

Nondiscrimination

Original Implementation: September 1990/February 2, 1982

Last Revision: July 27, 2021

I. Purpose

This Policy affirms Stephen F. Austin State University's commitment to providing 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, students, and employees of the university who allege discrimination by University employees, students, visitors, or contractors.

II. Definitions

The following are categories of conduct that are prohibited by this Policy ("Prohibited Conduct") and may result in disciplinary action when committed by University employees or students.

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 means 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 is a form of discrimination 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.

Other Sexual Harassment as used in this Policy means::

1. in the employment context, an unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if:
 - i. submission to the advance, request, or conduct is made a term or condition of an individual's employment, either explicitly or implicitly;
 - ii. submission to or rejection of the advance, request, or conduct by an individual is used as the basis for a decision affecting the individual's employment;
 - iii. the advance, request, or conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or
 - iv. the advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive work environment.
2. in the education context, unwelcome, sex-based verbal or physical conduct that is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from the University's educational programs or activities.

Other Sexual Harassment does not include allegations of sex discrimination or harassment which rise to the level of Sexual Harassment occurring within the University's Education Programs and Activities as defined by policy 2.13, Title IX.

Other Unprofessional/Inappropriate Conduct means behavior or conduct that is unprofessional and/or inappropriate for the educational and/or working environment, but does not rise to the level of Sexual Harassment or other form of Prohibited Conduct outlined above.

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.

Retaliation means any attempt to seek retribution against an individual or group of individuals involved in filing a complaint or report under this Policy, filing an external complaint, participating in a disciplinary process, or opposing in a reasonable manner an action believed to constitute a violation of this Policy. Retaliation can take many forms, including abuse or violence, threats, and intimidation. Actions in response to a good faith report or response under this Policy are considered retaliatory if they have a materially adverse effect on the working, academic or University-controlled living environment of an individual; or if they hinder or prevent the individual from effectively carrying out their University responsibilities. Any individual or group of individuals can engage in retaliation and will be held accountable under this Policy.

III. General

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, sexual orientation, gender identity, gender expression, age, disability, genetic information, citizenship, and veteran status. Unlawful discrimination based on sex includes discrimination defined as sexual harassment. 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 for ensuring compliance with EEO laws. The Human Resources Director or designee will regularly review all personnel policies and procedures to ensure compliance with EEO laws and present any recommendations for changes to the President or designee. 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.

IV. Scope

This Policy applies to Prohibited Conduct in all University education programs and activities and to all participants in such education programs and activities, including administrators, faculty, staff, students, volunteers, contractors, and guests. This Policy covers Prohibited Conduct that occurs on campus, in connection with an official University program or activity (regardless of location), and to off-campus conduct when the conduct could deny or limit a person's ability to participate in or benefit from the University's programs and activities or when the University, in its sole discretion, has an identifiable interest in the off-campus conduct.

All allegations of sex discrimination which rise to the level of Sexual Harassment occurring within the University's Education Programs and Activities as defined by policy 2.13, Title IX, are handled exclusively pursuant to the procedures outlined in that Policy. All other acts of Discrimination—including acts of sex discrimination which do not rise to the level of Sexual Harassment occurring within the University's Education Programs and Activities as defined by policy 2.13, Title IX—are handled pursuant to this Policy.

V. Reporting

A person who believes that he or she has been subjected to any type of Prohibited Conduct 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 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.

VI. Mandatory Reporting Requirement of Sexual Harassment for University Employees

Under Texas law, all University employees, with the exception of Confidential Employees, who:

1. in the course and scope of their employment¹
2. witnesses or receives information regarding an incident that the employee reasonably believes constitutes Sexual Harassment,² Sexual Assault, Dating Violence, or Stalking, which
3. is alleged to have been committed by or against a person who was a student enrolled at or an employee of the University at the time of the incident

must promptly report the incident to the University's Title IX Coordinator, within 48 hours.

