

Section VI: Equal Opportunity

Chapter 1: Equal Opportunity / Affirmative Action / Non-Discrimination Policy

1.1 Purpose of Policy

This chapter sets forth the University's policies concerning equal opportunity, affirmative action and non-discrimination, in compliance with the Equal Pay Act of 1963, Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, as amended, Title IX of the Civil Rights Act of 1972, Education Amendments, Section 503 and 504 of the Rehabilitation Act of 1973, as amended, Section 402 of the Vietnam Veterans Act of 1974, Immigration Reform and Control Act of 1986, Title II of the Americans with Disabilities Act of 1990, Department of Labor Order No. 4, Executive Order 11246, as amended, and Chapter 21 of the Texas Labor Code.

1.2 Scope

This policy applies to students, staff, faculty, job applicants, applicants for admission, and other beneficiaries of the programs, services, and activities of the University.

1.3 Policy

The University of Texas at El Paso is an Equal Opportunity/ Affirmative Action Employer. The University is committed to providing equal opportunity to all employees and individuals seeking employment or access to its programs, facilities or services, and will not discriminate against these persons on the basis of race, color, national origin, sex, religion, age, disability, veteran's status, or sexual orientation. In addition to this commitment, the University will take affirmative steps to insure that applicants are employed, and employees are treated, in a non-discriminatory manner. The University shall maintain and annually update its Affirmative Action Plan and will make good faith efforts to achieve established goals, to the extent permitted by applicable law.

An institutional commitment to these policies provides for selection procedures based upon objective, defensible qualifications, as in the case of promotions based upon documented performance, merit, and potential achievement and evaluations that are accurate and unbiased. In addition, the University commits itself to increased recruitment efforts to assure that qualified minorities, women, veterans, and individuals with a disability are represented in the applicant pool and are evaluated equitably by search committees and administrative personnel.

This policy shall be implemented throughout the University.

All regulations, programs, and documents required by these regulations are available for inspection by employees, applicants for employment, and the general public in the University Equal Opportunity/Affirmative Action Office on any workday.

Any member of the University community who engages in discrimination or other conduct in violation of University policy is subject to the full range of disciplinary action, up to and including separation from the University.

1.3.1 Religion

The University is committed to the provision of a learning and working environment free of bias for or against any religious creed, doctrine, belief, or affiliation, or the absence thereof. Further, as a state institution of higher education, the University and its employees acting in their official capacity must strictly avoid associations with, or support for, religious entities and activities which can be construed as infringement upon the constitutional constraints upon state support for religion.

1.3.1.1 As provided for in Section V of this Handbook, employees may observe religious holidays through substitution of authorized holidays or by utilizing accrued vacation in accordance with Texas state law.

1.3.1.2 Students should refer to the University Catalogue for the policy on absence from class on religious holidays.

1.3.2 Individuals With Disabilities

The University is committed to providing services, equipment, and accommodations to individuals with documented disabilities in order to provide them with equal opportunities to participate in programs, services, and activities in compliance with Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA) of 1990. Refer to Chapter 2 of this section of the Handbook for the University's policy concerning accommodations for individuals with disabilities.

1.3.3 Sexual Harassment & Sexual Misconduct

The University condemns sexual harassment of or by its students, staff, and faculty and 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. Refer to Chapter 3 of this section of the Handbook for the Sexual Harassment and Sexual Misconduct Policy.

1.3.4 Veterans

In accordance with Section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, the University shall take affirmative action to employ, advance in employment and otherwise treat without unlawful discrimination all qualified disabled veterans, veterans of the Vietnam era, and any other veterans who served on active duty during a war or in a military campaign or expedition for which a campaign badge has been authorized. This affirmative action shall extend to all levels of employment, including executive level positions. This affirmative action will apply to all employment practices, including, but not limited to, the following: hiring, promotion, award of tenure, demotion, transfer, recruitment, recruitment advertising, job application procedures, layoff, termination, right of return from layoff, rehiring, rates of pay or other forms of compensation and changes in compensation, job assignments, job classifications, organizational structures, position descriptions, lines of progression, seniority

lists, leaves of absence, sick leave or any other leave fringe benefits available by virtue of employment, selection and financial support for training selection for leaves of absence to pursue training, and social or recreational programs sponsored by the University. The compensation of any veteran covered by this policy will in no way be reduced because of any disability income, pension, or other benefits the veteran applicant or employee receives from another source. The University maintains a Veteran's Office and a Veterans' Counseling Service that assist disabled veterans and veterans of the Vietnam era.

