



NONDISCRIMINATION POLICY AND COMPLAINT PROCEDURE

A. Purpose

To make sure that no person shall be excluded from participation in, denied the benefits of, or be subject to discrimination under, any program or activity sponsored or conducted by The University of Texas System or any of its institutions, on the basis of race, color, national origin, religion, sex, sexual orientation, age, veteran status, or disability.

B. Authority/Persons Affected

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq., and its implementing regulation at, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin.

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1618 et seq., and its implementing regulation at, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (amended 1992), and its implementing regulation at, 34 C.F.R Part 104, which prohibit discrimination on the basis of disability.

Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and its implementing regulation at, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability.

The Age Discrimination Act of 1975, 42 U.S.C. §6101 et seq., and its implementing regulation at, 34 C.F.R. Part 110, which prohibit discrimination on the basis of age.

Persons affected: This policy applies to all University administrators, faculty, staff, students, visitors and applicants for employment or admission. This policy is the principal prohibition of all forms of discrimination on campus, except as follows:

- The University's controlling policy and procedure relating to sexual harassment and sexual misconduct can be found in Section VII of the *Handbook of Operating Procedures* and Human Resources Policy 6.100, *Sexual Harassment and Sexual Misconduct*.

C. Definitions

1. **Discrimination**, including harassment, is defined as conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment or education on account of race, color, national origin, religion, sex, sexual orientation, age, veteran status, or disability.
2. **Harassment**, as a form of discrimination, is defined as verbal or physical conduct that is directed at an individual or group because of disability, sex, age, race, color, national origin, religion, citizenship, veteran status, or sexual orientation when such conduct is sufficiently severe, pervasive or persistent so as to substantially interfere with an



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individual's or group's academic or work performance; or of creating a hostile academic or work environment. Constitutionally protected expression cannot be considered harassment under this policy.

3. **Contact Information** for the Director of Human Resources and Chief Student Affairs Officer are:

Joe Vorsas, Director of Human Resources, UT Tyler, 3900 University Blvd., Tyler Texas, 75799, Phone: (903)566-7294, Email: jvorsas@uttyler.edu (for employee or job applicant assistance on matters regarding Title II, Title IX, Section 504, ADA, EEO, and Age Act)

Ona Tolliver, Assistant Vice President for Student Affairs and Dean of Students, UT Tyler, 3900 University Blvd., Tyler, Texas 75799, Phone: (903)565-5651, Email: otolliver@uttyler.edu (for student assistance on matters regarding Title II, Title IX, Section 504, and Age Act)

D. Policy and Procedures

1. **Resolution Options**

A person who believes that he or she has been subjected to discrimination or harassment in violation of this policy and seeks to take action may use either the informal resolution process or the formal complaint process, or both. The informal resolution and formal complaint resolution process described in this policy are not mutually exclusive and neither is required as a pre-condition for choosing the other; however, they cannot both be used at the same time.

2. **Informal Resolution Process**

This process may be used as a prelude to filing a formal complaint or as an alternative. It is not necessary that this option be used. Anyone who believes that he or she has been subject to discrimination may immediately file a formal complaint as described in Section VI of this policy. Informal resolution may be an appropriate choice when the conduct involved is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. No formal investigation is involved in the informal resolution process.

- a. **Reporting.** Students wishing to use the informal resolution process should contact the Chief Student Affairs Officer. All other individuals wishing to utilize the informal resolution process should contact the Director of Human Resources. In either case, reporting of the alleged offense must be reported within sixty (60) calendar days from the date of the alleged offense.
- b. **Informal Assistance.** The individual is provided assistance in attempting to resolve possible discrimination if the individual does not wish to file a formal complaint. Such assistance includes strategies for the individual to effectively inform the



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offending party that his or her behavior is offensive and should cease, action by an appropriate University official to stop the offensive conduct, modification of the situation in which the offensive conduct occurred, or mediation between the parties. However, the University may take more formal action to ensure an environment free of discrimination.

- c. **Timeframe.** Informal resolutions will be completed within thirty (30) calendar days from receipt of a request for informal resolution.
- d. **Confidentiality and Documentation.** The University will document informal resolutions. The Office of Student Affairs or the Office of Human Resources, as appropriate, will retain such documentation. The University will endeavor to maintain confidentiality to the extent permitted by law. Where the individual's desire to maintain anonymity constrain attempts at establishing facts and eliminating the potential harassment, the University will attempt to find the right balance between the individual's desire for privacy and confidentiality with the responsibility of the University to provide an environment free of unlawful discrimination.

