

**HEALTH SCIENCE CENTER HANDBOOK OF OPERATING PROCEDURES**

Chapter 4	General Personnel Policies	Effective:	November 2000
Section 4.2	Employee Relations	Revised:	January 2017
<b>Policy 4.2.1</b>	<b>Nondiscrimination Policy and Complaint Procedure</b>	Responsibility:	Vice President for Human Resources and the Vice President for Academic, Faculty and Student Affairs

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## **NONDISCRIMINATION POLICY AND COMPLAINT PROCEDURE**

### **Policy**

It is the policy of UT Health San Antonio to provide an educational and working environment that provides equal opportunity to all members of the University community. In accordance with federal and state law, the University prohibits unlawful discrimination on the basis of race, color, religion, sex, national origin, age, disability, citizenship, genetic information, and veteran status. To the extent permitted by law, discrimination on the basis of sexual orientation is also prohibited pursuant to University policy.

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### **Scope of Policy**

This policy applies to all University administrators, faculty, staff, students/residents, fellows, post-docs, visitors and applicants for employment or admission. This policy is the principal prohibition of all forms of discrimination on campus, except as follows:

- The University's controlling policy and procedures relating to sexual harassment and sexual misconduct can be found in the *Handbook of Operating Procedures (HOP)*, [Section 4.2.2](#), "Title IX Sexual Harassment/Sexual Misconduct Policy."
- Complaints concerning wages, hours of work, working conditions, performance evaluations, merit raises, job assignments, reprimands, and the interpretation or application of a rule, regulation or policy are governed by the HOP, [Section 4.9.5](#), "Grievance Policy and Procedures".

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### **Definitions**

**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, religion, sex, national origin, age, disability, citizenship, genetic information, veteran status, or sexual orientation.

**HARASSMENT**: As a form of discrimination, is defined as verbal or physical conduct that is directed at an individual or group because of

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race, color, religion, sex, national origin, age, disability, citizenship, genetic information, veteran status, or sexual orientation 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. Constitutionally protected expression cannot be considered harassment under the policy.

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**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. The informal resolution and formal complaint resolution 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.

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**Informal Resolution Process**

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 discrimination may immediately file a formal complaint as described below under "Complaint Procedures". 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.

1. **Reporting:** Faculty, residents, students, fellows and non-employee post-docs wishing to use the informal resolution process should contact the appropriate Associate Dean for Student Affairs or the Associate Dean for Graduate Medical Education or the Office of the Vice President for Academic, Faculty and Student Affairs. All other individuals wishing to utilize the informal resolution process should contact the Office of Human Resources.

**Informal Assistance:** The individual is provided assistance in attempting to resolve possible discrimination if the individual does not wish to file a formal complaint. Such assistance

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includes strategies for the individual to effectively inform the offending party that his or her behavior is offensive and should cease. Action should be taken by an appropriate University official to stop the offensive conduct, modify the situation in which the offensive conduct occurred, or begin mediation between the parties. However, the University may take more formal action to ensure an environment free of discrimination.

2. Timeframe: Informal resolutions will be completed within a reasonable amount of time from receipt of a request for informal resolution.
  
3. Confidentiality and Documentation: The University will document informal resolutions for faculty, residents, students, fellows and non-employee post-docs by the appropriate Associate Dean for Student Affairs or the Associate Dean for Graduate Medical Education or the Office of the Vice President for Academic, Faculty and Student Affairs who will retain the official documentation. For all other informal resolutions, the Office of Human Resources will retain the official documentation. The University will endeavor to maintain confidentiality to the extent permitted by law. 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 discrimination prohibited by law.

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**Complaint Procedures**

Complaints that allege unlawful sexual harassment and sexual misconduct required under Title IX of the Education Amendments of 1972 are directed to follow the processes described in the HOP, [Section 4.2.2](#) "Title IX Sexual Harassment/Sexual Misconduct Policy."

Complaint procedures pursuant to this policy apply to complaints and grievances alleging unlawful discrimination on the basis of race, color, religion, sex, national origin, age, disability, citizenship, genetic information, and veteran status. As used herein, "complaint" is synonymous with "grievance."