1.4 Resolution and Complaint Procedures

The informal resolution and formal complaint procedures set forth below are internal administrative procedures of the University. These procedures are available to any member of the University community who believes that he or she has been discriminated against on the basis of race, color, national origin, sex, religion, age, disability, veteran's status or sexual orientation. Individuals wishing to utilize this procedure should contact the Equal Opportunity (EO) Office or, when the accused individual is a student, the Dean of Students. As to those forms of discrimination that also violate state or federal law, an aggrieved party may also file a complaint with the appropriate local, state, or federal agency or in a court of appropriate jurisdiction. These informal resolution and formal complaint procedures are supplemental to, and are not intended to displace, other disciplinary procedures set forth in the University's Handbook or the Rules and Regulations of the U.T. System Board of Regents.

1.4.1 Informal Resolution

This process may be used as a prelude to, or alternative to, filing a formal complaint, but need not be used at all. Anyone who believes that he or she has been subject to discrimination or harassment may immediately file a formal complaint as described in 1.4.2 of this policy. An individual wishing to utilize the informal resolution process should contact the EO Officer or the Dean of Students, as appropriate. Informal resolution includes:

a. Informal Assistance

The individual is provided assistance in attempting to resolve possible equal opportunity or discrimination issues if the individual does not wish to file a formal complaint. Methods of informal resolution may include, but are not limited to: coaching the person on how to directly address the situation that is causing a problem; mediating the dispute with the parties; aiding in the modification of a situation in which the offensive conduct occurred; assisting a department or division with the resolution of a real or perceived problem; or arranging a meeting with the alleged offender that involves a discussion of the requirements of the equal opportunity policy. However, if necessary, the University may take more formal action to ensure an environment free from equal opportunity violations and discrimination.

b. Timeframe

Informal resolutions will be completed within thirty (30) working days from receipt of a request for informal resolution.

c. Confidentiality and Documentation

The University shall document informal resolutions. The Office of the Dean of Students or the EO Office, as appropriate, shall retain such documentation. The University will endeavor to maintain confidentiality to the extent permitted by law. Relevant information will be provided only to those persons who need to know in order to achieve a timely resolution of the complaint.

1.4.2 Formal Complaint Reporting Procedure

The University of Texas at El Paso encourages any person who believes that he or she has been subjected to discrimination on the basis of race, color, national origin, sex, religion, age, disability veteran's status or sexual orientation to immediately report the incident to the appropriate supervisor of the accused faculty member or employee, to the EO Officer or, when a student is the accused individual, to the Dean of Students. 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. When a supervisor or the Dean of Students receives a complaint, he or she will immediately notify the EO Office. Formal reporting procedures are as follows:

1.4.2.1 Complaints should be filed as soon as possible after the conduct giving rise to the complaint, but not later than sixty (60) calendar days after the event occurred.

1.4.2.2 In order to initiate the investigation process, the complainant should submit:

- a. 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;
- b. the name of the person directly responsible for the alleged violation;
- c. a detailed description of the conduct or event that is the basis of the alleged violation;
- d. the date(s) and location(s) of the occurrence(s);
- e. the names of any witnesses to the occurrence(s);
- f. the resolution sought; and
- g. 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. 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. When a supervisor or the Dean of Students receives a complaint with a written statement, he/she shall immediately notify the EO Office.

1.4.3 Formal Complaint Investigation Procedure

1.4.3.1 The Dean of Students and/or the EO Office, as appropriate, is responsible for investigating formal complaints. If the complaint is not in writing, the investigator should prepare a state of what he or she understands the complaint to be and seek to obtain verification of the complaint from the complainant.

