

ARTICLE 6
NONDISCRIMINATION

6.1 Statement of Intent. ~~(a) The University of Central Florida is an equal opportunity employer.~~ 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,~~ **and have made clear their support for the concepts of affirmative action and equal employment opportunity and diversity.** ~~(b) 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. The Board and the UFF also affirm 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) a.~~ 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, and other affected groups.

~~(2) b.~~ 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 and~~ the UFF shall **not** discriminate against **or harass** any employee, **and shall protect employees from discrimination and harassment** 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 **or collective** activity, including those granted under Chapter 447, Florida Statutes, 2003, and 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 origin, age, veteran status, medical condition, disability, political opinions or affiliation, 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;~~

~~(3) 2) Such Harassment shall be defined as occurring when “the workplace is permeated with ‘discriminatory intimidation, ridicule, and insult’ that is ‘sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment’” (Harris v. Forklift Systems, inc., 510 U.S. 17, ___ (1993), quoting Meritor, 477 U.S. at 65, 67). Workplace conduct is not measured in isolation -- simple teasing, incivility, off-hand comments, and isolated incidents (unless extremely serious) will not constitute harassment.~~

~~(4) (3) Personnel decisions shall be based on job-related criteria and performance, pursuant to Article 10, Employee Performance and Evaluation.~~

(b) Sexual Harassment.

(1) 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).

[Text moved from below]

~~(2) The Board strictly prohibits sexual harassment. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:~~

~~a. (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,~~

~~b. (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or~~

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

~~(2) 3) In Meritor Savings Bank v. Vinson, 477 U.S. 57 106 S.Ct. 2399 (1986), the United States Supreme Court defined recognized two types of sexual harassment: hostile-environment harassment and quid-pro-quo harassment. (29 CFR 1604.11a) in the employment context as including the following:~~

1
2 **[Text moved to Section 6.2(b)(2) above]**

3 ~~Unwelcome sexual advances, requests for sexual favors, and other verbal or~~
4 ~~physical conduct of a sexual nature constitute sexual harassment when (1)~~
5 ~~submission to such conduct is made either explicitly or implicitly a term or~~
6 ~~condition of an individual's employment, (2) submission to or rejection of such~~
7 ~~conduct by an individual is used as the basis for employment decisions affecting~~
8 ~~such individual, or (3) such conduct has the purpose or effect of unreasonably~~
9 ~~interfering with an individual's work performance or creating an intimidating,~~
10 ~~hostile, or offensive working environment.~~

11 ~~**a. The Supreme Court defined hostile environment harassment as**~~
12 ~~**occurring only when “the workplace is permeated with ‘discriminatory**~~
13 ~~**intimidation, ridicule, and insult’ that is ‘sufficiently severe or pervasive to**~~
14 ~~**alter the conditions of the victim’s employment and create an abusive**~~
15 ~~**working environment” (Harris v. Forklift Systems, Inc., 510 U.S. 17, —**~~
16 ~~**(1993), quoting Meritor, 477 U.S. AT 65, 67). Hostile-environment**~~
17 ~~**harassment is defined in Section 6.2(a)(2) above. b.**~~ The EEOC Guidelines
18 provide that “‘quid pro quo harassment’ occurs when ‘submission to or rejection
19 of [unwelcome sexual] conduct by an individual is used as the basis for
20 employment decisions affecting such individual’” (EEOC, “Policy Guidance on
21 Current Issues of Sexual Harassment,” No. N-915-050 [March 19, 1990],
22 quoting 29 CFR 1604.11A[2-3]).

23
24 ~~(3 4) Title VII does not proscribe all conduct of a sexual nature in the workplace~~
25 ~~(EEOC, “Policy Guidance on Current Issues of Sexual Harassment,” No. N-915-~~
26 ~~050, 3/19/90). In addition to the parties' concern with respect to sexual~~
27 ~~harassment in the employment context, the parties also~~ The Board and the UFF
28 recognize, however, that sexual relationships between employees and students,
29 even if consensual, may become exploitative, and especially so when a student’s
30 academic work, residential life, or athletic endeavors are supervised or
31 evaluated by the employee (see section 5.3) (see Article 5). These relationships
32 may also involve a conflict of interest and should be addressed, pursuant to (see
33 Article 19).

34
35 (c) Harassment policies and regulations are intended to protect individuals from
36 discrimination, not to regulate the content of speech, or restrict the academic freedom or free
37 speech rights of employees. No activities within the scope of Article 5 may be subject to a claim
38 of harassment.

