

# 14-2 Non - Discrimination Policy

Responsible Officer: Vice President for Human Resources

Sponsoring Department: Equal Opportunity Services

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## **I. Policy Statement**

It is the policy of The University of Texas at Arlington that no person shall, on the basis of race, color, national origin, religion, age, sex, sexual orientation, disabilities, genetic information, and/or veteran status, be denied employment or admission, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity that the University sponsors or conducts.

Retaliation against persons who oppose a discriminatory practice, file a charge of discrimination, or testify for, assist in, or participate in an investigative proceeding relating to discrimination is prohibited. Constitutionally-protected expression will not be considered discrimination or harassment under this policy.

The University of Texas at Arlington (“the University”) complies with the Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, Executive Order 11246, the Age Discrimination in Employment Act of 1967, Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, Title II of the Genetic Information Nondiscrimination Act of 2008, the Vietnam Era Veterans Readjustment Act of 1974, the Texas Commission on Human Rights Act and their subsequent amendments, as well as other applicable federal and state laws and regulations, the Rules and Regulations of the Board of Regents of The University of Texas System, and The University of Texas System Administration Policies & Standards.

## II. Scope

This policy applies to all students and employees of the University, to visitors to the University, and to applicants for admission to or employment with the University.

## III. Definitions

**A. EOS:** the Office of Equal Opportunity Services for The University of Texas at Arlington.

**B. Discrimination:** conduct directed at a specific individual or 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, age, disability, genetic information, veteran status, sexual orientation, gender identity, and/or gender expression.

**C. Harassment:** a form of discrimination that includes verbal or physical conduct directed at an individual or group because of race, color, religion, national origin, age, disability, genetic information, citizenship, veteran status, sexual orientation, gender identity, and/or gender expression, when the conduct is sufficiently severe, pervasive or persistent as to have the purpose or effect of interfering with the individual's or group's academic or work performance, or of creating a hostile academic or work environment.

Harassment based on the victim’s gender is addressed separately in Procedure 14-1.

**D. Verbal conduct:** oral, written, or symbolic expression that:

- personally describes or is personally directed at a specific individual or group of identifiable individuals; and
- is not necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea.

**E. Hostile work environment:** a form of discrimination that exists when a victim is subjected to unwelcome harassment based on race, religion, national origin, age, disability, genetic information, veteran status, sexual orientation, citizenship status, marital status, and/or personal appearance, that is sufficiently severe or pervasive that it alters the terms, conditions or privileges of the victim’s employment with the University and creates an abusive working environment.

A hostile work environment based on the victim’s gender is a form of sexual harassment that is addressed separately in Procedure 14-1.

Behaviors or conduct that may create a hostile work environment include, but are not limited to:

- Repeatedly engaging in sexually-oriented conversations, comments or horseplay, including the using of language or the telling of jokes or anecdotes of a sexual nature in the workplace, office or classroom, even if such conduct is not objected to by those present.

- Gratuitous use of sexually-oriented materials not directly related to the subject matter of a class, course or meeting, even if not objected to by those present.
- Failure to observe the appropriate boundaries of the supervisor/subordinate or faculty/student relationship, including the participation of a supervisor, teacher, advisor or coach in an unreported consensual romantic or sexual relationship with a subordinate employee or student.

#### **IV. Reporting**

If a person believes he or she has been subjected to discrimination or harassment that violates this policy, he or she should report the incident to EOS or to any University official, administrator or supervisor. A faculty member is not a "University official, administrator, or supervisor" for this purpose unless that faculty member holds an administrative position.

The University encourages students, employees and visitors to report concerns to EOS. Incidents should be reported as soon as possible after they occur. However, no person is required to report discrimination or harassment to the alleged offender. The EOS Executive Director is responsible for ensuring that reports and complaints are resolved under this policy.

#### **V. Administrators' Responsibility**

Every University official, administrator, manager, and supervisor is responsible for promptly reporting incidents of discrimination and/or harassment that appear to violate this policy to EOS. If these persons fail to promptly notify EOS of such incidents, they may be deemed to have violated this policy.

#### **VI. Resolution Options**

If a person believes he or she has been subjected to discrimination or harassment that violates this policy and wishes the University to take action in response to that conduct, EOS has both an informal resolution process and a formal complaint process. Neither process is a prerequisite for the other, but both cannot be used at the same time. An individual may request to pursue his or her concerns through either the informal resolution process or the formal complaint process. However, it is within the discretion and authority of the EOS Executive Director, in light of the totality of the circumstances, to determine whether a specific situation will be addressed through the informal resolution process or the formal complaint process.

