

Handbook of Operating Procedures

NON-DISCRIMINATION AND COMPLAINT PROCEDURE

A. Purpose

The University of Texas Rio Grande Valley (UTRGV) is committed to providing equal opportunity in all programs and activities UTRGV sponsors or conducts, in compliance with and to the extent provided by applicable state and federal laws and regulations.

B. Persons Affected

This policy applies to all UTRGV administrators, faculty, staff, students, visitors and applicants for employment or admission. UTRGV's specific policy concerning sexual harassment and sexual misconduct can be found in ADM 3-300, Sexual Harassment and Sexual Misconduct.

C. Definitions

1. Complaint – a written, signed document alleging discrimination or retaliation that is filed under Section E.3 of this policy.
2. 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 the basis of race, color, sex, religion, national origin, age, disability, genetic information, veteran status, sexual orientation, gender identity, or gender expression.
3. Harassment - as a form of discrimination, is defined as verbal or physical conduct that is directed at an individual or group the basis of race, color, sex, religion, national origin, age, disability, genetic information, veteran status, sexual orientation, gender identity, or gender expression, 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 environment. Constitutionally protected expression cannot be considered harassment under this policy.
4. Retaliation – Any action that adversely affects the employment or other institutional status of an individual (including discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against an employee in the terms and conditions of employment) that is taken by UTRGV or its employees because the individual has made a good faith report concerning a possible violation of a law, rule, policy, or procedure (or of inadequate institutional response thereto), or has cooperated in good faith with an investigation of such allegation.

D. Policy

In accordance with and to the extent provided by applicable state and federal laws and regulations, it is the policy of UTRGV that no person will be denied employment with or admission to UTRGV, or otherwise be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity sponsored or conducted by UTRGV, on the basis of race, color, sex, religion, national origin, age, disability, genetic information, or veteran status. Sexual misconduct and sexual harassment in any form (including sexual violence) will not be tolerated. Discrimination on the basis of sexual orientation, gender identity, and gender expression are also prohibited under this policy.

Retaliation against individuals who oppose discriminatory practices, file a charge or complaint of discrimination, or testify for, assist in, or participate in an investigative proceeding relating to discrimination is also prohibited under this policy.

E. Procedures

Allegations of sexual misconduct or sexual harassment as defined in ADM 3-300, Sexual Harassment and Misconduct, should be handled in accordance with that policy. Other allegations of discrimination or retaliation under this policy should be addressed according to the procedures discussed below.

1. Resolution Options:

Persons who believe they have been subjected to discrimination or retaliation and seeks to take action may use either the informal resolution process or the formal complaint process described in this policy, 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.

These procedures are internal administrative procedures of UTRGV and are supplemental to an individual's ability to submit a complaint to the U.S. Department of Education Office of Civil Rights, U.S. Equal Employment Opportunity Commission, the Texas Workforce Commission Civil Rights Division, or other applicable state or federal agency with jurisdiction over complaints of discrimination or retaliation. Engaging in internal UTRGV administrative procedures does not excuse a complainant from meeting time limits imposed by outside agencies.

2. Informal Resolution Process:

The informal resolution 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 they have been subject to discrimination or retaliation may immediately file a formal complaint as described in Section E.3 of this policy. 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. UTRGV reserves the right to initiate the formal complaint process on its own initiative if circumstances warrant.

- a. *Reporting* – Individuals wishing to use the informal resolution process should contact the Office of Institutional Equity.
- b. *Informal Assistance* - The individual is provided assistance in attempting to resolve alleged discrimination or retaliation if the individual does not wish to file a formal complaint. Such assistance may include coaching the individual on how to directly address the situation causing the problem; mediating the dispute with the parties; aiding in the modification of the situation in which the problematic conduct occurred; assisting a department with resolution of a real or perceived problem, or arranging a meeting with the alleged offender that involves a discussion of the requirements of this policy. However, UTRGV may take more formal action to ensure an environment free of discrimination or retaliation.
- c. *Timeframe* - Informal resolutions will be completed within thirty (30) calendar days from receipt of a request for informal resolution.
- d. *Confidentiality and Documentation* – UTRGV will document informal resolutions, and the Office of Institutional Equity will retain such documentation. UTRGV 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, UTRGV will attempt to find the right balance between the individual’s desire for privacy and confidentiality with the responsibility of UTRGV to provide an environment free of unlawful discrimination.

