

Discrimination Complaints/Sexual Harassment

Original Implementation: September 1990/February 2, 1982

Last Revision: July 17, 2012

General Policy Guidelines

1. **Purpose:** 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 or sexual harassment by university employees, students, visitors, or contractors.
2. **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. 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/Sexual Harassment policy (11.5) 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.

The Title IX coordinator is designated as the vice president for university affairs and will have three (3) deputy coordinators responsible for investigation of complaints of gender discrimination, including sexual harassment. The deputy coordinators are designated as the director of human resources, dean for student affairs, and the athletics senior women's administrator.

Definitions

1. 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, age, disability, genetic information, citizenship, or veteran status.
2. 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, 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.
3. Sexual Harassment is a form of sex discrimination and is described as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature even if carried out under the guise of humor, and constitutes sexual harassment when:
 - submission to or tolerance of such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; or
 - submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions (including admissions and hiring) affecting that individual; or
 - such conduct has the purpose or effect of unreasonably interfering with an individual's academic or professional performance or creating an intimidating, hostile or offensive employment, educational or living 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.

Physical conduct that, depending on the totality of circumstances present may constitute sexual harassment includes, but is not limited to:

- unwelcome intentional touching;
- deliberate physical interference with or restriction of movement or;
- sexual violence.

Verbal conduct, defined as oral, written, or symbolic expressions (regardless of the method of communication) that depending on the totality of circumstances present may constitute sexual harassment includes, but is not limited to:

- explicit or implicit propositions to engage in sexual activity;
- gratuitous comments, jokes, questions, anecdotes, or remarks of a sexual nature about clothing or bodies;
- gratuitous remarks about sexual activities or speculation about sexual experiences;
- persistent, unwanted sexual or romantic attention;
- subtle or overt pressure for sexual favors;
- exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars, or other materials;
- deliberate, repeated humiliation or intimidation based upon sex.

General Procedures

1. **Reporting:** A person who believes that he or she has been subjected to any type of discrimination, including sexual harassment, 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 or sexual harassment to the alleged offender. Any allegations of sex based discrimination or sexual harassment 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.
2. **Referral Responsibility:** Every supervisor, administrator, department head, and university official is responsible for promptly reporting incidents of discrimination, including sexual harassment, that come to his or her attention to the appropriate university official. Students-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 or sexual harassment 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

1. **Definitions**
 - a. **Complaint** means a signed document alleging discrimination, including sexual harassment under this policy.

- b. **Complainant** means a person who submits a written complaint alleging discrimination, including sexual harassment, under this policy. As there may be more than one complainant in an unlawful discrimination or sexual harassment 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.
- c. **Respondent** means the person alleged to be responsible for the prohibited discrimination or harassment, including sexual 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.

2. **Complaint Procedure**

- a. **Complaint:** A complaint alleging discrimination or harassment, including sexual 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 must be filed within 180 calendar days of the occurrence of the alleged violation.
- 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 or director (or other appropriate administrator) for the area involved will investigate, not as a representative of the complainant, but as an impartial party. 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 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 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, 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 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 (excluding names), 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, the director of human resources, and the Title IX or ADA coordinator, as applicable. The vice 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 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 of 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, 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 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 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 sexual harassment and/or unlawful discrimination. Cross examination of the witnesses is allowed by all parties. In cases of alleged sexual harassment, the parties shall not be permitted to question each other directly. Each party may make a 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) 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 or sexual 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, up to and including termination of employment for faculty or staff. Such activities may be viewed as constituting moral turpitude or substantial neglect of academic responsibilities under the Faculty Code of Conduct policy (7.11) and Tenure policy (7.29), and a major work rule violation under the Discipline and Discharge policy (11.4).

Civil: Unlawful discrimination and sexual harassment are 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 or sexual harassment.

Criminal: Sexual harassment by a public servant is a criminal offense under 39.03 of the Texas Penal Code. Depending on the severity of the acts, sexual harassment may also specifically include indecent exposure, public lewdness, assault, or sexual assault under Chapter 21 and 22 of the Texas Penal Code.

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 10.5, Student Discipline 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 in violation of Title IX. 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.

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 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 (7.29); Discipline and Discharge (11.4); Student Discipline (10.5); 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