



Handbook of Operating Procedures

Section: 2.2.4
Originally Approved: 10/05/1990
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Last Reviewed: 03/05/2007
Page: 1 of 7

SEXUAL HARASSMENT AND SEXUAL MISCONDUCT POLICY

A. Purpose

The purpose of this policy is to set forth The University of Texas-Pan American policy concerning sexual harassment and sexual misconduct and commitment to create an environment free from sexual harassment and sexual misconduct.

B. Persons Affected

This policy applies to students, staff, and faculty. This policy applies not only to unwelcome conduct that violates state and federal laws concerning sexual harassment, but also to inappropriate conduct of a sexual nature regardless of the gender of the complainant or the alleged harasser. An employee may be subject to disciplinary action for sexual misconduct even if that conduct does not constitute a violation of Title VII, Title IX of the Civil Rights Act of 1964 or the Texas Commission on Human Rights Act, [Texas Labor Code, Chapter 21](#).

C. Policy

The policy of the University is:

1. The University condemns sexual harassment of or by its students, staff, and faculty. The University 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.

A public servant acting under color of his or her office or employment who intentionally subjects another to sexual harassment is guilty of official oppression. [Texas Penal Code Section 39.03\(a\) \(3\)](#). Official oppression is a Class A misdemeanor. [Texas Penal Code Section 39.03\(d\)](#).

2. Supervisors and faculty shall not enter into any type of romantic or sexual relationship with staff under their supervision or with students enrolled in their courses or otherwise under the supervision of the faculty member. Such relationships will be looked upon as potentially detrimental to the working and learning environment, may be deemed inappropriate and unacceptable, and may constitute grounds for disciplinary action including termination of all appropriate parties involved.



Handbook of Operating Procedures

Section: 2.2.4
Originally Approved: 10/05/1990
Last Amended: 03/05/2007
Last Reviewed: 03/05/2007
Page: 2 of 7

SEXUAL HARASSMENT AND SEXUAL MISCONDUCT POLICY

Complaints concerning consensual relationships impacting the work or educational environment by non-participating individuals will be treated as third-party sexual harassment complaints. Third party complaints will be handled according to procedures set forth in Subsection F below.

3. The University provides informal and formal complaint procedures that may be used to address complaints. The informal process described in Subsection F.1.b of this policy may be used as a prelude to filing a formal complaint, or as an alternative. The informal process is not a prerequisite to a formal complaint. Anyone who believes that he or she has been subject to sexual harassment or sexual misconduct may immediately file a formal complaint. The procedures for both informal and formal complaints are outlined in Subsection F of this policy.
4. The policy will be made available to all faculty, employees and students. The University will periodically educate and train employees and supervisors regarding the policy and conduct that could constitute a violation of the policy. Pursuant to [Texas Labor Code, Section 21.010](#), new employees shall receive this training 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 personnel file via an employee statement of training.

D. Definitions

1. *Sexual misconduct*. Includes inappropriate sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature.
2. *Sexual harassment*. As prohibited by state and federal laws, is defined as: Unwelcome sexual advances, requests for sexual favors, verbal or physical conduct of a sexual nature when
 - a. submission to which such conduct is made either explicitly or implicitly a term or condition of employment or education; or
 - b. submission to or rejection of such conduct is used as the basis for academic or employment decisions affecting that individual; or
 - c. such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating an intimidating, hostile or offensive employment, educational, or living environment.

Examples



Handbook of Operating Procedures

Section: 2.2.4
Originally Approved: 10/05/1990
Last Amended: 03/05/2007
Last Reviewed: 03/05/2007
Page: 3 of 7

SEXUAL HARASSMENT AND SEXUAL MISCONDUCT POLICY

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

- i. Physical contact of a sexual nature including touching, patting, hugging, or brushing against a person's body;
- ii. Explicit or implicit propositions or offers to engage in sexual activity;
- iii. Comments of a sexual nature including sexually explicit statements, questions, jokes or anecdotes; remarks of sexual nature about a person's clothing or body, remarks about sexual activity; speculation about sexual experience;
- iv. Exposure to sexually oriented graffiti, pictures, posters, or materials; and/or
- v. Physical interference with or restriction of an individual's movements.

E. Responsibilities

Not applicable.

F. Procedures

Complaint Procedures

1. Reporting—Employees and Non-Student Members of the University Community.

The University encourages any faculty, staff, or non-student member of the University community who believes he or she has been subjected to sexual harassment or sexual misconduct to immediately report the incident to the appropriate supervisor of the accused individual, the administrator at the next higher level, the Equal Opportunity/Affirmative Action Officer (EO/AA officer), or the Director of Human Resources.

- a. In order to initiate the formal investigation process, the complainant must submit a written statement setting out the details of the misconduct that is the subject of the complaint. A supervisor and/or administrator who receives a complaint with a written statement shall immediately notify the EO/AA Officer or the Director of Human Resources (or the Dean of Students if the accused is a student).
- b. Informal complaints are generally handled by the alleged offender's principal administrator, in consultation with the EO/AA Officer or the Director of Human Resources.



Handbook of Operating Procedures

Section: 2.2.4
Originally Approved: 10/05/1990
Last Amended: 03/05/2007
Last Reviewed: 03/05/2007
Page: 4 of 7

SEXUAL HARASSMENT AND SEXUAL MISCONDUCT POLICY

Resources. As in the case of formal complaints, the supervisor or administrator receiving the complaint must immediately notify the EO/AA Officer or the Director Human Resources for guidance.