3. *Formal Complaint Procedures:*

- a. *Reporting*
 - i. UTRGV encourages any persons who believe they have been subjected to discrimination or retaliation as defined in this policy to immediately report the incident to the Office of Institutional Equity or to their supervisor, the appropriate supervisor of the accused faculty member or employee, the Office of Human Resources, or when a student is the accused individual, to Student Rights and Responsibilities. However, no person is required to report discrimination or retaliation to the alleged offender. Individuals receiving a complaint of discrimination or retaliation should advise the complainant of the procedures for filing a formal complaint under this policy. When a supervisor, the Office of Human Resources, or Student Rights and Responsibilities receives a complaint, they must immediately notify the Office of Institutional Equity.

- ii. Complaints should be filed as soon as possible after the conduct giving rise to the complaint, but no later than 60 calendar days after the alleged violation of this policy occurred. The period in which UTRGV will accept a complaint under this policy may be extended for good cause as determined by the Director of the Office of Institutional Equity.
- iii. To begin 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. The Office of Institutional Equity has complaint forms available which are compliant with this policy. UTRGV may initiate an investigation regardless of the manner in which a complaint is received or whether a complaint is received at all. However, the complainant is strongly encouraged to file a written complaint. When a supervisor, the Office of Human Resources, or Student Rights and Responsibilities receives a written complaint, they should immediately notify the Office of Institutional Equity.
- iv. The following communications do not constitute a complaint under this formal complaint process and will not be investigated or resolved under the formal complaint process: (a) oral allegations from persons other than a complainant; (b) email correspondence that does not include a completed complaint; (c) courtesy copies of correspondence or a complaint filed with persons or entities other than the Office of Institutional Equity; (d) inquiries that seek advice or information only; or (e) pre-complaint consultations and informal resolution activities under this policy.

b. Complaint Investigation:

- i. The Office of Institutional Equity is responsible for investigating formal complaints. If the complaint is not in writing, the investigator should prepare a statement of what the investigator understands the complaint to be and ask the complainant to verify that statement.
- ii. Within ten (10) business days of receipt of a complaint, the Office of Institutional Equity 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 discrimination; the complaint fails to allege any facts that suggest

discrimination occurred; or the appropriate resolution or remedy has already been achieved, or has been offered and rejected.

- iii. If it is determined that a complaint will not be investigated, the Office of Institutional Equity will send the complainant a notification letter explaining the reason for the dismissal and informing the complainant that, within ten (10) business days of the notification letter, the decision not to proceed with a complaint investigation may be appealed to the Vice President for Operations. The written appeal must explain why the decision to dismiss the complaint was in error. The Vice President for Operations will respond within twenty (20) calendar days of receipt of the appeal. The Vice President's decision is final. If the decision to dismiss is overturned, the complaint will be sent back to the Office of Institutional Equity for investigation in accordance with the procedures outlined below.
 - iii.i As part of the investigation process, the respondent will be provided with sufficient notice of the allegations to permit the respondent to reasonably respond to the allegations.
 - iii.ii The complainant and respondent may identify witnesses and any documents or information that they believe are relevant to the complaint. Members of the UTRGV community have an affirmative duty to participate in any investigation.
 - iii.iii In the discretion of the investigator, individuals thought to have information relevant to the complaint will be interviewed and such interviews will be appropriately documented.
 - iii.iv The investigation of a complaint will be concluded as soon as possible after receipt of the written complaint. In investigations exceeding sixty (60) calendar days, a justification for the delay will be presented to and reviewed by the Vice President for Operations. The complainant, respondent and appropriate supervisor will be provided an update on the progress of the investigation after the review.
 - iii.v After completion of the investigation, a written report will be issued. The report shall include a recommendation of whether a violation of this policy occurred and a summary of the facts and evidence discovered during the investigation.
 - iii.vi Subject to applicable law, a copy of the report will be sent to the complainant and the respondent. The complainant and respondent will have ten (10) calendar days from the date of the report to submit comments regarding the report to the Office of Institutional Equity, which will provide the comments to the appropriate vice president or dean. However, if a complaint is filed against a student, then the complainant and respondent may not receive or comment on the report due to the

Family Educational Rights and Privacy Act's (20 U.S.C. §1232g) restrictions on disclosure of educational records.