Writing required. The University's online reporting form is the preferred method of communicating incidents promptly, so that a record is made of the time and all factual details disclosed in the initial report. A written memo is also acceptable if it can be delivered to a Coordinator promptly after the employee's duty to report arises.

Report Contents. The employee's report must include all information concerning the incident known to the employee which is relevant to an investigation under this Policy, including whether the subject of the report has expressed a desire for an institutional response to the incident or made a request for confidentiality in reporting the incident.

Confidentiality. Unless waived in writing by the affected individual, the identity of an alleged victim of an incident reported pursuant to this mandatory reporting requirement may be disclosed only to (a) employees of the University who are necessary to conduct an investigation of the report or any related hearings and (b) a law enforcement officer when appropriate.

Exceptions. The mandatory reporting requirement does not apply to:

1. Individuals who are themselves the victims of the Sexual Harassment, Sexual Assault, Dating Violence, or Stalking;
2. Instances when an employee receives information about Sexual Harassment, Sexual Assault, Dating Violence, or Stalking at a public awareness event sponsored by the University; or
3. Employees designated as Confidential Employees.

Consequences of Non-Compliance. An employee who fails to make a required report will be

¹ "Course and Scope of Employment" means an employee performing duties in the furtherance of the institution's interests.

² For the purposes of Texas's mandatory reporting requirement only, "Sexual Harassment" means: unwelcome, sex-based verbal or physical conduct that (a) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or (b) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from the University's educational programs or activities.

terminated following an investigation and any required process under the applicable personnel policy.³

Immunity. An employee or student who, in good faith reports or assists in the investigation of a report under this Policy, or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident, will not be subject to disciplinary action that are reasonably related to the incident. This immunity does not apply to a person who perpetrates or assists in the perpetration of the incident reported under this Policy or who commits a criminal offense pursuant to Texas Education Code § 51.255(a).

VII. Referral Responsibility

Every supervisor, administrator, department head, and University official is responsible for promptly reporting incidents of Prohibited Conduct 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.

VIII. Supportive Measures

The University will, to the extent practicable based on the circumstances and the University's resources, provide the Complainant with support and resources to restore or preserve equal access to the University's education programs and activities and/or employment. Such measures are designed to protect the safety of all parties implicated by a report or to deter Prohibited Conduct. Supportive measures may include, but are not limited to: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

IX. Complaint Procedures

A. Written 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;

³ Employees who fail to make a mandatory report under this provision may also be subject to criminal prosecution pursuant to Texas Education Code section 51.255(a).

- 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.

In some cases, the Equal Employment Opportunity Commission (EEOC) requires that 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.

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.

B. *Informal Complaint Process for Employee (including student-employee) and Third-Party Related Complaints*

The informal complaint process is not a prerequisite to the formal investigative process and participation is entirely voluntary. Deciding not to participate will not be held against either Complainant or Respondent(s).

Following the receipt of a written complaint, Human Resources will contact Complainant and Respondent(s) and schedule initial investigatory interviews. Human Resources will assess the complaint to determine whether informal processing is appropriate, and whether resolution of the complaint can be achieved through informal measures, such as conflict resolution or educational opportunities. If Human Resources determines that informal resolution is appropriate, and Complainant and Respondent(s) agree to participate, Human Resources will initiate informal resolution procedures. Informal processing is appropriate when the parties desire to resolve the situation cooperatively. Informal complaints may also be appropriate for responding to anonymous reports or third-party reports.

Human Resources will facilitate a meeting or provide guidance to discuss the allegations in an attempt to arrive at an action plan to address the issue. Resolution of informal complaints may include discussions with the parties, making recommendations for resolution, and conducting a follow-up review after a period of time to ensure that the resolution has been implemented effectively. Informal complaint resolution could encompass a full range of possible appropriate outcomes including, but not limited to, coaching a person on how to directly address a situation which is causing a problem; mediating an agreement between the parties; separating the parties if practicable; referring the parties

to targeted educational and training programs; or working with appropriate administrators to provide remedies acceptable to the Complainant.

