**Prohibition of Discrimination UPPS No. 04.04.46**

**Issue No. 10**

**Effective Date: 09/01/2023**

**Next Review Date: 10/01/2026 (E3Y)**

**Sr. Reviewer: Director, Equal Opportunity and Title IX**

**POLICY STATEMENT**

*Texas State University is committed to an inclusive educational and work environment that provides equal opportunity and access to all qualified persons.*

**01. POLICY PROHIBITING DISCRIMINATION AND RETALIATION**

01.01 In accordance with federal and state law, Texas State University prohibits discrimination on the basis of race, color, national origin, age, sex, religion, disability, genetic information, military service, veteran status, sexual orientation, gender identity, and gender expression.

01.02 Texas State also prohibits retaliation against a person who, in good faith, files a discrimination complaint, assists or participates in the investigation of a report of discrimination, or opposes discrimination.

**02. APPLICABILITY OF THIS POLICY**

02.01 Texas State forbids discrimination in any university activity or program. Texas State faculty, staff, employees, students, student organizations, visitors, contractors, university affiliates, applicants for admission to or employment with the University, and others conducting business on campus who discriminate against others in connection with a university activity or program will be considered to have violated this policy and are subject to disciplinary sanctions. Sexual misconduct, including sexual harassment, is governed by the Texas State University System (TSUS) Sexual Misconduct Policy.

**03. EQUAL ACCESS**

03.01 Texas State shall ensure, to the greatest extent practicable, equal access for students enrolled at or employees of the institution who are persons with disabilities. The university shall make reasonable efforts to consult with a disability services office of the university, advocacy groups for people with disabilities, and other relevant stakeholders to assist the university in complying with the university’s duties under this policy.

**04.** **FIRST AMENDMENT RIGHTS**

04.01 Freedom of speech and principles of academic freedom are central to the mission of institutions of higher education. Constitutionally protected expression cannot be considered discrimination or harassment under this policy.

**05. DEFINITIONS**

05.01 Protected Class – a class of persons who are protected under applicable federal or state laws against discrimination and harassment on the basis of race, color, sex, pregnancy, gender identity, sexual orientation, gender expression, religion, age, national origin, ethnicity, military or veteran status, disability, genetic information, or any other legally protected basis.

05.02 Discrimination – conduct directed at an individual or a group of identifiable individuals that subjects them to less favorable treatment or adversely affects their employment or education because of their membership in a protected class.

05.03 Harassment – a form of discrimination consisting of verbal, graphic, or physical conduct that either:

1. subjects an employee on the basis of their membership in a protected class to unwelcome conduct that is severe or pervasive enough to alter the conditions of the employee’s employment and create a hostile or abusive working environment; or
2. subjects a student on the basis of their membership in a protected class to severe, pervasive, and objectively offensive treatment that denies the student equal access to education.

An individual’s subjective belief that behavior is intimidating, hostile, or offensive, in and of itself, is not sufficient to establish discrimination or harassment. The behavior must satisfy the standard for discrimination or harassment from both a subjective and objective perspective. In determining whether discrimination or harassment has occurred, the university will examine the context, nature, scope, frequency, duration, and location of incidents, as well as the relationships of the individuals involved, and apply the appropriate standard according to the applicable complaint resolution procedures.

05.04 Respondent – the individual and/or organization alleged to be the perpetrator of conduct that violates this policy.

05.05 Complainant – the individual who is alleged to be the victim of any prohibited conduct under this policy.

05.06 Reporter – an individual, other than a complainant, making a report of an incident under this policy.

05.07 OEO – the Office of Equal Opportunity and Title IX.

05.08 Management Directed Inquiry (MDI) – a proactive measure requested by a vice president, dean, director, chair, or department head to address potential personnel concerns regarding discrimination without a formal complaint being filed. The OEO conducts an MDI and provides the requesting manager with the results.

**06. REPORTING POTENTIAL DISCRIMINATION UNDER THIS POLICY**

06.01 Any person may report an incident under this policy to the OEO via email at equalopportunity@txstate.edu; via mail to Office of Equal Opportunity & Title IX, 601 University Dr., Elliott A, Third Floor, San Marcos, TX, 78666; or via the OEO’s online reporting portal found on the [Office of Equal Opportunity & Title IX website](https://compliance.txst.edu/oeotix.html).

06.02 Mandatory Reporters

Anyone in a supervisory position (i.e., vice presidents, deans, directors, chairs, department heads, and supervisors) is required to notify the OEO when they learn of a possible instance or allegation of discrimination.

 Mandatory Reporters must promptly report all known information about an alleged or suspected instance or allegation of discrimination, harassment, or retaliation that is reported, observed, or suspected. Mandatory Reporters who fail to report suspected discrimination or unduly delay in making such a report are subject to disciplinary action up to and including termination of employment.

