

STEPHEN F. AUSTIN  
STATE UNIVERSITY

Office of the General Counsel

**POLICY SUMMARY FORM**

**Policy Name:** Non-Discriminatory Harassment Complaints

**Policy Number:** 2.14

**Is this policy new, being reviewed/revise, or delete?** New

**Date of last revision, if applicable:**

**Unit(s) Responsible for Policy Implementation:** Vice President for Finance and Administration

**Purpose of Policy (what does it do):** Policy extends the university's prohibition of harassment beyond harassment based upon protected classes. The policy details definitions of harassment and the process for filing a complaint and investigation of complaints.

**Reason for the addition, revision, or deletion (check all that apply):**

Scheduled Review       Change in law       Response to audit finding

Internal Review       Other, please explain: Policy was added to adequately identify and respond to inappropriate conduct in the workplace that does not appropriately fit under the discrimination complaint policy.

*Please complete the appropriate section:*

**Specific rationale for new policy:** Policy was added to provide guidelines for appropriate workplace conduct and to prevent harassment even when the actions are not based upon protected classes.

**Specific rationale for each substantive revision:**

**Specific rationale for deletion of policy:**

*Additional Comments:*

Reviewers:

Loreta Doty, Director of Human Resources  
Danny Gallant, Vice President for Finance and Administration  
Damon Derrick, General Counsel

# Non-Discriminatory Harassment Complaints

**Original Implementation:** July 25, 2017

**Last Revision:** None

## General Policy Guidelines

**Purpose:** To provide an educational and working environment free of harassment to all members of the university community. This policy applies to visitors, applicants for admission to or employment with the university, and students and employees of the university who allege harassment by university employees, students, visitors, or contractors.

**Workplace Environment Statement:** It is the policy of Stephen F. Austin State University to prohibit all forms of harassment and create a work environment free from harassment. An employee who violates this policy is subject to disciplinary action that can lead to termination. A student who violates this policy is subject to disciplinary action that can lead to expulsion.

The president or designee will be responsible for overseeing this policy and procedures to ensure compliance with this policy. For employee-related complaints, the human resources director or designee will be responsible for maintaining records of all formal complaints and the results of such complaints. For student-related complaints, the dean for student affairs or designee will be responsible for maintaining records of all formal complaints and the results of such complaints.

Instances of unlawful class-based discrimination based on race, color, religion, national origin, sex, age, disability, genetic information, citizenship, veteran status, sexual orientation, gender identity, or gender expression are governed by the Discrimination Complaints policy (2.11). Instances of sex discrimination based on sexual harassment or hostile environment relating to sexual harassment are governed by the Sexual Misconduct policy (2.13).

## Definitions

Harassment is defined as creating an unpleasant or hostile situation by uninvited and unwelcome verbal or physical conduct when such conduct is sufficiently severe, pervasive, or persistent so as to have the purpose or effect of interfering with an individual's or group's academic or work performance or of creating a hostile academic or work environment.

Harassment includes but is not limited to the following acts:

- Intimidation: to compel or deter by or as if by threats
- Demeaning actions: actions that degrade or humble, lower in character or status
- Public humiliation: to make someone ashamed or embarrassed in front of others
- Mobbing: bullying by a group
- Ostracism: the act of ignoring, disregarding an employee or co-worker

- **Ridicule:** the act of making fun of an employee or co-worker in a cruel or harsh way
- **Bullying:** acts or written or spoken words intended to intimidate or harass a person or to cause physical harm to a person or his or her property (physical, verbal, social and cyber)
- **Work interference or sabotage:** actions that prevent the work from getting done
- **Excessive faultfinding:** excessive critique and oversight of work and behavior that is targeted toward one particular individual rather than the work group as a whole.
- **Defamation of character:** spreading malicious gossip or rumor or untruthful information
- **Verbal outbursts:** uncontrolled, angry communication that may or may not include profanity

The totality of the circumstances will be considered in determining whether harassment has occurred. Relevant factors in determining whether the conduct is harassment include, but are not limited to, the type, frequency and severity of the conduct, whether the conduct is physically threatening or humiliating, and the relationship between the individuals.

In general, it is not considered harassment when a supervisor exercises management authority in communicating with employees, providing oversight of the employee's duties and delegating duties to employees in an appropriate manner. Disagreement with the methods and decisions of supervisors that are reasonably within their authority are also not considered harassment.

## **General Procedures**

1. **Reporting:** A person who believes that he or she has been subjected to any type of harassment prohibited by this policy should report the incident to any university official, administrator, or supervisor. Students are encouraged to report such incidents to the dean of student affairs. Employees and visitors are encouraged to report to the director of human resources. Incidents should be reported as soon as possible after the time of their occurrence. No person is required to report harassment to the alleged offender.
2. **Referral Responsibility:** Every supervisor, administrator, department head, and university official is responsible for promptly reporting incidents of harassment that come to his or her attention to the appropriate university official. Student-to-student complaints should be reported to the dean of student affairs. All other complaints should be reported to the director of human resources. This information should be kept in strict confidence to the extent allowed by law.