1.4.3.2 Within five (5) working days after receipt of a complaint, the Dean of Students, and/or the EO Office, as appropriate, will send the complainant a brief acknowledgment of the complaint, stating that the complaint will be evaluated and advising the complainant that he or she will be contacted within ten (10) working days as to whether the complaint is dismissed or an investigation has been authorized. A formal investigation will be initiated if a complaint is complete, timely, within the scope of this policy and articulates sufficient specific facts, which, if determined to be true would support a finding that this policy was violated. A complaint may be dismissed for a variety of reasons, for example: the complaint fails to describe in sufficient detail the conduct that is the basis of the complaint; the facts alleged in the complaint, even if taken as true, do not constitute discrimination on a protected basis; the complaint fails to allege any facts that suggest discrimination; the complainant declines to cooperate in the investigation; or the appropriate resolution or remedy has already been achieved, or has been offered and rejected.

1.4.3.3 If it is determined that a complaint will not be investigated, the Dean of Students and/or the EO Office, as appropriate, will send the complainant a notification letter explaining the reason and informing the complainant that, within ten (10) working days of the notification, he or she may appeal the decision not to proceed with a complaint investigation to the appropriate vice president. The written appeal must explain why the decision to dismiss the complaint was in error. The appropriate vice president will respond within twenty (20) working days of receipt of the appeal. The vice president's decision is final. If the decision to dismiss is overturned, the complaint is sent back to Equal Opportunity Office or the Office of the Dean of Students, as appropriate, for investigation in accordance with the procedures outlined below.

1.4.3.4 As part of the investigation process, the accused individual shall be provided with a copy of the complaint and allowed ten (10) working days to respond in writing, unless unusual circumstances warrant additional time.

1.4.3.5 The complainant and the accused individual may present any document or information that is believed to be relevant to the complaint.

1.4.3.6 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.

1.4.3.7 The investigation of a complaint will be concluded as soon as possible after receipt of the written complaint. In investigations exceeding sixty (60) working days, a justification for the delay shall be presented to and reviewed by the vice president overseeing the investigative office. The complainant, accused individual, and supervisor will be provided an update on the progress of the investigation after the review.

1.4.3.8 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.

1.4.3.9 The investigator will provide a copy of the report, along with copies of relevant documents or other evidence considered, to the appropriate vice president or to the vice president's designee. The investigator will send a copy of the report to the complainant and respondent, who will have seven (7) working days from the date of the report to submit comments regarding the report to the vice president or his/her designee. However, if a complaint is filed against a student, then the complainant and respondent may not receive or comment on the report in accordance with the Family Education Rights and Privacy Act's restrictions on disclosure of educational records.

1.4.3.10 Within ten (10) working days of the complainant and respondent's deadline for submitting comments to the report, the vice president or his/her designee and the investigator shall meet to discuss the findings, and review the record, including any comments or proposed corrections submitted by the complainant and respondent.

1.4.3.11 Within ten (10) working days of that meeting, the vice president or his or her designee 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.

1.4.3.12 The complainant and the respondent shall be informed in writing by the vice president or his/her designee, of the 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 this information as the Family Education Rights and Privacy Act prohibits such disclosures.

1.4.3.13 If the vice president or his/her designee 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, written reprimands, the imposition of conditions, reassignment, suspension, and dismissal.

1.4.3.14 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 Dean of Students will impose disciplinary action, if any, against a student in accordance with the University's student disciplinary procedures.

1.4.4 Provisions Applicable To All Complaints

1.4.4.1 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.

1.4.4.2 Retaliation

An administrator, faculty member, student, or employee who retaliates or discriminates against a person who opposes a discriminatory practice, makes or files a charge, files a complaint, or testifies, assists, or participates in any manner in an investigation, proceeding or hearing is subject to disciplinary action, including dismissal.

1.4.4.3 Confidentiality and Documentation

The University shall document complaints and their resolution. The Office of the Dean of Students or the Equal Opportunity Office as appropriate shall retain such 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.

1.5 Dissemination of Policy & Training

The policy will be disseminated annually to all faculty, employees, and students, and is available at the University's Equal Opportunity Office. The University will periodically educate and train employees and supervisors regarding the policy and conduct that could constitute a violation of this 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. The person(s) who provide the training shall ensure that each new or existing employee who attends such an initial or refresher training session sign a statement verifying his or her attendance at the session. If the training session is completed online, the University shall retain an electronic record of each trainee's successful completion of the online session.