#### **VII. Informal Resolution**

If a person believes he or she has been subjected to discrimination or harassment that violates this policy, he or she may immediately file a formal complaint as described in Section VIII of this policy. However, informal resolution may be appropriate if the conduct is not severe or repetitive and disciplinary action is not needed to remedy the situation. The University does not formally investigate complaints raised by the informal resolution process, but at any time during the informal resolution process, the University and EOS reserve the right to initiate the formal complaint process regarding the subject matter of the informal resolution.

- A. Reporting:** Individuals wishing to use the informal resolution process should contact the EOS Staff.
- B. Informal Assistance:** If the individual does not wish to file a formal complaint, EOS provides him or her assistance in attempting to resolve possible concerns. This assistance may include providing strategies by which the individual can effectively inform the offending party that his or her behavior is offensive and must cease, taking action to stop the offensive conduct, and/or

modifying the situation in which the alleged offensive conduct occurred. However, the University and EOS reserve the right to take more formal action to ensure an environment free of discrimination.

- C. **Time:** EOS will complete informal resolutions no later than 30 calendar days after it receives an individual's request for informal resolution.
- D. **Confidentiality and Documentation:** EOS will retain its documentation of informal resolution processes. The University will maintain confidentiality to the extent permitted by law. If an individual's desire to remain anonymous constrains EOS' attempts to establish facts and/or eliminate the potential harassment, however, EOS will attempt to balance the individual's desire for confidentiality with its responsibility to ensure an environment free of discrimination.

## VIII. Formal Complaint

### A. Definitions

1. **Complaint:** a signed document alleging discrimination that is filed under the procedures described in this policy.
2. **Complainant:** a person who submits a complaint on his or her own behalf, or the person on whose behalf a complaint is submitted.
3. **Respondent:** the person designated to respond to a complaint. Generally, the respondent is the person whom the complaint alleges to be responsible for the prohibited discrimination or harassment. The term "Respondent" may also denote a person directly responsible for a particular action or a person with administrative responsibility for procedures and policies covered in a complaint.
4. **Notification** takes place two days after the date of posting of any document in the United States mail, properly addressed, or upon the date of receipt of any document, when placed in the campus mail, properly addressed. Written communications to a complainant are properly addressed when sent to the address given in the complaint or the last address given since the filing of the complaint.

### B. Complaint Procedure

#### 1. Complaint:

The complainant should complete a complaint form and file it with EOS. Alternatively, a complainant may lodge an oral complaint. However, the University strongly encourages complainants to file a written complaint. If a complaint is oral, the EOS Investigator will prepare a complaint summarizing what he or she understands the complaint to be alleging, and then ask the complainant to verify the complaint.

The following communications do not constitute a complaint under the formal complaint process and will not be investigated or resolved under the formal complaint process:

- Oral allegations from persons other than a complainant
- E-mail correspondence that does not include a completed complaint
- Courtesy copies of correspondence or a complaint filed with persons or entities other than EOS
- Inquiries that seek advice or information only
- Pre-complaint consultations and informal resolution activities

#### 2. Time:

The University will accept a complaint no later than 90 calendar days after an alleged violation of this policy occurs. For that reason, the University encourages prospective complainants to file a complaint as soon as possible after the alleged violation occurs.

If the prospective complainant is a currently-enrolled student and the deadline for filing a complaint falls before the end of the academic semester in which the alleged violation occurred, then EOS will accept the complaint no later than 30 calendar days after the end of that semester.

The period in which the University will accept a complaint under this policy may be extended for good cause as determined by the EOS Executive Director. *In no case will the University review a complaint more than one year after an alleged incident.*

**3. Acknowledgement:**

No later than 5 working days after it receives a properly-filed complaint, EOS will contact complainant to acknowledge receipt of the complaint and to provide the name of the EOS Staff who will investigate the matter.

**4. Initial Evaluation:**

EOS will initiate a formal investigation if a complaint is complete, timely, and within the scope of this policy, and if it articulates sufficient specific facts, that, if determined to be true, would support a finding that this policy was violated.

EOS may not proceed with a complaint investigation under a variety of circumstances, for instance, if:

- a person fails to provide a written, signed complaint;
- a person fails to verify the EOS Investigator's written summary of an oral complaint;
- the complaint fails to describe in sufficient detail the conduct that is the basis of the complaint;
- the conduct described in the complaint is not covered by this policy;
- the complaint is not timely;
- the complainant declines to cooperate in the investigation;
- the complaint is withdrawn; or
- an appropriate resolution or remedy has already been achieved, or has been offered to the complainant but rejected.

