

Policy Name: 3.04.1 Non-Discrimination**Scope:**

It is the policy of The University of Texas at Tyler and The University of Texas Health Science Center, (UT Tyler) to provide an educational and working environment that provides equal opportunity to all members of the UT Tyler community. In accordance with federal and state law, UT Tyler prohibits unlawful discrimination on the basis of race, color, gender, sex, sexual orientation, pregnancy, genetic information, gender identity, gender expression, religion, national origin, age, disability, citizenship, and veteran status in all aspects of employment and education.

Authority/Persons Affected:

Relevant Federal and State Statutes (This list is not inclusive of all laws prohibiting discrimination.):

The United States Constitution, First Amendment Title IX of the Education Amendments of 1972
Section 504 of the Rehabilitation Act of 1973
The Uniformed Services Employment and Reemployment Rights Act
Title VI of the Civil Rights Act of 1964
Title VII of the Civil Rights Act of 1964
The Age Discrimination Act of 1975 Texas
Labor Code Chapter 21

UT System Board of Regents' Rules and Regulations:

Rule 10701, Policy Against Discrimination
Rule 30107, Veteran's Employment Preferences

Persons affected:

This policy and complaint procedure applies to all University administrators, faculty, staff, students, visitors and applicants for employment or admission.

Definitions

1. Discrimination, including harassment, 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 on account of race, color, gender, sex, sexual orientation, pregnancy, genetic information, gender identity, gender expression, religion, national origin, age, disability, citizenship, and 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, gender, sex, sexual orientation, pregnancy, genetic information, gender identity, gender expression, religion, national origin, age, disability, citizenship, and veteran status when such conduct is sufficiently severe, pervasive or persistent so as to substantially interfere with an individual's or group's academic or work performance; or of creating a hostile academic or work

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environment. Constitutionally protected expression cannot be considered harassment under this policy.

3. Retaliation is defined as any adverse action threatened or taken against an individual because the individual has filed, supported, provided information in connection with a complaint of discrimination or engaged in other legal protected activities. Retaliation includes, but is not limited to, intimidation, threats or harassment against any complainant, witness or third party.

Policy and Procedures

This policy is the principal prohibition of all forms of discrimination regardless of where it occurs, including both on and off university property, if it potentially affects the alleged victim's education or employment with the following exceptions: Sexual Harassment/Sexual Misconduct (which is controlled by the HOP policy 2.4.3).

Reporting Responsibilities: UT Tyler encourages any person who believes that they have been subjected to discrimination to immediately file a complaint with the appropriate office listed below and to utilize the procedures set forth in this policy. Every supervisor, administrator and UT Tyler official is responsible for promptly reporting incidents of prohibited discrimination and harassment that comes to their attention. Students, faculty, staff, and visitors who witness or are aware of suspected incidents of prohibited discrimination are strongly encouraged to immediately report the incident to:

For employees or applicants for employment, contact the:

Office of Human Resources 3900 University Blvd.
Tyler Texas, 75799
Phone: (903) 566-7234

Office of Human Resources 11937 U.S. Hwy 271
Tyler Texas, 75708
Phone: (903)877-7740

For students, contact the:

Office of the Dean of Students 3900 University Blvd.
Tyler, Texas 75799
Phone: (903) 566-5946

Complaints and reports of any prohibited discrimination should be filed as soon as possible after the conduct giving rise to the complaint. Delay in filing or reporting can greatly limit UT Tyler's ability to stop the harassment/discrimination and take effective action against the alleged respondent. Complaints regarding unlawful discrimination or harassment should be filed within

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thirty (30) calendar days after the event occurred. In the case of a currently enrolled student, if the last day for filing a complaint falls prior to the end of the academic semester in which the

alleged violation occurred, then the complaint may be filed within thirty (30) calendar days after the end of that semester.

Resolution Options: A person who believes that he or she has been subjected to discrimination or harassment in violation of this policy and seeks to take action may use either the Informal Resolution process or the Formal Complaint process, or both. Both processes are administered by the respective office. The Informal Resolution and Formal Complaint process described in this policy are not mutually exclusive and neither is required as a pre- condition for choosing the other; however, they cannot both be used at the same time.

