

THE UNIVERSITY OF TEXAS AT EL PASO

Sexual Harassment and Misconduct Policy

I. Statement of Policy

The University of Texas-El Paso (UTEP) condemns sexual harassment of or by its students, staff, and faculty. UTEP is committed to the principle that the learning and working environment of its students, employees and guests should be free from sexual harassment and inappropriate conduct of a sexual nature. Sexual harassment is a form of sex discrimination and is illegal. Sexual misconduct and sexual harassment are unprofessional behaviors. Such conduct is prohibited as a matter of institutional policy and will be subject to disciplinary action.

II. Scope of Policy

This policy applies to all University administrators, faculty, staff, students, visitors and applicants for employment or admission. It applies not only to unwelcome conduct that violates state and federal laws concerning sexual harassment but also to inappropriate conduct of a sexual nature. It is also applicable regardless of the gender of the complainant or the alleged harasser.

III. Statutory Reference

Sexual harassment is a form of sex discrimination under Title VII of the Civil Rights Act of 1964, Title IX of the Civil Rights Act of 1972, and the Texas Commission on Human Rights Act, Article 5221k, Vernon's Texas Civil Statutes, and it is illegal, and actionable under civil and criminal law.

IV. Definitions

- A. Sexual Misconduct. Sexual misconduct includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual that does not rise to the level of sexual harassment but is unprofessional and inappropriate for the workplace or classroom.
- B. Sexual Harassment. Sexual harassment, includes unwelcome sexual advances, requests for sexual favors, verbal or physical conduct of a sexual nature when:
1. submission to such conduct is made either explicitly or implicitly a term or condition of employment or student status;
 2. submission to or rejection of such conduct is used as a basis for evaluation in making personnel or academic decisions affecting that individual; or
 3. such conduct has the purpose or effect of unreasonably interfering with an individual's performance as an administrator, faculty member, staff or student, or creating an intimidating, hostile or offensive environment.

C. Examples. Examples of behavior that could be considered sexual misconduct or sexual harassment include but are not limited to:

1. physical contact of a sexual nature including touching, patting, hugging, or brushing against a person's body;
2. explicit or implicit propositions or offers to engage in sexual activity;
3. comments of a sexual nature including sexually explicit statements, questions, jokes or anecdotes; remarks of a sexual nature about a person's clothing or body; remarks about sexual activity; speculation about sexual experience;
4. exposure to sexually oriented graffiti, pictures, posters, or materials; and/or
5. physical interference with or restriction of an individual's movements.

V. Consensual Relationships

Every consenting romantic and sexual relationships between a faculty member and a student or between supervisor and employee may potentially evolve into a sexual harassment case with serious implications, either from a subsequent change of attitude by the parties involved or from a contemporary complaint from a disadvantaged third party. Faculty members exercise power over students, as do supervisors over employees, whether in evaluating them, making recommendations for their promotion or future employment, or conferring other benefits. Others may be adversely affected by the relationship in that it places the faculty member or supervisor in a position to favor or advance one student or employee's interest at the expense of others.

As provided in the American Association of University Professors policy on consensual relationships, faculty are expected to be aware of their professional responsibilities in their relationships with students and "avoid apparent or actual conflict of interest, favoritism, or bias."

It is the policy of the University of Texas El Paso that the following romantic or sexual relationships are prohibited:

- between a faculty member and a student who is enrolled in the faculty member's course or who is otherwise under the supervision of the faculty member, or
- between a supervisor and a person under his or her supervision.

This policy is not intended to discourage the interaction of faculty and students, and supervisors and employees where it is appropriate and ethical; however, it is intended to clarify that romantic or sexual relationships often create situations that lead to sexual harassment, conflicts of interest, favoritism, and low morale. Therefore, such relationships are prohibited and subject to disciplinary action.

Complaints concerning consensual relationships by non participating individuals will be treated as third-party sexual harassment or sexual misconduct complaints.

VI. Informal Resolution

This process may be used as a prelude to filing a formal complaint or as an alternative. It is not necessary that this option be used. Anyone who believes that he or she has been subject to sexual harassment or sexual misconduct may immediately file a formal complaint as described in Section VI of this policy. An individual wishing to utilize the informal resolution process should contact the Employee Relations Official, Equal Opportunity/Affirmative Action (EO/AA) Officer or the Dean of Students, as designated by the University.

- A. Informal Assistance. The individual is provided assistance in attempting to resolve possible sexual harassment or sexual misconduct 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 his or her behavior is unwelcome and should cease, action by an appropriate university official to stop the unwelcome conduct, or mediation. However, the University may take more formal action to ensure an environment free of sexual harassment or sexual misconduct.
- B. Timeframe. Informal resolutions will be completed within 30 days from receipt of a request for informal resolution.
- C. Confidentiality and Documentation. The University shall document informal resolutions. The Office of the Dean of Students or the Office of Equal Opportunity/Affirmative Action as appropriate shall retain such documentation. The University will endeavor to maintain confidentiality to the extent permitted by law. Where the individual's desire to maintain anonymity constrain attempts at establishing facts and eliminating the potential harassment, the University will attempt to find the right balance between the individual's desire for privacy and confidentiality with the responsibility of the University to provide an environment free of sexual harassment.

VII. Complaint Procedures (This complaint procedure also constitutes the grievance procedure for complaints alleging unlawful sex discrimination required under Title IX of the Education Amendments of 1972. As used herein, "complaint" is synonymous with "grievance.")