3. Formal Complaint Procedures

(This complaint procedure also constitutes the grievance procedure for complaints alleging unlawful sex discrimination required under Title IX of the Education Amendments of 1972. As used herein, "complaint" is synonymous with "grievance.")

- a. Reporting
 - i The University of Texas at Tyler encourages any person who believes that he or she has been subjected to discrimination to immediately report the incident to his or her supervisor, to the appropriate supervisor of the accused faculty member or employee, to the Director of Human Resources, or when a student is the accused individual, to the Chief Student Affairs Officer. The complainant will be advised of the procedures for filing a formal complaint of discrimination. When a supervisor or the Chief Student Affairs Officer receives a complaint, he or she will immediately notify the Director of Human Resources.
 - ii Complaints should be filed as soon as possible after the conduct giving rise to the complaint, but no later than thirty (30) calendar days after the event occurred. In the case of a currently enrolled student, if the last day for filing a complaint falls prior to the end of the academic semester in which the alleged violation occurred, then the complaint may be filed within thirty (30) calendar days after the end of that semester.
 - iii In order to initiate the investigation process, the complainant should submit a signed written statement, [Complaint form](#), setting out the details of the conduct that is the subject of the complaint, including the complainant's name, signature, and contact information; the name of the person directly responsible for the alleged



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violation(s); a detailed description of the conduct or event that is the basis of the alleged violation; the date(s) and location(s) of the occurrence(s); the names of any witnesses to the occurrence(s); the resolution sought; and any documents or information that is relevant to the complaint. While an investigation may begin on the basis of an oral complaint, the complainant is strongly encouraged to file a written complaint. When a supervisor or the Chief Student Affairs Officer receives a complaint with a written statement, he/she shall immediately notify the Director of Human Resources.

b. Complaint Investigation

- i The Chief Student Affairs Officer or Director of Human Resources, as appropriate, is responsible for investigating formal complaints. If the complaint is not in writing, the investigator should prepare a statement of what he or she understands the complaint to be and seek to obtain verification of the complaint from the complainant.
- ii Within five (5) calendar days of receipt of a complaint, the Chief Student Affairs Officer or Director of Human Resources, as appropriate, may either dismiss the complaint or authorize an investigation of the complaint. A complaint may be dismissed if the facts alleged in the complaint, even if taken as true, does not constitute discrimination; the complaint fails to allege any facts that suggest discrimination occurred; or the appropriate resolution or remedy has already been achieved, or has been offered and rejected.

2.1 If it is determined that a complaint will not be investigated, the Chief Student Affairs Officer or Director of Human Resources, as appropriate, will send the complainant a notification letter explaining the reason for the dismissal and informing the complainant that, within ten (10) calendar days of the notification letter, he or she may appeal the decision not to proceed with a complaint investigation to the appropriate vice president. The written appeal must explain why the decision to dismiss the complaint was in error. The appropriate vice president will respond within twenty (20) calendar days of receipt of the appeal. The vice president's decision is final. If the decision to dismiss is overturned, the complaint will be sent back to the Chief Student Affairs Officer or Director of Human Resources, as appropriate, for investigation in accordance with the procedures outlined below.

- iii As part of the investigation process, the accused individual shall be provided with a copy of the complaint and allowed ten (10) calendar days from the date the accused received the complaint within which to file a written response.



