination by the Board or universities may~~
44 ~~be presented as grievances pursuant to Article 20, Grievance Procedure. It is the intent of the~~

1 ~~parties that matters which may be presented as grievances under Article 20, Grievance~~
2 ~~Procedure, be so presented and resolved thereunder instead of using other procedures. The~~
3 ~~UFF agrees not to process cases arising under this Article when alternate procedures to Article~~
4 ~~20 are initiated by the grievant, except as specifically provided for in Section 20.2.~~
5