At the successful conclusion of the informal complaint process, Human Resources will send a written notification of the outcome and the understanding between the parties. If the dispute is not settled during the informal stage, then the matter will advance to the formal complaint process.

At anytime during the informal complaint process, Complainant, Respondent(s), or Human Resources can stop the process and advance the complaint to a formal complaint. If the complaint does not allege a policy violation, the complaint will not proceed to a formal complaint.

C. *Formal Investigative Process for Employee (including student employee) and Third-Party Related Complaints*

An impartial administrator from within the division where the complaint was filed, but not within the unit involved, will investigate the Complaint. The university reserves the right to appoint an external investigator or investigator from a different division in its sole discretion. The investigation shall normally be conducted within 30 business days from when the investigator is appointed. Case complexity will vary and the resolution of the Complaint will depend on case circumstances; however, the investigation will conclude under normal circumstances within 30 business days. It is incumbent upon the investigator to document a reasonable justification for extending an investigation beyond 30 business days.

The investigator will interview 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 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 Complainant or the university community pending outcome of the investigation, including interim suspension with pay of an employee.

1. Notification of the Respondent(s): After investigating the allegations, the investigator will meet with Respondent(s), provide them with a copy of the Complaint, and give them an opportunity to respond. Respondent(s) may, but is not required to, submit a written response to the allegations in the time prescribed by the investigator.
2. Report of Findings and Recommendations: The investigator is responsible for preparing a report responding to each allegation subject to this Policy that Complainant has made. This report should describe the investigator's findings and conclusions to each allegation. There

are two possible findings based on a preponderance of the evidence standard: (1) Substantiated: there is sufficient evidence that it is more likely than not that the Policy has been violated, based on the evidence reviewed; or (2) Unsubstantiated: there is insufficient evidence to prove or disprove that the Policy has been violated, based on the evidence reviewed. 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, if any, for resolution of the matter. This report should be addressed to the appropriate supervisor with copies provided to the general counsel, the Director of Human Resources, and the Title IX or ADA Coordinator, as applicable.

The supervisor shall review the findings and recommendations of the investigator and take such action deemed appropriate. Such action shall be communicated in a letter to Complainant and Respondent(s) with copies to the general counsel, Director of Human Resources, and the Title IX or ADA Coordinator, as applicable, within ten (10) business days of receipt from the investigator.

3. Appeal Process: A Complainant or Respondent may request a review of the findings and conclusions by the appropriate vice president (or President if the complaint concerns a vice 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). A request for review must be submitted to the reviewing official within five (5) business days from the date of the supervisor's notification. The appeal process is not a re-investigation of the original complaint, but is an opportunity for the appealing party to request a review based on one or more of the following grounds for appeal: (1) a procedural error on the part of the investigator that unfairly and materially affected the outcome of the case; or (2) material evidence has been discovered that was not reasonably available at the time of the investigation. A complete request for review will include the basis for the request and how this affected the investigator's determination in the case. Incomplete requests will not be considered. The decision of the reviewing official regarding the finding and determination is final.

D. *Sanctions for University Employees*

1. 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).
2. 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.
3. False Charges: False charges may result in disciplinary action against Complainant by the

university or civil charges against Complainant by Respondent(s). An unsubstantiated charge is not considered “false” unless it is found to be made with the knowledge of it being false.

E. *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 10.4, Student Code of Conduct will guide the proceedings. Informal and formal disposition procedures are outlined within the policy; and it contains full due process procedures.

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.

X. **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 investigator will be responsible for monitoring the circumstances surrounding the complaint to insure the situation has been remedied.

XI. **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 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 Code of Conduct (10.4); Title IX (2.13); Civil Rights Act of 1964, 42 U.S.C. § 2000e, e-2, e-3; 42 U.S.C. § 1981; 20 U.S.C. § 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

Responsible for Implementation: President

Contact for Revision: Director of Human Resources

Forms: None

Board Committee Assignment: Academic and Student Affairs Committee

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