

STEPHEN F. AUSTIN
STATE UNIVERSITY

Office of the General Counsel

POLICY SUMMARY FORM

Policy Name: Discrimination Complaints

Policy Number: 2.11

Is this policy new, being reviewed/revised, or deleted? Review/Revise

Date of last revision, if applicable: 1/26/2016

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

Purpose of Policy (what does it do): Provides guidelines for filing a discrimination complaint, investigating a complaint and appealing the findings of a discrimination complaint.

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:

Please complete the appropriate section:

Specific rationale for new policy: Not applicable

Specific rationale for each substantive revision: Changes were made to the investigation process, the process for identifying appeal board members and presenting information before the appeal board to ensure objectivity and an open process.

Specific rationale for deletion of policy: Not applicable

Additional Comments:

Reviewers:

Loretta C. Doty, Director of Human Resources
Dr. Steve Westbrook, Acting President
Damon Derrick, General Counsel

Discrimination Complaints

Original Implementation: September 1990/February 2, 1982

Last Revision: ~~January 26, 2016~~ January 29, 2019

General Policy Guidelines

Purpose:

This policy affirms Stephen F. Austin State University's intent to provide an educational and working environment free of unlawful discrimination or 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 discrimination by university employees, students, visitors, or contractors.

~~Non-discrimination Statement:~~ It is the policy of Stephen F. Austin State University, in accordance with federal and state law, to prohibit unlawful discrimination on the basis of race, color, religion, national origin, sex, age, disability, genetic information, citizenship, and veteran status. ~~Unlawful discrimination based on sex includes discrimination defined as sexual harassment. Additionally, Stephen F. Austin State University prohibits discrimination on the basis of sexual orientation, gender identity, and gender expression. Stephen F. Austin State University is committed to the principles of Equal Employment Opportunity (EEO) law. An employee who violates this policy is subject to disciplinary action up to and including termination. A student that violates this policy is subject to disciplinary action up to and including expulsion.~~

~~The president or designee will be responsible for overseeing the Discrimination Complaint policy (2.11) and procedures and for ensuring compliance with EEO laws. All employment decisions will be based on objective, job-related, and measurable criteria that can be consistently applied. Human resources or designee will annually review all personnel policies and procedures to ensure compliance with EEO laws and present any recommendations for changes to the president. All employment-related documents will be maintained in accordance with the university's Texas State Record Retention Schedule.~~

~~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 sex discrimination based on sexual harassment or hostile environment are governed by the Sexual Misconduct policy (2.13).~~

Definitions

Complaint means a signed document or a communication submitted electronically from an account assigned to complainant alleging discrimination under this policy.

Complainant means a person who submits a written complaint alleging discrimination under this policy. As there may be more than one complainant in an unlawful discrimination 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.

Discrimination 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 because of their race, color, religion, national origin, sex, sexual orientation, gender identity, gender expression, age, disability, genetic information, citizenship, or veteran status.

Harassment as a form of discrimination is defined as verbal or physical conduct that is directed at an individual or group because of race, color, religion, national origin, sex, sexual orientation, gender identity, gender expression, age, disability, genetic information, citizenship, or veteran status 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.

The totality of the circumstances will be considered in determining whether a hostile environment exists. Relevant factors in determining whether the conduct has created a hostile environment 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.

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

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General

~~Non-discrimination Statement:~~ It is the policy of Stephen F. Austin State University, in accordance with federal and state law, to prohibit unlawful discrimination on the basis of race, color, religion, national origin, sex, age, disability, genetic information, citizenship, and veteran status. Unlawful

discrimination based on sex includes discrimination defined as sexual harassment. Additionally, Stephen F. Austin State University prohibits discrimination on the basis of sexual orientation, gender identity, and gender expression. Stephen F. Austin State University is committed to the principles of Equal Employment Opportunity (EEO) law. An employee who violates this policy is subject to disciplinary action up to and including termination. A student that violates this policy is subject to disciplinary action up to and including expulsion.

The president or designee will be responsible for overseeing this policy and procedures and for ensuring compliance with EEO laws. The human resources director or designee will annually review all personnel policies and procedures to ensure compliance with EEO laws and present any recommendations for changes to the president. All employment related documents will be maintained in accordance with the university's Texas State Record Retention Schedule.

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 sex discrimination based on sexual harassment or hostile environment are governed by the Sexual Misconduct policy (2.13).***Procedures**

Reporting:

A person who believes that he or she has been subjected to any type of discrimination 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. Reports of sexual harassment or other forms of sexual misconduct should be reported in accordance with the Sexual Misconduct policy (2.13). Incidents should be reported as soon as possible after the time of their occurrence. No person is required to report discrimination to the alleged offender. Any allegations of sex--based discrimination may also be directed to the attention of the Title IX coordinator; allegations of disability-based discrimination may also be directed to the ADA coordinator but will be investigated in accordance with this policy.

Referral Responsibility:

Every supervisor, administrator, department head, and university official is responsible for promptly reporting incidents of discrimination 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. Any allegations of sex--based discrimination may also be directed to the attention of the Title IX coordinator and allegations of disability-based discrimination may also be referred to the ADA coordinator but will be

investigated in accordance with this policy. Every attempt should be made to keep the information confidential and restricted to only those who have an absolute need to know.