1. **Informal Resolution Process:** This process may be used as a prelude to file a Formal Complaint or as an alternative. It is not necessary that this option be used. Anyone who believes that they have been subject to discrimination may immediately file a Formal Complaint as described in Subsection (2) below. Informal resolution may be an appropriate choice when the conduct involved is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. No formal investigation is involved in the informal resolution process.
 - a. **Informal Assistance:** The individual is provided assistance in attempting to resolve possible harassment or discrimination if the individual does not wish to file a Formal Complaint. Such assistance includes strategies for the individual to effectively inform the offending party that their behavior is unwelcomed and/or offensive and should cease, action by an appropriate University official to stop the unwelcome and/or offensive conduct, modification of the situation in which the offensive conduct occurred, or mediation between the parties. However, the University may take more formal action, including disciplinary action, to ensure an environment free of unlawful harassment and discrimination.
 - b. **Timeframe:** Informal Resolutions will be addressed as soon as possible after a complaint is filed and completed within sixty (60) calendar days from receipt of a request for Informal Resolution.
2. **Formal Complaint Procedures:** This complaint procedure also constitutes the grievance procedure for complaints alleging unlawful gender discrimination required under Title IX of the Education Amendments of 1972. As used herein, "complaint" is synonymous with "grievance."
 - a. **Formal Complaint -** In order to initiate the investigation process, the complainant should submit a signed, written statement setting out the details of the conduct that is the subject of the complaint, including the complainant's name, signature, and contact information; the name of the person directly responsible for the alleged violation(s); a

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detailed description of the conduct or event that is the basis of the alleged violation; the date(s) and location(s) of the occurrence(s); the names of any witnesses to the occurrence(s); the resolution sought; and any documents or information that is relevant to the complaint. While an investigation may begin on the basis of an oral complaint, the complainant is strongly encouraged to file a written complaint. When a UT Tyler employee, supervisor or University office receives a complaint with a written statement, the individual receiving the complaint shall immediately notify the appropriate office.

b. Complaint Investigation

- i. Depending on the nature of the complaint, the appropriate office listed under Reporting Responsibilities will be responsible for investigating formal complaints. If the complaint is not in writing, the investigator should prepare a statement of what they understand the complaint to be and seek to obtain verification of the complaint from the complainant.
- ii. Within ten (10) workdays of receipt of a complaint, the investigator, as appropriate, may either dismiss the complaint or authorize an investigation of the complaint. A complaint may be dismissed if the facts alleged in the complaint, even if taken as true, does not constitute prohibited harassment, discrimination or retaliation; the complaint fails to allege any facts that suggest prohibited harassment or discrimination occurred; or the appropriate resolution or remedy has already been achieved, or has been offered and rejected. If it is determined that a complaint will not be investigated, the appropriate office will contact the complainant and/or send the complainant a notification letter explaining the reason for the dismissal and informing the complainant that, within fifteen (15) work days of the notification, they may appeal the decision not to proceed with a complaint investigation to the appropriate administrator named in the letter. The written appeal must explain why the decision to dismiss the complaint was in error. The administrator named in the notification letter will respond within twenty (20) workdays of receipt of the appeal. The decision is final. If the decision to dismiss is overturned, the complaint will be sent back to the appropriate office for investigation in accordance with the procedures outlined below.
- iii. As part of the investigation process, the respondent shall be provided with a copy of the complaint and allegations or a statement from the appropriate office that explains the allegations as they and the complainant understand them to be. The respondent will be allowed ten (10) calendar days upon receipt of the document to provide a written response.

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- iv. The complainant and the respondent may present witnesses and any document or information that is believed to be relevant to the complaint.
 - v. Any persons thought to have information relevant to the complaint will be interviewed and such interviews will be appropriately documented.
 - vi. Both the complainant and respondent may recommend witnesses for interview and suggest questions that should be asked. Neither the complainant nor the respondent may attend investigation interviews of witnesses or the gathering of evidence.
 - vii. The investigation of a complaint will be concluded as soon as possible after receipt of the written complaint. In investigations exceeding ninety (90) workdays, a justification for the delay will be presented to and reviewed by the appropriate administrator overseeing the investigative office. The complainant, respondent, and appropriate supervisor will be provided an update on the progress of the investigation and issuance of the report.
- c. Upon completion of the investigation, a written report will be issued. The report shall include: a recommendation of whether a violation of the policy occurred, an analysis of the facts discovered during the investigation, any relevant evidence, and recommended disciplinary action if a violation of the policy occurred. Factual conclusions shall be based on a preponderance of the evidence standard. The Office of Human Resources may also make recommendations to resolve any workplace issues it may discover during the investigation process regardless of whether prohibited harassment or discrimination can be substantiated.
 - d. A copy of the report will be sent to the complainant, the respondent, and the appropriate vice president or dean who has authority over the respondent. The complainant and respondent have ten (10) workdays from the date of the report to submit written comments regarding the report to the appropriate vice president or dean. For complaints involving a student-respondent, in accordance with the Family Education Rights and Privacy Act (FERPA) and the Texas Education Code, Section 51.917, the complainant and the respondent will receive a copy of the report in which all student identifiable information has been redacted.
 - e. Within ten (10) workdays of receiving any written comments submitted by the complainant or respondent, or, if no comments were submitted, the appropriate vice president or dean who has authority over the respondent will take one of the following actions:
 - i. Request further investigation into the complaint;
 - ii. Dismiss the complaint if the results of the completed investigation are