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2.1 Purpose

The purpose of this policy is to set out the University's policy concerning accommodations for individuals with disabilities, and to provide for the prompt and equitable resolution of complaints alleging the violations of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of

1973, including complaints regarding a denial of requested accommodations and auxiliary aids or services, and programs that are perceived to be inaccessible.

2.2 Scope

This policy applies to students, staff, faculty, job applicants, applicants for admissions, and other beneficiaries of the programs, services, and activities of the University.

2.3 Individuals With Disabilities

The University is committed to providing reasonable accommodations and auxiliary services to students, staff, faculty, job applicants, applicants for admissions, and other beneficiaries of University programs, services and activities with documented disabilities in order to provide them with equal opportunities to participate in programs, services, and activities in compliance with sections 503 and 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA) of 1990. Reasonable accommodations will be made unless it is determined that doing so would cause undue hardship on the University.

2.3.1 Definitions

2.3.1.1 “Individual with a disability” is a person who has a physical or mental impairment that substantially limits one or more life activities, has a record of such impairment, or is regarded as having such impairment.

2.3.1.2 “Qualified individual” with a disability is defined as an individual who possesses the requisite skills, education, experience, knowledge, and other job requirements and who can, with or without reasonable accommodations, perform the essential functions of the job.

2.3.1.3 “Substantial limitation” is defined as an impairment that prevents the performance of a major life activity that the average person in the general population can perform; or a significant restriction as to the condition, manner, or duration under which an individual can perform a particular major life activity, as compared to the average person in the general population. Measures that correct or mitigate a physical or mental impairment, and the effects of those measures, shall be considered in determining whether an individual is substantially limited in a major life activity.

2.3.1.4 “Accommodation” is defined as a reasonable modification or adjustment to the job application process or the work environment that enables a qualified person with a disability to perform the essential functions of that job.

2.3.1.5 “Undue hardship” shall conform to definitions provided by the Courts, the Americans with Disabilities Act, and the Texas Commission of Human Rights Act. In determining whether an accommodation would impose an undue hardship, factors to be considered include, but are not limited to, the nature and cost of the accommodation, financial considerations, the impact of the accommodation upon the nature and operation of the department, and how the request affects the health and safety of other employees or students.

2.4 Requests for Accommodations

Please refer to the next section

2.4.1 Applicants for Employment and Employees

2.4.1.1 Applicants for employment can initiate a request for accommodation by contacting the Human Resource Services Office, or advising, verbally or in writing, the department in which they will be interviewing, or the chair of the search committee of the possible need for accommodation. Any such inquiry shall be immediately forwarded to the ADA Coordinator for review of the request and determination, if applicable, of reasonable accommodation.

2.4.1.2. Any employee can initiate a request for accommodation by notifying, in writing, his or her immediate supervisor, the director of Human Resource Services, or the ADA Coordinator of the nature of the disability and the accommodation being requested. Any such request shall be forwarded to the ADA Coordinator for review and determination, if applicable, of a reasonable accommodation to be made.

2.4.1.3 Individuals will be required to provide a medical statement by an appropriately licensed professional that contains a diagnosis, prognosis, and a description of the specific impairment(s) and the major life functions and activities affected by the impairment. Individuals may be asked to submit additional medical information if the information originally provided is incomplete, unclear, outdated, or inconsistent. If the individual does not provide the required documentation and information within 30 days, the request for accommodation may be cancelled for lack of necessary information.

2.4.1.4 The ADA Coordinator will analyze the request and, to determine eligibility for accommodation, confer with the employee, the supervisor or the applicant to ascertain the individual's requirements for reasonable accommodation and make a determination regarding which accommodations are necessary. If the employee or applicant is unable to demonstrate a disability, or does not request a reasonable accommodation under applicable statute or regulation, the request may be denied.