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- iv The complainant and the accused individual may present witnesses and any document or information that is believed to be relevant to the complaint.
- v Any persons thought to have information relevant to the complaint will be interviewed and such interviews will be appropriately documented.
- vi The investigation of a complaint will be concluded as soon as possible but within thirty (30) calendar days after receipt of the written complaint. In investigations exceeding forty-five (45) calendar days, a justification for the delay will be presented to and reviewed by the appropriate vice president overseeing the investigative office. The complainant, accused individual and appropriate supervisor will be provided an update on the progress of the investigation after the review.
- vii Within ten (10) calendar days of the completion of the investigation, a written report will be issued. The report shall include: a recommendation of whether a violation of the policy occurred, an analysis of the facts discovered during the investigation, any relevant evidence, and recommended disciplinary action if a violation of the policy occurred.
- viii A copy of the report will be sent to the appropriate vice president, the complainant and the accused individual. The complainant and accused individual have ten (10) calendar days from the date of the report to submit comments regarding the report to the vice president. However, if a complaint is filed against a student, then the complainant and accused individual may not receive or comment on the report due to the Family Educational Rights and Privacy Act's (20 U.S.C. §1232g) restrictions on disclosure of educational records.
- ix Within twenty (20) calendar days of receiving any written comments submitted by the complainant or accused individual, the vice president will take one of the following actions: a) request further investigation into the complaint; b) dismiss the complaint if the results of the completed investigation are inconclusive or there is insufficient reasonable, credible evidence to support the allegation(s); or c) find that this policy was violated. A decision that this policy was violated shall be made upon the record provided by the investigator and any comments submitted by the complainant or accused individual; and shall be based on the totality of circumstances surrounding the conduct complained of, including but not limited to: the context of that conduct, its severity, frequency, whether it was physically threatening, humiliating, or was simply offensive in nature. Facts will be considered on the basis of what is reasonable to persons of ordinary sensitivity and not on the particular sensitivity or reaction of an individual.



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- x If the vice president determines that this policy was violated, he or she will take disciplinary action that is appropriate for the severity of the conduct. Disciplinary actions can include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension, and dismissal. Disciplinary actions against students can include probation, suspension, or expulsion from the University.
- xi The complainant and the accused individual shall be informed within ten (10) calendar days in writing of the vice president's decision and be provided a copy of the final statement of findings. However, if a complaint is filed against a student, then the complainant may not receive information prohibited by the Family Educational Rights and Privacy Act.
- xii Implementation of disciplinary action against faculty and employees will be handled in accordance with the University's policy and procedures for discipline and dismissal of faculty and employees. The Chief Student Affairs Officer will impose disciplinary action, if any, against a student in accordance with the University's student disciplinary procedures.

4. Provisions Applicable To All Complaints

- a. Assistance. During the complaint process, a complainant or **accused individual** may be assisted by a person of his or her choice; however, the assistant may not examine witnesses or otherwise actively participate in a meeting or interview.
- b. Retaliation. An administrator, faculty member, student or employee who retaliates in any way against an individual who has brought a complaint pursuant to this policy or an individual who has participated in an investigation of such a complaint is subject to disciplinary action, including dismissal.
- c. Prevention of Recurrence. If discriminatory conduct is found to have existed, the University will take appropriate steps to (1) prevent recurrence of any such discriminatory conduct, and (2) correct its effects on the complainant and others, if appropriate.
- d. False Complaints/Statements. Any person who knowingly and intentionally files a false complaint under this policy or knowingly and intentionally makes false statements in the course of an investigation is subject to disciplinary action up to and including dismissal from the University.
- e. Confidentiality and Documentation. The University shall document complaints and their resolution. The Office of Student Affairs or the Office of Human Resources, as appropriate, shall retain such documentation. To the extent permitted by law, complaints and information received during the investigation will remain confidential. Relevant information will be provided only to those persons who need to know in order to achieve a timely resolution of the complaint.



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- f. Monitoring. Periodic monitoring of complaint resolutions will be conducted by the Director of Human Resources to ensure that discriminatory practices are no longer a factor in the workplace or academic environment, and that no retaliation for filing the complaint has taken place.

5. Dissemination Of Policy

- a. The policy will be made available to all faculty, employees and students. New employees will receive nondiscrimination and EEO training within thirty (30) calendar days of being hired and will sign a written acknowledgment attesting that they have received the training. All employees will complete and verify that they have received EEO and nondiscrimination training at least every other year via *The Training Post* online training system or through training provided by a trainer certified by The Texas Commission on Human Rights in providing EEO and nondiscrimination training. Periodic notices sent to students, employees and faculty about the University's Nondiscrimination Policy will include information about the complaint procedure and will refer individuals to designated offices or officials for additional information.
- b. The University will periodically educate and train employees and supervisors regarding the policy and conduct that could constitute a violation of the policy.

E. Responsibilities:

See Policy and Procedures section.

F. Review

This policy shall be reviewed by the Director of Human Resources every five years or as legislation changes.