- iii.vii Within ten (10) business days of receiving any written comments submitted by the complainant or respondent, the vice president 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.
- iii.viii If the vice president or dean determine that this policy was violated, they 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. Disciplinary actions against students can include probation, suspension, or expulsion from UTRGV.
- iii.ix The complainant and respondent shall be informed within ten (10) calendar days in writing of the vice president's or dean's decision and be provided a copy of the final statement of findings. However, if a complaint is filed against a student, then the complainant may not receive information prohibited by the Family Educational Rights and Privacy Act.
- iii.x Implementation of disciplinary action against faculty and employees will be handled in accordance with UTRGV'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 UTRGV's student disciplinary procedures.
- iii.xi The Office of Institutional Equity should be copied on any disciplinary action taken as a result of an investigation under this policy.

4. Provisions Applicable to All Complaints:

- a. *Assistance* - During the complaint process, a complainant or respondent may be assisted by a person of their 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 or an individual who has participated in an investigation of such a complaint is subject to disciplinary action, including dismissal.
- c. *Interference* – Any person who knowingly and intentionally interferes with an investigation conducted under this policy is subject to disciplinary action. Interference with an investigation may include, without limitation, intimidating, influencing, or encouraging individuals not to provide testimony or information, or to provide false or misleading testimony; removing, destroying, or altering documentation related to an investigation; or providing intentionally false or misleading information (see 4.e, below).
- d. *Prevention of Recurrence* - If discriminatory conduct is found to have existed, UTRGV 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 UTRGV.
- f. *Confidentiality and Documentation* – UTRGV shall document complaints and their resolution. The Office of Institutional Equity shall retain such documentation received during the investigation, and to the extent permitted by law such information 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.
- g. *Monitoring* - Periodic monitoring of complaint resolutions will be conducted by the Office of Institutional Equity 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.
- h. *Recordings* – Individuals being interviewed by or otherwise communicating with the Office of Institutional Equity are not permitted to record the interview or communication without the express, prior consent of the Office of Institutional Equity and any other party present. The Office of Institutional Equity reserves the right to employ recording devices in the course of conducting interviews, and will make recordings available in accordance with the Texas Public Information Act.

5. *Dissemination of Policy:*

- a. This policy will be made available to all faculty, employees and students. New employees will receive nondiscrimination and EEO training within thirty (30) calendar days of being hired and will sign a written acknowledgment attesting that they have received the training. All employees will complete and verify that they have received EEO and nondiscrimination training at least every other year in providing EEO and nondiscrimination training. Periodic notices sent to students, employees and faculty

about this policy will include information about the complaint procedure and will refer individuals to designated offices or officials for additional information.

- b. UTRGV will periodically educate and train employees and supervisors regarding the policy and conduct that could constitute a violation of the policy.

F. Relevant Federal and/or State Statute(s), Board of Regents' Rule(s), UTS Policy(ies), or Coordinating Board Rule(s)

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin.

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1618 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (amended 1992), and its implementing regulation at 34 C.F.R Part 104, which prohibit discrimination on the basis of disability.

Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability.

The Age Discrimination Act of 1975, 42 U.S.C. §6101 et seq., and its implementing regulation at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age.

Title VII of the Civil Rights Act

Equal Pay Act of 1963

Section 503 of the Rehabilitation Act

Veterans Readjustment Act of 1974

Executive Order of 11246, Equal Employment Opportunity

Texas Labor Code - Chapter 21

UT System Policy UTS105 -- Sexual Orientation Nondiscrimination Policy

The University of Texas System Board of Regents' Rules Rule 10701, Policy against Discrimination

G. Dates Reviewed or Amended

Not applicable.