Complaint Resolution Procedures

Definitions

Complaint means a signed document alleging discrimination under this policy.

Complainant means a person who submits a written complaint alleging discrimination under this policy. As there may be more than one complainant in an unlawful

discrimination 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.

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

Complaint Procedure

Complaint: A complaint alleging discrimination or 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 violations(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.

Time Limit: *In some cases, the Equal Employment Opportunity Commission (EEOC) requires that a written* 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.

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 or director (or other An appropriate administrator) for the area involved~~ from within the division whereof the complaint was filed, but not within the unit involved will investigate, not as a representative of the complainant, but as an impartial party. *Notwithstanding, the university reserves the right to appoint an external investigator or investigator from a different division in its discretion. If the director is the direct supervisor of the respondent (accused), the vice president will assign an alternative director from within their division so the investigator is not investigating his or her own department.* The investigation shall normally be conducted within 20 business days from when the ~~investigation~~investigator is appointed 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 investigator ~~ing 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~~investigator conducting the investigation may also consult with appropriate management personnel, including the director of human resources, the ADA coordinator, the Title IX coordinator, 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~~investigator 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 (*or president if the complaint concerns a unit reporting directly to the president, or chair of the Board of Regents if the complaint concerns an employee reporting directly to the Board of Regents or a member of the Board of Regents*) with copies provided to the general counsel, the director of human resources, and the Title IX or ADA coordinator, as applicable.

The vice president/*president* shall review the findings and recommendations of the investigator and take such action deemed appropriate. Such action shall be communicated in a letter to the complainant and respondent with copies to the general counsel, director of human resources, and the Title IX or ADA coordinator, as applicable, ~~within~~ *within five (5) business days* of receipt from the investigator.

Appeal Process: If the decision of the vice president/*president* is not satisfactory to the complainant or respondent, that individual has five (5) business days in which to request a formal hearing of the discrimination complaint review board ("review board"). The request must be put in writing to the vice president/*president* issuing the decision. If the vice president/*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~~ *final determination*.

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), *and at least one member should be from a different department than the other two members*. 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, the respondent, and the university all have the right to be advised by counsel, but lawyers will not be allowed to conduct or participate in the hearing. ~~The day~~ *At least five (5) business days prior* ~~days 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. *The list of witnesses should contain a short description of the testimony each witness is expected to provide.* 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~~ *investigator* will apprise the review board of the charges and will ~~normally present all relevant evidence~~ *the investigation process, evidence and findings*. ~~Both The complainant and respondent parties~~ will have an opportunity to respond to the charges and present evidence. Each party may make a *five (5-minute) 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 unlawful discrimination. 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 meetings. 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) *business* 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 discrimination 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, up to and including 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) and grounds for termination under the *Tenure and Continued Employment* policy (7.29), and a major work rule violation under the Discipline and Discharge policy (11.4).

Civil: Unlawful discrimination is illegal under state and federal law. Official governmental investigations by the Equal Employment Opportunity Commission, the Texas Commission on

Human Rights, and/or the Office of Civil Rights of the Department of Education may result in civil lawsuits against any person guilty of unlawful discrimination.

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, policy 10.45, Student Discipline-Code of Conduct will guide the proceedings. Informal and formal disposition procedures are outlined within the policy; and it contains full due process procedures.

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 commits an unlawful employment practice if the supervisor or employee retaliates or discriminates against a person, who (a) opposes a discriminatory or harassing practice, (b) makes or files a complaint alleging employment discrimination or 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 investigator will be responsible for monitoring the circumstances surrounding the complaint to insure the situation has been remedied.

Training

The university is required by the Texas Labor Code 21.010 to provide EEO training to each new employee, including student employees on policies regarding discrimination, including sexual harassment, no later than 30 days after the date of hire. In addition, supplemental EEO training is required every two years. All employees will receive a copy of this policy within 30 days of employment. A signed statement verifying attendance training is required to be maintained in the

employee's personnel file.

Additional training shall be provided in accordance with applicable law.

Cross Reference: Faculty Code of Conduct (7.11); Tenure *and Continued Employment* (7.29); Discipline and Discharge (11.4); Student ~~Discipline~~ (*Code of Conduct* (10.45); Sexual Misconduct (2.13); 42 U.S.C. § 2000e, e-2, e-3; 42 U.S.C. § 1981; 20 U.S.C. §§ 1681, 1684; 42 U.S.C. § 12101; 29 U.S.C. § 623; 29 U.S.C. § 794; 29 U.S.C. § 206(d); 8 U.S.C. § 1101; Tex. Lab. Code Ch. 21; Tex. Penal Code § 39.03; Pub. L. 88-352; Pub. L. 102-166; Pub. L. 110-233

Responsible for Implementation: President

Contact for Revision: Title IX Coordinator, Director of Human Resources, and the General Counsel

Forms: None

Board Committee Assignment: Academic and Student Affairs