## **Complaint Resolution Procedures**

1. **Definitions**
  - a. **Complaint** means a signed document alleging harassment under this policy.  
**Complainant** means a person who submits a written complaint alleging harassment under this policy. As there may be more than one complainant in a case, the term

"complainant" as used herein shall refer to one or more complainants. In the event of a third party charge, the university may serve as the complainant.

- b. **Respondent** means the person alleged to be responsible for the prohibited harassment alleged in a complaint. The term "respondent" may be used to designate persons with direct responsibility for a particular action or the persons with administrative responsibility for the procedures and policies in those areas covered in a complaint.

## 2. Complaint Procedure

- a. **Complaint:** A complaint alleging harassment must be submitted in writing. The complaint must contain the following information:
- Name of the complainant;
  - Contact information, including address, telephone number, email address;
  - Name of person(s) directly responsible for alleged violation(s);
  - Date(s) and place(s) of alleged violation(s);
  - Nature of alleged violation(s) as defined in this policy;
  - Detailed description of the specific conduct that is the basis of alleged violation(s);
  - Copies of documents pertaining to the alleged violation(s);
  - Names and contact information (if known) of any witnesses to alleged violation(s);
  - Action requested to resolve the situation;
  - Complainant's signature and date of filing;
  - Any other relevant information.
- b. **Time Limit:** A written complaint should be filed within 180 calendar days of the occurrence of the alleged violation. Depending on the circumstances, the university may accept and investigate a complaint even if filed after 180 calendar days.
- c. **Third Party Charge:** If a pattern of harassment appears to exist, but no complainant files charges, the university may file a third-party charge against an individual. Such charges will be handled with as much care and control as any other complaint so as to avoid acting on rumor or unjustified accusation.

### Investigative Process for Employee and Third-Party Related Complaints

The dean, director or other appropriate administrator will investigate harassment claims in an impartial manner. If a dean or director is the direct supervisor of the respondent (accused), the vice president will assign an alternative director from within the division to conduct an impartial investigation. The investigation shall normally be conducted within 20 business days from when the investigation is assigned to the dean or director. Case complexity will vary and the termination of the investigation will depend on case circumstances; however, the investigation will conclude under normal circumstances within 20 business days. It is incumbent upon the investigating official to document a reasonable justification for extending an investigation beyond 20 business days.

The investigator will interview the complainant and persons who are considered to have pertinent factual information related to the complaint. The investigator will also gather and examine documents relevant to the complaint. 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.

Findings will be based on the totality of circumstances surrounding the conduct complained of, including, but not limited to, the context of that conduct, its severity, its frequency, and whether it was physically threatening, humiliating, or simply offensive in nature.

The dean or director conducting the investigation may also consult with appropriate management personnel, including the director of human resources, and/or the general counsel for advice and guidance as applicable. The university reserves the right to take such action as may be reasonably appropriate upon receipt of a complaint to protect the complainant or university community pending outcome of the investigation, including interim suspension with pay of an employee.

Notification of the Respondent: After investigating the allegations, the dean or director will meet with the respondent, provide them with a copy of the complaint, and give them an opportunity to respond. The respondent may, but is not required to, submit a written response to the allegations in the time prescribed by the investigator.

Report of Findings and Recommendations: The investigator is responsible for preparing a report responding to each allegation that the complainant has made. This report should describe the investigator's findings and conclusions to each allegation. The report should also include a brief overview of the investigative process including the category and number of individuals interviewed, timelines, and a summary of each allegation. Finally, the report should contain the investigator's recommendations for resolution of the matter. This report should be addressed to the appropriate vice president with copies provided to the general counsel and the director of human resources.

The vice president shall review the findings and recommendations of the investigator and take action that he or she determines to be appropriate. Such action shall be communicated in a letter to the complainant and respondent with copies to the general counsel and director of human resources, within five (5) business days of receipt from the investigator.

Appeal Process: If the decision of the vice president is not satisfactory to the complainant or respondent, that individual has five (5) business days in which to request a formal hearing. The hearing will be conducted by the discrimination complaint review board ("review board"). The request must be put in writing to the vice president issuing the decision. If the vice president concludes that the charges are serious enough to require termination or suspension,

the faculty or staff member may be placed on a leave of absence with pay, pending a hearing by the review board and action by the president.