- A. Reporting
 - 1. The University of Texas at El Paso encourages any person who believes that he or she has been subjected to sexual misconduct or sexual harassment to immediately report the incident to the appropriate supervisor of the accused faculty member or employee, to the EO/AA Officer or Employee Relations Officer, or when a student is the complainant or the accused individual, to the

Dean of Students. In no case will a complainant be required to report such conduct to the person accused of the misconduct, for example where the accused is the complainant's supervisor. The complainant will be advised of the procedures for filing a formal complaint of sexual harassment or sexual misconduct. When a supervisor or the Dean of Students receives a complaint, he or she will immediately notify the EO/AA Officer or Employee Relations Officer, as designated by the University.

2. Complaints should be filed as soon as possible after the conduct giving rise to the complaint, but no later than 60 days after the event occurred.
3. 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; a 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 supervisor or the Dean of Students receives a complaint with a written statement, he/she shall immediately notify the EO/AA Officer or Employee Relations Officer, as designated by the University.

B. Complaint Investigation

1. The Dean of Students, Employee Relations Officer and/or the EO/AA Officer, as appropriate, is responsible for investigating formal complaints. If the complaint is not in writing, the investigator should prepare a statement of what he or she understands the complaint to be and seek to obtain verification of the complaint from the complainant.
2. Within five working days of receipt of a complaint, the Dean of Students, Employee Relations Officer and/or the EO/AA Officer, 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 sexual misconduct or sexual harassment; the complaint fails to allege any facts that suggests sexual misconduct or sexual harassment occurred; or the appropriate resolution or remedy has already been achieved, or has been offered and rejected.

2.1 If it is determined that a complaint will not be investigated, the Dean of Students, Employee Relations Officer and/or the EO/AA Officer, as appropriate, will send the complainant a notification letter explaining the reason and informing the complainant that, within ten (10) working days of the notification, he or she may appeal the decision not to proceed with a complaint investigation to the Vice President for Finance and Administration, Vice

President for Academic Affairs or the Vice President for Student Affairs, as appropriate. The written appeal must explain why the decision to dismiss the complaint was in error. The appropriate vice president will respond within twenty (20) working days of receipt of the appeal. The vice president's decision is final. If the decision to dismiss is overturned, the complaint is sent back to Equal Opportunity/Affirmative Action Office or the Office of the Dean of Students, as appropriate, for investigation in accordance with the procedures outlined below.

3. As part of the investigation process, the accused individual shall be provided with a copy of the complaint and allowed a reasonable time to respond in writing.
4. The complainant and the accused individual may present any document or information that is believed to be relevant to the complaint.
5. Any persons thought to have information relevant to the complaint shall be interviewed and such interviews shall be appropriately documented. Other acceptable methods for gathering information include but are not limited to visual inspection of materials alleged to be offensive and follow-up interviews as necessary.
6. The investigation of a complaint will be concluded as soon as possible after receipt of the written complaint. In investigations exceeding 60 days, a justification for the delay shall be presented to and reviewed by the vice president overseeing the investigative office. The complainant, accused individual and supervisor will be provided an update on the progress of the investigation after the review.
7. 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, and recommended disciplinary action if a violation of the policy occurred.

C. Complaint Determination

1. A copy of the investigation report will be sent to the appropriate administrative official, the appropriate vice president, the complainant and the respondent. The complainant and respondent have seven (7) working days from the date of the report to submit comments regarding the report to the administrative official. However, if a complaint is filed against a student, then information sent to the complainant must be in compliance with the Family Education Rights and Privacy Act.
2. Within 10 working days of receiving any comments submitted by the complainant or respondent, the appropriate administrative official will take one of the following actions: a) request further investigation into the complaint; b) dismiss the complaint if the results of the completed

investigation are inconclusive or there is insufficient reasonable, credible evidence to support the allegation(s); or c) find that this policy was violated. 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.

3. If the appropriate administrative official determines that this policy was violated, he or she, will take disciplinary action that is appropriate for the severity of the conduct. Disciplinary actions can include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension, and dismissal.
4. The complainant and the respondent shall be informed in writing of the administrative official's decision and be provided a copy of the final statement of findings. However, if a complaint is filed against a student, then information sent to the complainant must be in compliance with the Family Education Rights and Privacy Act .
5. Implementation of disciplinary action against faculty and employees will be handled in accordance with the University's policy and procedures for discipline and dismissal of faculty and employees. The Dean of Students will impose disciplinary action, if any, against a student in accordance with the University's student disciplinary procedures. Where the resolution requires continued monitoring to ensure that the concerns raised have been addressed, the file documenting the complaint will reflect the monitoring plan.

VIII. Provisions Applicable to all Complaints

- A. Assistance. During the complaint process, a complainant or respondent may be assisted by a person of his or her choice; however, the assistant may not examine witnesses or otherwise actively participate in a meeting or interview.
- 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 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 Office of the Dean of Students or the Office of Equal Opportunity/Affirmative Action as appropriate shall retain such documentation. 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.

IX. Dissemination of Policy

The policy will be disseminated annually to all faculty, employees and students, and is available through the University's Equal Opportunity/Affirmative Action Office. The University will periodically educate and train employees and supervisors regarding the policy and conduct that could constitute a violation of this policy. Pursuant to Texas Labor Code, Section 21.010, new employee shall receive this training and this policy within 30 days of hire. All employees shall participate in a refresher training every two years. Such training shall be documented in each employee's personal file via an employee statement of training.

X. Review

This policy shall be reviewed every three years by the EO/AA Officer, the Dean of Students and the Director of Human Resource Services.