An exception to this general reporting requirement occurs when a faculty member alleges discrimination or harassment as part of a request for a hearing related to the denial of tenure or promotion because, under [The TSUS Rules and Regulations, (Chapter V, Section 4.4)](https://gato-docs.its.txstate.edu/jcr%3A3886f00c-3e13-496d-a28f-d1eee580775a/TSUS_Rules_and_Regs_thru_05-23-19.pdf) such a faculty member must make this allegation in writing directly to the president.

06.03 Confidential Reporters

The following individuals are required to maintain confidentiality and shall not report any information about an incident without the complainant’s permission:

a. medical professionals, including physical and mental health professionals, licensed counselors who provide mental health counseling to members of the university community, and those who act under the supervision of a health care employee; and

b. individuals whose scope of employment include confidentiality requirements under Texas law.

06.04 Anyone who is not a mandatory reporter or a confidential reporter under this policy is encouraged to notify the OEO when they learn of a possible instance of discrimination.

06.05 Confidentiality

When considering reporting options, complainants should be aware that certain university personnel can maintain strict confidentiality while others have mandatory reporting and response obligations as described in Sections 06.02 and 06.03 of this policy. To the extent permitted by law, Texas State will not disclose complainants’ or reporters’ information to anyone outside the university. As for confidentiality of information within Texas State, the university must balance a complainant’s request for confidentiality with its responsibility to provide a safe and non-discriminatory environment for the university community. An individual should be aware that by contacting the OEO, they are placing the university on notice of potential unlawful discrimination or harassment, and, depending on the facts and circumstances of the case, the OEO may not be able to keep the information confidential and may be obligated to act.

06.06 Complaints and Reports

A complaint or report alleging a violation of this policy should be submitted to the OEO in writing and contain the following information, to the extent such information is known:

a. name and TXST ID of the complainant(s);

b. contact information, including address, telephone, and email;

c. name of person(s) directly responsible for alleged violation(s);

d. date(s) and place(s) of alleged violation(s);

e. nature of alleged violation(s) as defined in this policy;

f. detailed description of the defined conduct that is the basis of the alleged violation(s);

g. copies of any documents about the alleged violation(s);

h. names of any witnesses to the alleged violation(s) and witnesses’ contact information;

i. action requested to resolve the situation; and

j. any other relevant information.

06.07 Time Limit – Individuals must file a complaint or report within180 calendar days of the most recent alleged discriminatory action. The OEO may extend the 180-day filing deadline when good cause supports the extension.

06.08 Knowingly making or filing a false report or complaint under this policy is a violation of this policy and may subject a person to disciplinary action under university policy and [TSUS Rules and Regulations](https://gato-docs.its.txstate.edu/jcr%3A3886f00c-3e13-496d-a28f-d1eee580775a/TSUS_Rules_and_Regs_thru_05-23-19.pdf).

06.09 Filing a complaint or report will not stop or delay any evaluation or disciplinary proceeding related to a reporter, complainant, or respondent who is not performing up to acceptable standards or who has violated other university rules or policies.

**07. Intake and Initial Review of Reports and Complaints**

07.01 Initial Review of Complaint or Report

The OEO shall review each complaint or report of potential discrimination and may conduct an initial inquiry to determine whether investigation or informal resolution is warranted.

07.02 Administrative Closure Complaints or Reports

The OEO may close a complaint or report under the following circumstances:

a. the alleged discriminatory conduct did not occur in a university program or activity;

b. respondent is not an employee, student, student organization, visitor, contractor, university affiliate, applicant for admission or employment, or other person conducting business on campus to whom this policy applies;

c. insufficient information exists to proceed with an investigation;

d. the complaint, report, and/or initial inquiry does not support a plausible violation of this policy;

e. the OEO approves the complainant’s request to dismiss the complaint;

f. the complainant resigns from employment;

g. the parties negotiate a full remedy or settlement; or

h. for other reasons identified in applicable laws, regulations, or policies.

07.03 The OEO shall evaluate whether a complaint or report, or any portion thereof, should be referred to another university division, office, or employee for resolution of matters not subject to this policy.

07.04 Notice to Parties

 If the OEO determines that investigation or informal resolution is

appropriate, the OEO will provide a written Notice of Allegations simultaneously to both parties. The notice will contain the following:

a. sufficient details of the allegations known at the time;

b. identities of the parties involved;

c. the conduct allegedly constituting discrimination;

d. the date and location of the alleged incident (if known);

e. that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney. The advisor shall not have a direct role in any part of the investigation process, other than to advise the party.