Discrimination Review Board: The review board of three individuals will be selected from a panel of 20 pre-selected faculty members and 20 pre-selected staff members, to be appointed by the president. If the respondent is a faculty member, the review board will be composed of at least two faculty members. If the respondent is a staff member, the review board will be composed of at least two staff members. The complainant will select one member and the respondent will select one member from the applicable panel. The two selected members will choose the third person from the panel. None of the review board members shall be from the department of the respondent or the complainant (if applicable). These three individuals will comprise the review board and will elect a chair from among them. The university president may remove any selected review board member if substantial proof of bias exists.

The chair of the review committee is responsible for coordinating the hearing. The complainant, respondent, and university all have the right to be advised by an advisor, but advisors will not be allowed to conduct or participate in the hearing. The day prior to the scheduled review committee hearing, each side shall submit a list of its witnesses and four copies of its evidence to the chair. A list of witnesses and copy of the evidence will be provided to each side. The rest of the review committee will not receive the material until the time of the hearing. All materials presented must be maintained in a confidential manner by all parties involved.

The dean or director who conducted the investigation will apprise the review board of the charges and will normally present all relevant evidence. Both parties will have an opportunity to respond to the charges and present evidence. Each party may make a five (5) minute opening statement prior to presentation of the evidence. The burden will be on the complainant to prove, by a preponderance of the evidence, that the respondent has committed an act of harassment as prohibited by this policy. Cross-examination of the witnesses is allowed by all parties. Each party may make a five (5) minute closing statement. The review board is permitted to question the parties and/or witnesses at any time during the proceeding.

The chair of the review board will conduct a fair hearing before the complainant and the respondent and shall allow relevant witnesses and evidence from both parties. The hearing shall be closed to the public. The general counsel and/or the director of human resources may be consulted in procedural matters of the review board and may be present at the hearing. All information presented in the hearing is confidential to the extent allowed by law and restricted to only those who have an absolute need to know. The review board will normally have five (5) days after the completion of the hearing to summarize its findings and make a written recommendation to the president.

Review by the President: The president may accept, reject, or modify the decision of the review

board and will have access to all evidence, both parties, and witnesses, as deemed appropriate. In all instances except those that involve the revocation of tenure or termination with an unexpired appointment extending beyond the date of the proposed dismissal, the decision of the president is final. In cases that involve the revocation of tenure or termination with an unexpired appointment extending beyond the date of the proposed dismissal, termination proceedings shall commence under university policy 7.29. Such termination proceedings shall not reconsider whether harassment occurred, but rather determine if good cause exists for dismissal. Pending termination proceedings, a faculty member may be suspended and removed from the university or assigned to other duties, with pay, at the president's discretion. Final disposition of the case will be communicated to the respondent and the complainant.

## **Sanctions**

University imposed: University sanctions for violations of this policy may include any disciplinary action that may lead to termination of employment for faculty or staff. Such activities may be viewed as constituting a violation of the Faculty Code of Conduct policy (7.11), grounds for termination under the Tenure policy (7.29), and a major work rule violation under the Discipline and Discharge policy (11.4).

False charges may result in disciplinary action against the complainant by the university or civil charges against the complainant by the respondent. An unsubstantiated charge is not considered "false" unless it is found to be made with the knowledge of it being false.

## **Investigative Process for Student-to-Student Complaints**

The dean for student affairs, or their appointee, shall investigate student-to-student complaints and follow the timeframes described in the preceding guidelines for employees. If student discipline is recommended, the Student Code of Conduct (10.4) will guide the proceedings. Informal and formal disposition procedures and full due process procedures are outlined within the policy.

**Student Sanctions:** Disciplinary action for student-to-student related complaints may range from sensitivity counseling to suspension or expulsion. False charges may also result in disciplinary action. An unsubstantiated charge is not considered "false" unless it is found to be made with knowledge of it being false.

## **Retaliation**

A supervisor or employee violates this policy if the supervisor or employee retaliates or discriminates against a person, who (a) opposes a harassing practice, (b) makes or files a complaint alleging harassment, (c) or testifies, assists, or participates in any manner in an investigation, proceeding or hearing. Any employee who retaliates against another employee

violates the university's policies and procedures and may be subject to disciplinary action up to and including termination. Instances of alleged retaliation shall be investigated pursuant to the procedures of this policy. A student violates this policy if the student retaliates or discriminates against a person. A student that violates this policy is subject to disciplinary action up to and including expulsion.

The dean/director (or other appropriate administrator) who investigated the complaint will be responsible for monitoring the circumstances surrounding the complaint to insure the situation has been remedied.

**Cross Reference:** Faculty Code of Conduct (7.11); Tenure (7.29); Discipline and Discharge (11.4); Student Code of Conduct (10.4); Discrimination Complaints (2.11); Sexual Misconduct (2.13).

**Responsible for Implementation:** President

**Contact for Revision:** Director of Human Resources, General Counsel

**Forms:** None

**Board Committee Assignment:** Academic and Student Affairs