2.4.2 Beneficiaries of Programs, Services, and Activities

Beneficiaries of programs, services, and activities can initiate a request for accommodation by contacting the department or organization hosting the event, program, or activity. Routine requests may be handled directly by the department or organization hosting the event. The administrator of the event, service, or activity will notify the ADA Coordinator of non-routine or other requests. Denial of a request may only be done by the ADA Coordinator, after his/her analysis of the reasonableness of the accommodation and/or determination of an undue hardship to the University, and not by the department or organization hosting the event. The ADA Coordinator will analyze the request and, to determine eligibility for the accommodation, confer with the individual to ascertain his/her requirements for reasonable accommodation and make a determination regarding which accommodations are necessary. If the individual is unable to demonstrate a disability, or does not request a reasonable accommodation under applicable statute or regulation, the request may be denied.

2.4.2.1 Individuals may be required to provide a medical statement from an appropriately licensed professional that contains a diagnosis, prognosis, and a description of the specific impairment(s) and the major life functions or activities affected by the impairment. Individuals may be asked to submit additional medical information if the information originally provided is incomplete, unclear, outdated or inconsistent. If the individual does not provide the required documentation and information within a reasonable period of time prior to the event, service, or activity, the request for accommodation may be cancelled for lack of necessary information.

2.4.3 Students and Applicants for Admission

Students and applicants for admission requesting eligibility for accommodation and services can initiate a request for accommodation(s) by contacting the Director of Disabled Student Services.

2.4.3.1 Individuals will be required to provide a recent medical statement that contains a diagnosis, prognosis, and a description of the specific impairment(s) and the major life functions or activities affected by the impairment. Individuals may be asked to submit additional medical information if the information

originally provided is incomplete, unclear, or inconsistent, according to the guidelines set forth by the Disabled Student Services at www.utep.edu/dsso. If the individual does not provide the required documentation and information within the time frame specified by the Disabled Student Services Office the request for accommodation may be cancelled for lack of necessary information.

2.4.3.2 The Director of Disabled Student Services will decide whether to grant or deny the request for accommodation. If a student is dissatisfied with the determination, he or she may follow the complaint and appeal procedures outlined below.

2.4.4 Provisions Applicable to All Individuals Requesting Accommodation

2.4.4.1 Confidentiality All offices and individuals responsible for reviewing and analyzing the accommodation request will maintain the confidentiality of all medical and ADA information. Records and information obtained on employees as part of the accommodation request will be kept in the Equal Opportunity/Affirmative Action Office in separate files. Records and information obtained on students as part of the accommodation request will be kept in the Disabled Student Services Office. Such records shall be shared with only those University employees who have a need to know in order to implement the accommodation request, and shall not be released except as required by law.

2.4.4.2 The University may, at University expense, request an independent medical opinion concerning the impairment for which an individual seeks an accommodation. The failure of an individual to cooperate in obtaining such an opinion will result in the cancellation of the request for accommodation.

2.5 Complaint Procedures for Faculty, Staff, or Applicants for Employment

Please refer to the next section

2.5.1 Filing the Complaint

2.5.1.1 Faculty, staff, or applicants for employment who believe that they have been denied a reasonable accommodation in violation of this policy or disability laws may file a complaint to the University's ADA Coordinator. The complaint shall be in writing. Complaints alleging discrimination on the basis of disability should be filed as provided for in Chapter 1.4 of this section of the Handbook.

2.5.1.2 The complaint must be filed within ten (10) working days after the complainant becomes aware of the alleged violation and shall contain the name and address of the person filing the complaint, a brief description of the alleged violation, and any documents supporting the complaint.

2.5.1.3 The ADA Coordinator shall investigate the complaint. A written statement containing the determination and/or proposed solution shall be sent to the complainant within fifteen (15) working days of the receipt of the complaint.

2.5.1.4 The ADA Coordinator shall maintain all records related to the complaint.

2.5.2. Appeal

2.5.2.1 Faculty and Faculty Candidates

If the complainant is not satisfied with the decision of the ADA Coordinator, a written appeal stating why the decision is incorrect may be made to the Vice President for Academic Affairs within ten (10) working days of the receipt of the determination from the ADA Coordinator. The appeal must contain the name and address of the person filing it and a statement of the reason for appeal.