**08. INFORMAL RESOLUTION**

08.01 Informal resolution of complaints or reports under this policy involves assisting the parties in resolving the issue by mutual agreement.

08.02 A complaint or report is eligible for informal resolution under this policy when:

a. both the complainant and respondent agree to informal resolution; and

b. the OEO determines that informal resolution is appropriate.

08.03 In pursuing an informal resolution, the OEO shall meet with the complainant and the respondent and review all available relevant information.

08.04 Methods for informal resolution may include, but are not limited to, mediating the dispute with the parties or meeting with the parties separately to form a mutual agreement.

08.05 The OEO shall work with the parties to reach a mutual agreement that is approved by the OEO within 30 days, unless the OEO determines good cause exists to extend this timeframe. If an informal resolution is reached, the OEO shall close the case and provide each party a copy of the mutual agreement signed by both parties and the OEO.

08.06 If an informal resolution is not reached within 30 days (or as extended by the OEO), the OEO may refer the case for investigation or close the matter in accordance with Section 07.02.

08.07 Either party may elect to end the informal resolution process at any point before an agreement is reached.

**09. PROCEDURES FOR INVESTIGATING REPORTS OF DISCRIMINATION**

09.01 The OEO is empowered to investigate the charge, interview the parties and other witnesses, and gather any evidence deemed pertinent. The OEO shall made a determination as to whether it is more likely than not that the respondent violated the policy based upon the evidence as a whole.

09.02 Each party may be accompanied by an advisor of their choice to any related meeting, interview, or proceeding. The advisor may be, but need not be, an attorney who may provide support, guidance, or advice to the party. The advisor may only advise the party and may not otherwise directly participate in any meeting, interview, or proceeding.

09.03 Each party will be given the opportunity to present their side and identify witnesses and other relevant evidence.

09.04 Parties are not obligated to disclose their confidential treatment records, including records maintained by a physician, mental health provider, or other medical or health provider, unless the OEO obtains the party’s written consent.

09.05 Investigations will be completed as expeditiously as possible.

09.06 Texas State employees must cooperate with investigations concerning allegations of discrimination or harassment. Refusal to cooperate with an investigation may result in disciplinary action.

09.07 Information obtained by the OEO in an investigation under this policy is considered confidential and will only be disclosed to university officials or other individuals as necessary to effectuate the purposes of the policy or as required by law. University employees who knowingly and intentionally make an unauthorized disclosure of confidential information relating to a report, complaint, or investigation under this policy may be subject to disciplinary action.

**10. NOTIFICATION OF INVESTIGATION FINDINGS**

10.01 The OEO will make a written finding as to whether it is more likely than not that respondent violated this policy.

10.02 The finding shall include the basis for the decision.

10.03 When the OEO’s investigation does not substantiate a violation of this policy, the OEO will communicate the finding of no violation in writing simultaneously to the complainant, respondent, and any pertinent supervisor or administrator.

10.04 When the OEO finds that it is more likely than not that respondent violated this policy, the OEO will communicate the finding to an appropriate sanctioning authority as follows:

a. for student respondents, a finding of a violation of this policy shall be referred to the Dean of Students for determination of any appropriate sanctions.

b. for employee respondents, a finding of a violation of this policy shall be referred to the respondent’s supervisor, who shall determine, in consultation with Human Resources and any other appropriate university officials, appropriate disciplinary or corrective action.

10.05 The OEO, in consultation with TSUS Office of General Counsel, may designate an alternative sanctioning authority where a conflict of interest, potential or otherwise, becomes apparent.

10.06 A finding by the OEO is final.

10.07 If the OEO finds a violation of this policy, the OEO may include in the written report a recommendation that the sanctioning authority consult with Human Resources, Academic Affairs, TSUS Office of General Counsel, and/or another appropriate university official prior to issuing sanctions.

**11. SANCTION DECISIONS**

11.01 The sanctioning authority will issue an appropriate sanction no later than 15 calendar days after receiving the OEO’s written findings. The sanctioning authority will send a notice of the sanctions and a copy of the findings to the complainant, respondent, the OEO, and when appropriate, additional individuals with supervisory authority over either party that are not in the line of appellate review.

11.02 Appeal of Sanctions

Respondents may appeal only the sanction’s severity by submitting a written request to appeal that states the grounds for the appeal together with any additional information in support of the appeal to the OEO within 10 calendar days. The OEO will forward the findings, sanctions, and appeal to the appropriate appellate authority. The appellate authority shall issue a written decision within 20 business days, unless the appellate authority determines good cause exists to extend the deadline.