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inconclusive or there is not a preponderance of the evidence (i.e., there is insufficient reasonable, credible evidence to support the allegation(s));
or

- iii. Find that this policy was violated.
 - i. A decision that this policy was violated shall be made upon the record provided by the investigator and any comments submitted by the complainant or respondent; and shall be based on the totality of circumstances surrounding the conduct complained of, including but not limited to: the context of that conduct, its severity, frequency, whether it was physically threatening, humiliating, or was simply offensive in nature. 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.
 - ii. If the appropriate vice president or dean who has authority over the respondent determines that this policy was violated, they will refer the matter for disciplinary action in accordance with UT Tyler's applicable disciplinary procedures. Implementation of disciplinary action against faculty and staff will be handled in accordance with UT Tyler's policy and procedures for discipline and dismissal of faculty and employees. Disciplinary actions can include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension, and dismissal. Implementation of disciplinary action against students will be referred to the Office of Student Conduct for processing in accordance with the Student Code of Conduct. Disciplinary actions against students can include probation, suspension, or expulsion from the University.
- f. The complainant and the respondent shall be informed in writing of the appropriate vice president's or dean's final decision and be provided a copy of the final statement of findings. However, if a complaint is filed against a student, information sent to the complainant will be in compliance with the Family Educational Rights and Privacy Act.
- g. Both the complainant and the respondent shall be afforded an opportunity to appeal any disciplinary action imposed by utilizing the established policies governing such appeals:
 - i. Faculty: HOP 3.5.0, Faculty Grievance Procedure
 - ii. Staff: HOP 4.16.4, Discipline and Dismissal of Classified Employees, or HOP 4.19.1, Grievance Policy and Procedures

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iii. Students: MOPP, Chapter 8-600 Appeal

Provisions Applicable to All Complaints

- a) Assistance: During the complaint process, a complainant, respondent or witness may be accompanied by an uninvolved person of their choice, including an attorney, unless doing so would violate FERPA; however, this individual may not actively participate in the meeting or interview. In addition, this individual must not have any personal knowledge regarding the facts surrounding the complaint.
- b) Retaliation: An administrator, faculty member, student or employee who retaliates in any way against an individual who has brought a complaint pursuant to this policy or an individual who has participated in an investigation of such a complaint is subject to disciplinary action, including dismissal.
- c) Confidentiality and Documentation: The University shall document complaints and their resolution. The investigative office, as appropriate, shall retain such documentation. The documentation will be retained in accordance with State and Federal records laws and UT Tyler policy. To the extent permitted by law, complaints and information received during the investigation will remain confidential. Relevant information will be provided only to those persons who need to know in order to achieve a timely resolution of the complaint. Where the individual's desire to maintain anonymity constraints attempts at establishing facts and eliminating the potential harassment or discrimination, UT Tyler will attempt to find the right balance between the individual's desire for privacy and confidentiality with the responsibility of UT Tyler to provide an environment free of prohibited harassment and discrimination.
- d) Prevention of Recurrence: If discriminatory conduct is found to have existed, the University will take appropriate steps to (1) prevent recurrence of any such discriminatory conduct, and (2) correct its effects on the complainant and others, if appropriate.
- e) False Complaints/Statements: Any person who knowingly and intentionally files a false complaint under this policy or knowingly and intentionally makes false statements in the course of an investigation is subject to disciplinary action up to and including dismissal from the University.
- f) Monitoring: Periodic monitoring of complaint resolutions will be conducted by the Director of Human Resources to ensure that discriminatory practices are no longer a factor in the workplace or academic environment, and that no retaliation for filing the complaint has taken place.

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The policy will be made available to all faculty, employees and students. Regular compliance training will provide guidance to employees and faculty about UT Tyler's Nondiscrimination Policy and will include information about complaint procedures and will refer individuals to designated offices or officials for additional information. Periodic notices will be sent to students, faculty, and staff about UT Tyler's Nondiscrimination Policy. The notice will specify the right to file a complaint under this policy and will refer individuals to designated offices or officials for additional information.

UT Tyler may periodically educate and train employees and supervisors regarding the policy and conduct that could constitute a policy violation. Preventive education and training programs will be provided to students, faculty, and staff.

In accordance with Texas Labor Code 21.010, all UT Tyler employees, including faculty, are required to complete discrimination training no later than the 30th calendar day after the date the employee is hired and shall complete supplemental training every two years. The electronic training record is the acknowledgement and verification that the training has been conducted.

Each vice president, dean, or designee will periodically assess their area of authority to make sure a climate is maintained that promotes an educational and working environment that provides equal opportunity to all members of the UT Tyler community. If problems are noted or if the circumstances surrounding a complaint are not remedied, the Office of Human Resources shall be notified immediately for assistance in taking corrective actions.

Curriculum Oversight Committee approved: Pending – 5/2023

Review and Modification – 2/2022