2.5.2.2 Staff, Administrative Employees and Job Applicants

If the complainant is not satisfied with the decision of the ADA Coordinator, a written appeal stating why the decision is incorrect may be made to the appropriate Vice President within ten (10) working days of the receipt of the determination from the ADA Coordinator. The appeal must contain the name and address of the person filing it and a statement of the reason for appeal.

2.5.2.3 Review by Vice President

The Vice President shall review the determination of the ADA Coordinator and may consult with others as may be deemed necessary. A written decision will be sent to the complainant within thirty (30) working days from the date of receipt of the complaint. The Vice President may extend the response time by an additional ten (10) working days upon notifying the complainant in writing.

The decision of the Vice President shall be final.

2.6 Complaint Procedures for Students, Applicants for Admission, or Other Beneficiaries of University Programs, Services, or Activities

Please refer to the next section

2.6.1 Filing a Complaint

2.6.1.1 Students and applicants for admission who are dissatisfied with the decision of the Director of Disabled Students Services Office should first submit their concerns in writing to the Director of Disabled Student Services Office. The Director of Disabled Student Services shall give a written response within ten (10) working days. If the student or applicant for admission is not satisfied with the Director's determination, he/she should then follow the complaint and appeal options below.

2.6.1.2 Students and applicants for admission, or beneficiaries of University programs, services, or activities who believe that they have been denied a reasonable accommodation in violation of this policy or disability laws may file a complaint in writing with the University's ADA Coordinator.

2.6.1.3 The complaint must be filed within ten (10) working days after the complainant becomes aware of the alleged violation and shall contain the name and address of the person filing the complaint, a brief description of the alleged violation, and any documents supporting the complaint. In the case of a student or applicant for admission who has appealed an accommodation decision with the Director of Disabled Student Services Office in accordance with 2.6.1.1 above, the complaint filed with the ADA Coordinator must be filed within ten (10) working days of the decision made by the Director of the Disabled Student Services Office.

2.6.1.4 The ADA Coordinator shall investigate the complaint. A written statement containing the determination and/or proposed solution shall be sent to the complainant within fifteen (15) working days of the receipt of the complaint.

2.6.1.5 The ADA Coordinator shall maintain all records related to the complaint.

2.6.2 Appeal

2.6.2.1 Students and Applicants for Admission

If the complainant is not satisfied with the decision of the ADA Coordinator, a written appeal stating why the decision is incorrect may be made to the Vice President for Student Affairs within ten (10) working

days of the receipt of the written determination by the ADA Coordinator. The appeal must contain the name and address of the person filing it and a brief description of the reason for the appeal.

2.6.2.2 Beneficiaries of University Programs or Activities

If the complainant is not satisfied with the decision of the ADA Coordinator, a written appeal stating why the decision is incorrect may be made to the Vice President for Business Affairs within ten (10) working days of the receipt of the written determination by the ADA Coordinator. The appeal must contain the name and address of the person filing it and a brief description of the reason for the appeal.

2.6.2.3 Review by Vice President

The Vice President shall review the determination of the ADA Coordinator and may consult with others as may be deemed necessary. A written decision will be sent to the complainant within thirty (30) working days from the date of receipt of the complaint. The Vice President may extend the response time by an additional ten (10) working days upon notifying the complainant in writing.

The decision of the Vice President shall be final.

2.7 Failure to Proceed with an Appeal or Process a Grievance

Failure of a complainant to appeal a determination by the ADA Coordinator to the appropriate Vice President within the specified time limit shall constitute abandonment of the complaint, unless an extension has been approved in writing. Failure by the ADA Coordinator to make a determination within the prescribed time limit authorizes the complainant to forward his or her complaint to the appropriate Vice President.

3.1 Purpose of Policy

This chapter sets forth the University's policy concerning sexual harassment and sexual misconduct in compliance with Title VII of the Civil Rights Act of 1964, Title IX of the Civil Rights Act of 1972, the Texas Commission on Human Rights Act, and Texas Civil Statutes. The University condemns sexual harassment of or by its students, staff, and faculty and 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, is illegal, and is actionable under civil and criminal law. 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.