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Reporting

1. UT Health San Antonio encourages any person who believes that he or she has been subjected to discrimination to immediately report the incident to his or her appropriate supervisor, to the appropriate supervisor of the accused faculty member or employee, to the Office of Human Resources, or when faculty, residents, students, fellows and non-employee post-docs are the accused individuals, to the appropriate Associate Dean for Student Affairs or the Associate Dean for Graduate Medical Education or the Office of the Vice President for Academic, Faculty and Student Affairs. The complainant will be advised of the procedures for filing a formal complaint of discrimination. When a supervisor or Associate Dean of Students or Associate Dean for Graduate Medical Education receives a complaint, he or she will immediately notify the Office of the Vice President for Academic, Faculty and Student Affairs, and/or the Office of Human Resources, as appropriate.
2. Complaints should be filed as soon as possible after the conduct giving rise to the complaint, but no later than thirty (30) working 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) working days after the end of that semester.
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.

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### Complaint Investigation

The Associate Dean for Student Affairs or Associate Dean for Graduate Medical Education and/or the Office of the Vice President for Academic, Faculty and Student Affairs, as appropriate, is responsible for:

1. Investigating formal complaints for faculty, residents, students, fellows and non-employee post-docs, while the Office of Human Resources is responsible for all other non-faculty/non-student 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 ten (10) working days of receipt of a complaint, the Associate Dean for Student Affairs or the Associate Dean for Graduate Medical Education or the Office of the Vice President for Academic, Faculty and Student Affairs, and/or the Office of Human Resources as appropriate, will authorize an investigation of the complaint.
3. As part of the investigation process, the accused individual shall be provided with a copy of the allegations and be given the opportunity to respond verbally and/or in writing within a reasonable time frame.
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.
6. The investigation of a complaint will be concluded as soon as possible after receipt of the written complaint. In investigations exceeding sixty (60) days, a justification for the delay shall be presented to and reviewed by the Office of the Vice President for Academic, Faculty and Student Affairs for faculty, students, residents and non-employee post-docs, or the Vice President for

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the Office of Human Resources for all non-faculty/non-student employees. 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, any relevant evidence and recommended disciplinary action if a violation of the policy occurred.
8. A copy of the report will be sent to the appropriate administrative official. Written notification of the findings of the investigation and outcome will be sent to the complainant and the respondent by the appropriate administrative official. The complainant and the respondent have seven (7) working days from the date of the notification letter to submit comments regarding the investigation to the administrative official. However, if a complaint is filed against a student, then the complainant and respondent may not receive or comment on the notification letter in accordance with the *Family Education Rights and Privacy Act's* restrictions on disclosure of educational records.
9. Within thirty (30) 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 of complained of, including but not limited to; the context of that conduct, its

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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.

10. 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: verbal reprimands, written reprimands, and the imposition of conditions, reassignment, suspension, and dismissal.
11. The complainant and the respondent shall be informed in writing of the administrative official's decision. However, if a complaint is filed against a student, then the determination letter sent to the complainant will be written in compliance with the *Family Education Rights and Privacy Act*.
12. 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 Associate Dean for Student Affairs or the Associate Dean for Graduate Medical Education will impose disciplinary action, if any, against a student, resident or fellow in accordance with the University's appropriate disciplinary procedures.

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**Provisions  
Applicable to All  
Complaints**

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.

Retaliation: An administrator, faculty member, student, resident, fellow, post-doc, 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.

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False Complaints: Any person who knowingly and intentionally files a false complaint under this policy or any person who knowingly and intentionally makes false statements within the course of the investigation is subject to disciplinary action up to and including dismissal from the University.

Confidentiality and Documentation: The University shall document complaints and their resolution for faculty, residents, students and non-employee post-docs by the appropriate Associate Dean for Student Affairs or the Associate Dean for Graduate Medical Education or the Office of the Vice President for Academic, Faculty and Student Affairs. The Associate Deans will forward documentation of resolutions to the Office of the Vice President for Academic, Faculty and Student Affairs at the conclusion of the process for which they are responsible to conduct. The Office of the Vice President for Academic, Faculty and Student Affairs will retain the official documentation. For all other informal resolutions, the Office of Human Resources will retain the 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.

**Dissemination of Policy**

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The policy will be made available to all faculty, employees, students, residents, fellows, and post-docs. Periodic notices sent to faculty, employees, students, residents, fellows, and post-docs about the University's nondiscrimination policy will include information about the complaint procedure and will refer individuals to designated offices for additional information.

The University will periodically educate and train employees and supervisors regarding the policy and conduct that could constitute a violation of the policy.

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