

**HEALTH SCIENCE CENTER HANDBOOK OF OPERATING PROCEDURES**

Chapter 4	General Personnel Policies	Effective:	November 2000
Section 4.2	Employee Relations	Revised:	January 2011
<b>Policy 4.2.2</b>	<b>Sexual Harassment and Sexual Misconduct</b>	Responsibility:	Vice President for Human Resources and Executive Director, Faculty and Academic Equal Opportunity/Affirmative Action Office

## **SEXUAL HARASSMENT AND SEXUAL MISCONDUCT**

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### **Policy**

The Health Science Center is committed to the principle that the University's working and learning environment be free from inappropriate conduct of a sexual nature. Sexual misconduct and sexual harassment in any form will not be tolerated and individuals who engage in such conduct will be subject to disciplinary action.

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### **Scope of Policy**

This policy applies to all University administrators, faculty, staff, residents, fellows, post-docs, 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.

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### **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.

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### **Definitions**

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.

Sexual Harassment. Sexual harassment, includes unwelcome sexual advances, requests for sexual favors, verbal or physical conduct of sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of employment or student status;

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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, resident, fellow or student, or creating an intimidating, hostile or offensive environment.

Examples. Examples of behavior that could be considered sexual misconduct or sexual harassment includes, 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.

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**Consensual Relationships**

It is the policy of the Health Science Center that the following romantic or sexual relationships are strongly discouraged.

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

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This policy is not intended to discourage the interaction between faculty, students, post-docs, residents and/or fellows, 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 strongly discouraged.

Every consenting romantic and sexual relationship between a faculty member and a student, resident, post-doc or fellow, 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, residents, post-docs or fellows, 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 individual'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 or interest, favoritism, or bias." These relationships are viewed as damaging to the University environment and therefore are strongly discouraged.

Complaints concerning consensual relationships by non-participating individuals whose work or school environment is adversely affected by the behavior will be treated as third-party sexual harassment or sexual misconduct complaints.

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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

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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**

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 above under "Resolution Options". An individual wishing to utilize the informal resolution process should contact the Office of Human Resources EO/AA Officer or the appropriate Associate Dean for Student Affairs or the Associate Dean for Graduate Medical Education, or the Executive Director of the Office of Faculty and Academic EO/AA..

1. 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 should be taken by an appropriate University official to stop the unwelcome conduct, or begin mediation. However, the University may take more formal action to ensure an environment free of sexual harassment or sexual misconduct.
2. Timeframe. Informal resolutions will be completed in a timely manner from receipt of a request for informal resolution.
3. Confidentiality and Documentation. The University shall 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 Executive Director of the Office of Faculty and Academic EO/AA. The Office of Faculty and Academic EO/AA 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

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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 sexual harassment.

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**Complaint Procedures**

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

Reporting

1. The Health Science Center 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 Office of Human Resources EO/AA Officer or when a faculty, student, resident, non-employee post-doc or fellow is the complainant or the accused individual, to the appropriate Associate Dean for Student Affairs or the Associate Dean for Graduate Medical Education or the Executive Director of the Office of Faculty and Academic EO/AA. In no case will a complainant be required to report such conduct to the person accused of the misconduct. The complainant will be advised of the procedures for filing a formal complaint of sexual harassment or sexual misconduct. When a supervisor or Associate Dean for Student Affairs or Associate Dean for Graduate Medical Education receives a complaint, he or she will immediately notify the Executive Director of the Office of Faculty and Academic EO/AA and/or the Office of Human Resources EO/AA Officer.
2. Complaints should be filed as soon as possible after the conduct giving rise to the complaint, but no later than 180 days after the event occurred.

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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 Associate Dean for Student Affairs or Associate Dean for Graduate Medical Education receives a complaint with a written statement, he or she will immediately notify the Executive Director of the Office of Faculty and Academic EO/AA, and/or the Office of Human Resources EO/AA Officer.

**Complaint Investigation**

1. The Associate Dean for Student Affairs or Associate Dean for Graduate Medical Education or the Executive Director of the Office of Faculty and Academic EO/AA and/or the Office of Human Resources 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 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 Executive Director of the Office of Faculty and Academic EO/AA, and/or the Office of Human Resources EO/AA Officer, 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 allowed the

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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. 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 sixty (60) days, a justification for the delay shall be presented to and reviewed by the Executive Director of the Office of Faculty and Academic EO/AA for faculty, students, residents, and non-employee post-docs, or the Vice President for Human Resources, for all non-faculty and 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, and recommended disciplinary action if a violation of the policy occurred. The written report will be sent to the appropriate administrative official.
8. Written notifications 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

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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, 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.
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, 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

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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, post-doc or fellow in accordance with the University's appropriate disciplinary procedures.

13. The Executive Director of the Office of Faculty and Academic EO/AA, and/or the Office of Human Resources EO/AA Officer, will monitor the circumstances surrounding the complaint to ensure the situation has been remedied.

**Provisions  
Applicable To All  
Complaints**

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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, post-doc, fellow, 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.

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 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 Executive Director of the Office of Faculty and Academic EO/AA. The Office of Faculty and Academic EO/AA will retain official documentation. For all other informal resolutions, the Office of Human Resources will retain the official documentation.

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Relevant information will be provided only to those persons who need to know in order to achieve a timely resolution of the complaint. The University will endeavor to maintain confidentiality to the extent provided 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 sexual harassment.

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**Dissemination of Policy**

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

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

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