39
40 ~~(e) 6.3~~ Investigation of Charges of Discrimination or Harassment. Charges of discrimination or
41 harassment, including those filed by employees against ~~students~~ the Board, alleging ~~unwelcome~~
42 ~~sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual~~
43 ~~nature that constitutes sexual discrimination or harassment by students, shall be promptly~~
44 reviewed/investigated according to ~~established university procedures~~ the following principles:

1
2 (a) Prohibition of Retaliation or Reprisal.

3
4 **(1) Retaliation for exercising civil rights is prohibited by federal and state**
5 **law. Employees shall not be subjected to harassment, intimidation, threats,**
6 **coercion, or discrimination for filing a complaint, assisting in an**
7 **investigation or other procedure related to the federal or state civil rights**
8 **laws, or opposing a practice made illegal by those laws. Retaliation shall be**
9 **regarded as seriously as discrimination itself and may justify discipline**
10 **pursuant to the procedures established in Article 16.**

11
12 (1 2) No reprisal of any kind shall be made by an employee, the Board, or UFF
13 against any party, any witness, any UFF representative, or any other participant
14 in this process or in any grievance arising from this process by reason of such
15 participation.

16
17 (2 3) Any officer(s) of the Board or the UFF found to have committed such
18 reprisal shall be fined thirty (30) days salary and shall not be eligible for salary
19 increases for a period of one year.

20
21 (b) Remedial measures shall correct the effects of the discrimination or harassment.

22
23 (c) The remedial measures shall not adversely affect the employee who was the object
24 of discrimination or harassment.

25
26 (d) In determining whether the alleged conduct constitutes **sexual discrimination or**
27 harassment, consideration shall be given to the record of the incident as a whole and to the
28 totality of the circumstances, including the context in which the alleged incidents occurred.

29 (e) The investigative report of the complaint of **sexual discrimination or** harassment
30 shall contain at least the following information:

31
32 (1) A statement of the issues under review.

33
34 (2) All statements by the parties.

35
36 (3) A summary of the results of the investigation.

37
38 (4) Conclusion as to whether there is probable cause to believe that **sexual**
39 **discrimination or** harassment, as defined in this Article, has occurred.

40
41 **[Text from current Section 6.2(c) is rearranged in (f), (g), and (h) below.]**

42
43 (f) In cases alleging discrimination or harassment by an employee and in which
44 if no finding of discrimination **or harassment** on any charge or complaint is
45 made, no record of the charge or complaint will be placed in the employee's

1 evaluation file unless the employee requests **otherwise, in writing** **The**
2 **employee may request** that a **record copy** of the complete review/investigation
3 be placed in the **employee's** evaluation file.
4

5 (g) In cases alleging discrimination or harassment by an employee and in which,
6 If after the completion of the review/investigation, any finding of discrimination
7 or harassment is made against the employee, a record of the complete findings
8 will be placed in the employee's evaluation file.
9

10 ~~(e h) No employee reviewed/investigated under such procedures shall be~~
11 ~~disciplined until such review is complete and unless a finding of discrimination~~
12 ~~or harassment by the employee has been issued.~~
13

14 (i) Disciplinary actions shall follow the policy of progressive discipline,
15 pursuant to Article 16.

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

23 ~~(d) Should state or federal law establish sexual orientation as a protected~~
24 ~~category for claims of discrimination during the term of this Agreement, the~~
25 ~~Board and the UFF agree to modify the Agreement pursuant to Section 30.2.~~
26

27 ~~6.3~~ 6.4 Access to Documents. No employee shall be refused a request to inspect and copy
28 documents relating to the employee's claims of discrimination under this Article, to which the
29 employee is a party, except for records which are exempt from the provisions of the Public
30 Records Act, Chapter 119, Florida Statutes, 2003, provided, however, that a university may
31 charge for copies of documents in accordance with law, rule, university procedures, and this
32 Agreement. The Board shall provide copies of all requested documents within fourteen (14)
33 days of its receipt of an employee's written request.
34

35 ~~6.4 Consultation. As part of the consultation process described in Article 2, the parties agree~~
36 ~~to discuss efforts made to appoint and retain women and minority employees.~~
37

38 ~~6.5 Grievance Procedures. Claims of such discrimination by the Board or universities may be~~
39 ~~presented as grievances pursuant to Article 20, Grievance Procedure. It is the intent of the~~
40 ~~parties that matters which may be presented as grievances under Article 20, Grievance~~
41 ~~Procedure, be so presented and resolved thereunder instead of using other procedures. The~~
42 ~~UFF agrees not to process cases arising under this Article when alternate procedures to Article~~
43 ~~20 are initiated by the grievant, except as specifically provided for in Section 20.2.~~