

ARTICLE 6
NONDISCRIMINATION
[Changes are indicated relative to the BOT proposal #3, August 23]

6.1 Statement of Intent.

(a) The Board and the UFF recognize their obligations under Federal and State laws, rules, and regulations prohibiting discrimination or harassment.

(b) The Board and the UFF affirm their support for the concepts of diversity and affirmative action. They recognize that the purpose of affirmative action is to provide equal opportunity in employment. The Board and the UFF shall implement programs, policies, and practices to facilitate the recruitment, appointment, retention and professional development of women and minorities. This statement of intent is not subject to Article 20, Grievance Procedure and Arbitrations.

6.2 Policy.

(a) Discrimination.

(1) Personnel decisions shall be based solely on job-related criteria and performance.

(2) Furthermore, neither the Board nor the UFF shall discriminate against any faculty member based upon race, color, sex, religious creed, national origin, age, veteran status, disability, political affiliation, or marital status, nor shall the Board or the UFF abridge any rights of faculty members related to union activity 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.

(3) Should state or federal law establish any additional protected category for claims of discrimination during the term of this Agreement, the Board and the UFF agree to modify the Agreement pursuant to Section 30.2.

(b) Harassment.

(1) Some types of workplace harassment may constitute discrimination.

(2) The faculty shall be protected from workplace harassment that is premised upon sex/gender or other protected classes of individuals.

(3) In Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986), the United States Supreme Court recognized two types of sexual harassment in the employment context: quid-pro-quo harassment and hostile-environment harassment.

a. The Supreme Court defined hostile-environment harassment as occurring only 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).

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1 b. The EEOC Guidelines provide that “quid pro quo harassment”
2 occurs when ‘submission to or rejection of [unwelcome sexual] conduct by an individual is used
3 as the basis for employment decisions affecting such individual’” (EEOC, “Policy Guidance on
4 Current Issues of Sexual Harassment,” No. N-915-050 [March 19, 1990], quoting 29 CFR
5 1604.11A [2-3]).

6 c. Title VII does not proscribe all conduct of a sexual nature in the
7 workplace (EEOC, “Policy Guidance on Current Issues of Sexual Harassment,” No. N-915-050,
8 3/19/90). However, even consensual sexual relationships may involve a conflict of interest.
9 Such conflicts of interest are subject to the provisions of Article 19.

10 (3) In addition to the Board and the UFF’s concern with respect to sexual
11 harassment between employees, the Board and the UFF recognize the potential for this form of
12 illegal discrimination involving students, including unwelcome sexual advances, requests for
13 sexual favors, or other verbal or physical conduct of a sexual nature that constitutes sexual
14 harassment.

15 (4) Furthermore, the Board and UFF recognize that sexual relationships
16 between faculty and students, even if consensual, may become exploitative and especially so
17 when a student’s academic work, residential life, or athletic endeavors are supervised or
18 evaluated by the faculty member.

19 (5) Policies and regulations regarding harassment are intended to protect
20 individuals from discrimination, not to regulate the content of speech, or restrict the academic
21 freedom or free speech rights of faculty.

22
23 6.3 Investigation of Complaints of Discrimination or Harassment. Charges of discrimination,
24 including complaints of harassment, shall be promptly investigated according to the following:

25 (a) No retaliation shall be made by a faculty member, the Board or UFF against any
26 party, witness or representative arising from their good faith participation in the investigation
27 process.

28
29 (b) The Board shall take appropriate remedial actions to correct any finding of
30 discrimination or harassment that is found.

31
32 (c) The remedial actions shall not adversely affect the faculty member who was
33 found to be the object of discrimination or harassment.

34
35 (d) In the process of investigating discrimination or harassment the conduct shall be
36 considered in the context of the entire circumstances.

37
38 (e) The investigative report shall contain at least the following information:

- 39 (1) The nature of the complaint;
40 (2) All formal statements by the parties;
41 (3) A summary of the findings; and
42 (4) A conclusion as to whether there is cause to determine that discrimination

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1 or harassment has occurred.

2
3 (f) In instances where no finding of discrimination or harassment is made, no record
4 of the complaint shall be placed in the faculty member's evaluation file unless the faculty
5 member requests in writing that a record of the complete investigation be placed in the
6 evaluation file.

7
8 (g) No faculty member shall be disciplined for discrimination or harassment until the
9 investigation is complete and a finding of discrimination or harassment has been issued. The
10 Board may determine that non-disciplinary action is appropriate pending the completion of the
11 investigation. The faculty member may be placed on administrative leave pursuant to Article 17
12 of this Agreement during the investigation.

13
14 (h) Disciplinary actions shall follow the policy of progressive discipline, pursuant to
15 Article 16, Disciplinary Action.

16
17 6.4 Access to Documents. (a) No faculty member shall be refused a request to inspect and
18 copy documents relating to any claim of discrimination to which the faculty member is a party,
19 except for records which are exempt from the provisions of the Public Records Act, Chapter 119,
20 Florida Statutes.

21
22 ~~(b) In order to determine if equitable treatment has occurred, a grievant and the UFF~~
23 ~~may need to examine the personnel records of other faculty members. The Board shall grant~~
24 ~~such requests, but a restriction may be placed on the use of such information for anything beyond~~
25 ~~the case at issue.~~

26
27 6.5 Grievance Procedures.

28 (a) Claims of discrimination or harassment brought against the Board may be
29 presented as grievances pursuant to Article 20, Grievance Procedure and Arbitration. However,
30 no grievance may be maintained under this section if the faculty member has also initiated a
31 complaint arising from the same issue(s) filed with any court or fair employment practices
32 agency, except as specifically provided for in Article 20. This article cannot be relied upon to
33 grieve issues that are not ~~otherwise grievable under this contract~~ a violation of a provision of this
34 Agreement.

35
36 (b) Appeals of adverse employment decisions made against faculty accused of
37 discrimination or harassment may be presented as grievances pursuant to Article 20, Grievance
38 Procedures and Arbitration.

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