If EOS determines that it will not conduct an investigation, the assigned investigator will send a notification letter to the complainant that explains that fact and identifies the reason(s) for not conducting an investigation. The notification letter will also inform the complainant that, no later than 5 working days after receiving the notification, he or she may appeal that determination to the EOS Executive Director. That appeal must be a signed, written document explaining why the decision to dismiss the complaint was in error. The EOS Executive Director will respond to that appeal no later than 10 working days after receiving it. If the decision to dismiss the complaint is upheld, that decision is final. If the decision to dismiss is overturned, the EOS Executive Director will send the complaint back to the EOS assigned investigator for investigation in accordance with the procedures outlined below.

**5. Notification of Respondent:**

If EOS proceeds with a complaint investigation, the EOS Staff will contact the respondent to schedule a time to pick up the complaint. At that time, the respondent will receive a copy of the complaint and a copy of this policy, and will be asked to sign an acknowledgement form cautioning him or her against retaliation. The respondent will then be given an opportunity to submit a written response to the complaint no later than 10 working days after receiving it, unless EOS determines that circumstances warrant additional time.

If the respondent is a University employee, he or she must pick up the complaint and submit a timely response. If the employee fails to submit a timely response, he or she will be deemed to have failed to cooperate with an internal, employer-sponsored investigation. Furthermore, a failure to respond will require EOS to inform the employee's supervisor and other members of the University administration of the respondent's failure to cooperate with a University investigation.

**6. Investigation Responsibility:**

The EOS Executive Director, or a member of the EOS Staff designated by the EOS Executive Director as the assigned investigator, is responsible for conducting formal investigations of complaints that allege discrimination and harassment in violation of this policy. If a complaint is directed against an individual who otherwise would play a role in investigating and attempting to resolve the complaint, the University will delegate the appropriate investigation or resolution function to another person.

**7. Investigative Process:**

Generally, the investigator will interview the complainant, the respondent and persons who are considered to have factual information relevant to the complaint. In addition, the investigator generally will gather and examine documents relevant to the complaint.

In doing so, the investigator will consider facts on the basis of what is reasonable to persons of ordinary sensitivity, and not on the particular sensitivity or reaction of an individual. The investigator's findings will be based on the totality of the circumstances surrounding the conduct complained of, including, but not limited to, the context of that conduct, its severity, and frequency, whether it was physically threatening and/or humiliating (or a mere offensive utterance), and whether it unreasonably interferes with a person's performance as a University employee or student.

**8. Confidentiality:**

To the extent authorized by law and requested by the investigator, the University requires any individual who participates in the investigative process to keep the investigation and related information confidential and not to discuss the investigation with anyone outside of those conducting the investigation.

**9. Representation:**

During the complaint process, the complainant and the respondent may designate and be accompanied by an advisor of their respective choosing at meetings and interviews at which they are present; however, no representative may examine witnesses or otherwise actively participate in a meeting or interview.

**10. Submission of Evidence:**

During the complaint investigation process, the complainant and the respondent will provide the investigator with all documents requested by him or her that relate to the complaint.

**11. Investigative Report & Recommendations:**

- a. After completing the investigation, the investigator will prepare a written report summarizing the investigation. This summary report will include findings, a recommendation of whether a violation of the policy occurred, and suggested disciplinary action if a violation of the policy occurred. The investigator will forward the summary report to the EOS Executive Director, who will then forward a copy of the report to the Provost or appropriate Vice President. The complainant and the respondent will also be provided a summary report of the investigation.
- b. The complainant and the respondent will be afforded an opportunity to submit comments regarding the report to the EOS Executive Director by a deadline stated in the transmittal letter sent to each of them. However, if a complaint is filed against a student, then the complainant and respondent will not be sent a summary report of the investigation for comments due to the Family Educational Rights and Privacy Act's restrictions on disclosure of education records.

No later than 10 working days after the deadline for the complainant and respondent to submit comments, the EOS Executive Director will **i)** request further investigation into the complaint, **ii)** dismiss the complaint if the results of the completed investigation are inconclusive or there is insufficient reasonable, credible evidence to support the allegations(s), or **iii)** find that this policy was violated and suggest appropriate remedial action. The EOS Executive Director shall send a determination letter to inform the complainant, the respondent, and the appropriate administrative head and Vice President of the decision. However, if a complaint is filed against a student, then the determination letter will be written in compliance with the Family Educational Rights and Privacy Act.