During an informal proceeding, the administrator may make notes of the informal complaint, the date, and the name of the complainant; make note of the informal action to be taken; make a note that the complainant was advised of the procedures and did not wish to file a formal complaint; and forward a copy of the documentation to the EO/AA Officer.

The University may provide assistance to the complainant to try to resolve possible sexual harassment or sexual misconduct as part of an informal complaint. Such assistance may include developing strategies for the complainant 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. The University may take additional action to ensure an environment free of sexual harassment or sexual misconduct.

2. Reporting—Students

Students who believe they are victims of sexual harassment or sexual misconduct are encouraged to immediately report the incident to the Dean of Students, the EO/AA Officer, or the supervisor of the accused individual. The Dean of Students, or his or her designee, will work in consultation with the EO/AA Officer to resolve the complaint.

3. In no case will a complainant be required to report such behavior to the person accused of the misconduct.

4. Formal Complaint Investigation

- a. The investigator(s) will attempt to interview any persons thought to have information relevant to the complaint and such interviews shall be appropriately documented. Investigations will be concluded as soon as possible. Complaints filed by students against employees will be investigated by the EO/AA Officer in cooperation with the appropriate line of administration and in consultation with the Dean of Students, or his or her designee. When the accused is also a student, the Dean of Students or his or her designee will proceed according to *Handbook of Operating Procedures* [Section 5.5.3, Student Disciplinary Hearing and Appeals Procedures](#).



Handbook of Operating Procedures

Section: 2.2.4
Originally Approved: 10/05/1990
Last Amended: 03/05/2007
Last Reviewed: 03/05/2007
Page: 5 of 7

SEXUAL HARASSMENT AND SEXUAL MISCONDUCT POLICY

- b. Prior to interviewing persons thought to have information relevant to the complaint, the accused employee will be provided a copy of the complaint, and allowed to respond in writing by a specific date as determined by the investigating officer.
- c. Any persons thought to have information relevant to the complaint may be interviewed and such interviews shall be appropriately documented. Other acceptable methods for gathering information include, but are not limited to, visual inspection of offensive materials and follow-up interviews as necessary.
- d. Upon completion of the investigation, the investigating officer will prepare a written report of the investigation, which shall include the findings of the investigation. The Investigating Officer will forward a copy to the appropriate Vice President. Subsection F.4.d is not applicable when the accused is a student.

5. Disposition

- a. The Vice President receiving the report will review and act on the report, pursuant to University disciplinary policies.

(1) Non-faculty employees

The Vice President receiving the report will forward it to the appropriate administrative official immediately over the accused employee who will act according to procedures set forth in *Handbook of Operating Procedures* [Section 7.7.2, Discipline and Dismissal of Employees](#), for non-faculty employees.

(2) Faculty employees

The Vice President will act according to procedures set forth in *Handbook of Operating Procedures* [Section 6.2.10, Termination of Employment of a Faculty Member](#).

- (3) The Vice President shall inform the complainant when the complaint has been resolved.

b. Students

Reports regarding complaints against students will be processed in accordance with *Handbook of Operating Procedures* [Section 5.5.3, Student Disciplinary Hearing and Appeals Procedures](#).



Handbook of Operating Procedures

Section: 2.2.4
Originally Approved: 10/05/1990
Last Amended: 03/05/2007
Last Reviewed: 03/05/2007
Page: 6 of 7

SEXUAL HARASSMENT AND SEXUAL MISCONDUCT POLICY

6. Appeals

- a. Non-faculty employees may appeal disciplinary action to the President in accordance with *Handbook of Operating Procedures* [Section 7.7.1, Grievances of Employees](#), or [Section 7.7.2, Discipline and Dismissal of Employees](#), as appropriate.
- b. Faculty employees may appeal disciplinary action to the President in accordance with *Handbook of Operating Procedures* [Section 6.2.10, Termination of Employment of a Faculty Member](#) or [Section 6.2.8, Faculty Grievance](#), as appropriate.
- c. Students may appeal the Dean of Students' or his or her designee's sanction(s) or the hearing Officer's decision and/or disciplinary action to the President in accordance with *Handbook of Operating Procedures* [Section 5.5.3, Student Disciplinary Hearing and Appeals Procedures](#).

7. Retaliation Prohibited

A University employee or student who retaliates against a person for filing a complaint of sexual harassment or sexual misconduct pursuant to this policy in good faith or an individual who has participated in good faith in an investigation of such a complaint is subject to disciplinary action, including dismissal.

8. Confidentiality

The University of Texas-Pan American will maintain confidentiality to the extent permitted by law. Where the complainant's desire to maintain anonymity may constrain attempts to establish facts and eliminate the potential harassment, the University will attempt to find the right balance between the complainant's desire for confidentiality with the responsibility of the component institution to provide an environment free of sexual harassment.

9. False Complaints

Any person who knowingly and intentionally files a false complaint under this policy is subject to disciplinary action up to and including dismissal from the University.

G. Review



Handbook of Operating Procedures

Section:	2.2.4
Originally Approved:	10/05/1990
Last Amended:	03/05/2007
Last Reviewed:	03/05/2007
Page:	7 of 7

SEXUAL HARASSMENT AND SEXUAL MISCONDUCT POLICY

This policy shall be reviewed every five years by the EO/AA, the Dean of Students, and the Director of Human Resources.