

Nondiscrimination

Original Implementation: September 1990/February 2, 1982

Last Revision: July 21, 2020

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 unwelcome, sex-based verbal or physical conduct that:

1. in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
2. 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.

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

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

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

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.

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).

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;
- 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. *Investigative Process for 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 20 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 20 business days or 60 business days for complaints of sexual harassment. It is incumbent upon the investigator to document a reasonable justification for extending an investigation beyond 20 business days, or 60 business days for complaints of sexual harassment.

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 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.

1. Notification of the Respondent: After investigating the allegations, the 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.

2. 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 five (5) business days of receipt from the investigator.

3. 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 final determination.
4. Discrimination Review Board: A 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 board 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. At least five (5) business 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 party. All materials presented must be maintained in a confidential manner by all parties involved.

The investigator will apprise the review board of the charges and will present the investigation report, evidence and findings. The Complainant and Respondent 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 review board will determine whether a Policy violation has occurred by a preponderance of the evidence standard. Cross examination of 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 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.

5. 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.

C. *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 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.

D. *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, General Counsel

Forms: None

Board Committee Assignment: Academic and Student Affairs