- c. If the EOS Executive Director issues a decision that this policy was violated, the matter will then be remanded to the Provost or appropriate Vice President for the assessment of any disciplinary action. The determination that this policy was violated shall be made upon the record by EOS and shall be based on the totality of the circumstances surrounding the conduct complained of, including, but not limited to, the context of that conduct, its severity, frequency, whether it was physically threatening and/or humiliating (or a mere offensive utterance), and whether it unreasonably interferes with a person's performance as a University employee or student.
- d. In reaching this decision, the EOS Executive Director will consider facts on the basis of what is reasonable to persons of ordinary sensitivity and not on the particular sensitivity or reaction of an individual.
- e. It is the decision of the Provost or appropriate Vice President to authorize disciplinary actions based upon a violation of this policy. Disciplinary actions may include, but are not limited to, written reprimands, imposition of conditions, reassignment, suspension without pay, termination, and/or expulsion, as appropriate.
- f. Disciplinary action, if any, will be imposed in accordance with the University's policies for discipline and dismissal of faculty and employees and/or the University's student disciplinary procedures.
- g. EOS will be copied on any letters sent out by other University administrators issuing disciplinary action as a result of an EOS investigation. EOS will also monitor recommended resolutions and disciplinary actions. EOS will then record the resolution and/or disciplinary action and place any follow-up reports in the case file.

## **IX. Provisions Applicable to all Complaints**

### **A. Retaliation Prohibited**

A student, faculty, or staff member who retaliates in any way against an individual, who has brought a complaint pursuant to this policy or participated in good faith in an investigation of such a complaint, is subject to disciplinary action, up to and including termination from employment with and/or expulsion from the University.

### **B. Filing of False Complaints**

Any person who knowingly and intentionally files a false complaint under this policy is subject to disciplinary action up to and including termination from employment with and/or expulsion from the University.

### **C. Interference with an Investigation**

Any person who knowingly and intentionally interferes with an investigation conducted under this policy is subject to disciplinary action, up to and including termination from employment with and/or expulsion from the University. Interference with an investigation may include, but not be limited to:

- a. Discussing the investigation or related information with other, unauthorized individuals;
- b. Removing, destroying, or altering documentation related to the investigation; and/or
- c. Providing intentionally false or misleading information to the investigator(s)

Actions that interfere with an ongoing investigation may also be deemed acts of retaliation under this policy.

### **D. Effect on Pending Evaluation or Disciplinary Actions**

The filing of a complaint under this policy does not automatically stop or delay any evaluation or disciplinary actions related to a complainant who is not performing up to acceptable standards or who has violated University rules or policies.

### **E. Relationship of Complaint Process to Outside Agency Time Limits**

The filing of a complaint under this policy does not excuse a complainant from meeting time limits imposed by outside agencies.

**F. Deadlines**

The deadlines identified in this policy may be extended for good cause as determined by the EOS Executive Director. Examples of reasons that constitute good cause include, but are not limited to, holidays, University breaks, or the unavailability of witnesses or parties to a complaint. *In no case will the University review a complaint more than one year after an alleged incident.*

**G. Documentation and Confidentiality**

The University shall maintain documents related to complaints under this policy as required by law. The Vice President of Student Affairs' Office shall be primarily responsible for records related to complaints against students. EOS shall be primarily responsible for records related to complaints against non-students.

The confidentiality of a complaint under this policy and all documents, correspondence, interviews and discussions relating to the investigation of the information contained in a complaint will be maintained on a "need to know" basis to the extent authorized by law. Any person who knowingly and intentionally makes an unauthorized disclosure of confidential information contained in a complaint or relating to the investigation of a complaint under this policy is subject to disciplinary action up to and including termination from employment with the University and/or expulsion from the University.

**H. Recording Devices**

No recording devices by parties and/or witnesses are allowed during EOS interviews or meetings and no recording by parties and/or witnesses is allowed of EOS telephone conversations. EOS and its designated investigators expressly reserve the option to employ recording devices in party and/or witness interviews.

**X. Contact Information:**

*Questions regarding this policy should be directed to Equal Opportunity Services.*

*Equal Opportunity Services*

*710 S. Davis Street*

*Box 19569*

*Arlington, Texas 76019*

*817.272.2106*

*EOS website: <http://www.uta.edu/hr/eos/index.php>*

**XI. Dissemination of Policy**

Copies of the policy are available in Equal Opportunity Services and accessible at the EOS website. Periodic notices sent to students, employees, and supervisors about the University's EOS Non-discrimination Policy will include information about the complaint procedure and will refer individuals to the designated office for additional information.

*In accordance with Texas Labor Code section 21.010, all UT Arlington employees, including faculty, are required to complete training regarding the University's procedures relating to employment discrimination, including its procedures regarding sexual harassment, no later than the 30th day after the date the employee is hired, and to complete supplemental training every two years. The University will generate an electronic acknowledgement after each individual completes his/her training, and will retain the acknowledgement in the individual training records of the University.*