11.03 The university may impose the following sanctions for violation of this policy:

a. for faculty or staff – disciplinary action up to and including termination of employment;

b. for students – disciplinary action up to and including dismissal from the university;

c. for contractors – cancellation of their contract with Texas State or other action as deemed appropriate by Texas State. A contractor may not dispute or otherwise appeal a sanction.

**12. TRAINING AND DISSEMINATION OF THIS POLICY**

12.01 All employees must complete equal opportunity non-discrimination training within 30 days of new employment and every two years thereafter consistent with state law. The university will maintain an electronic record of all completed trainings in accordance with the applicable retention policy.

12.02 The OEO will provide required training to all full-time, regular employees through workshops or other appropriate means, concerning:

a. definitions of discrimination;

b. examples of incidents of discrimination;

c. descriptions of how and when to report;

d. descriptions of available informal and formal resolution mechanisms; and

e. sources of support and information for complainants and respondents, as mandated by Texas law.

12.03 The university will summarize this policy in the [Faculty Handbook](http://gato-docs.its.txstate.edu/jcr%3A78db2d91-b1aa-46de-8216-baac6269e7c1/Faculty%20Handbook.pdf), the [Staff Handbook](http://www.hr.txstate.edu/staffhandbook.html), and the [Student Handbook](http://www.dos.txstate.edu/handbook.html).

**13. FILING WITH EXTERNAL AGENCIES**

13.01 Persons who believe that they have been subjected to discrimination, harassment, sexual harassment, or retaliation may be able to file a complaint with the Texas Workforce Commission, the U.S. Equal Employment Opportunity Commission, the U.S. Department of Education’s Office for Civil Rights, or the Office of Federal Contract Compliance Programs. Information regarding filing charges with any of these agencies may be obtained from the OEO.

**14. CONFLICTS**

14.01 If this policy conflicts with any other university policy, rule, or regulation, this policy shall take precedence.

**15. REFERENCES AND LEGAL AUTHORITY**

 15.01 The following are additional references and legal authorities:

a. [Title VI of the Civil Rights Act of 1964](https://www.dol.gov/agencies/oasam/regulatory/statutes/title-vi-civil-rights-act-of-1964);

b. [Executive Order 11246, as amended](https://www.dol.gov/agencies/ofccp/executive-order-11246/as-amended);

c. [Pregnancy Discrimination Act of 1978](https://www.eeoc.gov/statutes/pregnancy-discrimination-act-1978);

d. [Equal Pay Act of 1963](https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/internal/policies/equal-pay-for-equal-work)

e. [Age Discrimination in Employment Act of 1967](https://www.dol.gov/agencies/oasam/regulatory/statutes/age-discrimination-act);

f. [Vietnam Era Veterans’ Readjustment Assistance Act, as amended](https://www.dol.gov/agencies/ofccp/vevraa/as-amended);

g. [Uniformed Services Employment and Reemployment Rights Act of 1994](https://www.dol.gov/agencies/vets/programs/userra);

h. [Genetic Information Nondiscrimination Act of 2008](https://www.eeoc.gov/statutes/genetic-information-nondiscrimination-act-2008);

i. [Americans with Disabilities Act of 1990, amended by the ADA Amendment Act of 2008](https://www.eeoc.gov/statutes/ada-amendments-act-2008);

j. Sections [503](https://www.dol.gov/agencies/ofccp/section-503/law) and [504](https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973) of the Rehabilitation Act of 1973, as amended;

k. [Title IX of the 1972 Education Amendments to the Higher Education Opportunity Act](https://www.justice.gov/crt/title-ix-education-amendments-1972);

l. [Violence Against Women Act, 34 U.S.C. § 12291, et seq., 34 C.F.R. § 668.46](https://www.federalregister.gov/documents/2014/10/20/2014-24284/violence-against-women-act);

m. [Jeanne Clery Disclosure of Campus Security Policy and Campus Crime](https://www.clerycenter.org/the-clery-act)

n. Statistics Act (20 U.S.C.A. §1092(f) and implementing regulations, 34 C.F.R. §668.41 and 668.46) (“Clery Act”)

**16. REVIEWERS OF THIS UPPS**

16.01 Reviewers of this UPPS include the following:

Position Date

Director, Office of Equal October 1 E3Y

Opportunity and Title IX

Associate Vice President October 1 E3Y

for Institutional Compliance and

Ethics

Associate Vice President October 1 E3Y

for Human Resources

Associate Vice President for Student October 1 E3Y

Affairs and Dean of Students

**17. CERTIFICATION STATEMENT**

This UPPS has been approved by the following individuals in their official capacities and represents Texas State policy and procedure from the date of this document until superseded.

Director, Office of Equal Opportunity and Title IX; senior reviewer of this UPPS

Vice President, Chief of Staff

President