3.2 Scope of Policy

This policy applies to all University administrators, faculty, staff, students, visitors, and applicants for employment or admission, and beneficiaries of University programs, services, and activities. 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.

3.3 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, the Texas Commission on Human Rights Act, Chapter 21 of the Texas Labor Code and Vernon's Texas Civil Statutes. It is illegal, and is actionable under civil and criminal law.

3.4 Definitions

Please refer to the next section.

3.4.1 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 and is unprofessional and inappropriate for the workplace or classroom.

3.4.2 Sexual Harassment

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

- a.** submission to such conduct is made a term or condition of employment or student status, either explicitly or implicitly;
- b.** submission to or rejection of such conduct is used as a basis for evaluation in making personnel or academic decisions affecting that individual; or
- c.** such conduct has the purpose or effect of unreasonably interfering with an individual's performance as an administrator, faculty member, staff, or student, or creating an intimidating, hostile, or offensive environment.

3.4.3 Examples

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

- a.** physical contact of a sexual nature, including touching, patting, hugging, or brushing against a person's body;
- b.** explicit or implicit propositions or offers to engage in sexual activity;
- c.** comments of a sexual nature, including sexually explicit statements, questions, jokes, or anecdotes;
- d.** remarks of a sexual nature about a person's clothing or body;
- e.** remarks about sexual activity;
- f.** speculation about sexual experience; exposure to sexually-oriented graffiti, pictures, posters, or materials; and/or
- g.** physical interference with or restriction of an individual's movements.

3.5 Consensual Relationships

3.5.1 Every consenting romantic or sexual relationship between a faculty member and a student, 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, 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 student or employee's interest at the expense of others.

3.5.2 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 of interest, favoritism, or bias."

3.5.3 It is the policy of the University that the following romantic or sexual relationships are prohibited:

- a. between a faculty member and a student who is enrolled in the faculty member's course or who is otherwise under the supervision of the faculty member, or
- b. between a supervisor and a person under his or her supervision.

This policy is not intended to discourage the interaction of faculty and students, 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 prohibited and subject to disciplinary action.

3.5.4 Complaints concerning consensual relationships by non-participating individuals will be treated as third-party sexual harassment or sexual misconduct complaints.

3.6 Resolution and Complaint Procedures

The informal resolution and formal complaint procedures set forth below are internal administrative procedures of the University. This procedure is available to any member of the University community who believes that he or she has been subjected to sexual harassment and/or sexual misconduct. Individuals wishing to utilize this procedure should contact the EO/AA Officer or when the accused individual is a student, the Dean of Students. As to those forms of discrimination that also violate state or federal law, an aggrieved party may also file a complaint with the appropriate local, state, or federal agency or in a court of appropriate jurisdiction. These informal resolution and formal complaint procedures are supplemental to, and are not intended to displace, other disciplinary procedures set forth in the University's Handbook nor the Rules and Regulations of the U.T. System Board of Regents.

3.6.1 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 in Chapter 3.6.2 of this section of the Handbook. An individual wishing to utilize the informal resolution process should contact the EO/AA Officer or the Dean of Students, as appropriate.

a. Informal Assistance

The individual is provided assistance in an attempt to resolve possible sexual harassment or sexual misconduct if the individual does not wish to file a formal complaint. Methods of informal resolution may include, but are not limited to: coaching the person on how to directly address the situation that is causing a problem; mediating the dispute with the parties; aiding in the modification of a situation in which the offensive conduct occurred; assisting a department or division with the resolution of a real or perceived problem; or arranging a meeting with the alleged offender that involves a discussion of the requirements of the sexual harassment and misconduct policy. However, if necessary, the University may take more formal action to ensure an environment free of sexual harassment or sexual misconduct.

b. Timeframe

Informal resolutions will be completed within 30 working days from receipt of a request for informal resolution.

c. Confidentiality and Documentation

The University shall document informal resolutions. The Office of the Dean of Students or the Equal Opportunity/Affirmative Action Office, as appropriate, shall retain such documentation. The University will endeavor to maintain confidentiality to the extent permitted by law. Relevant information will be provided only to those persons who need to know in order to achieve a timely resolution of the complaint.

3.6.2 Formal Complaint Reporting Procedure

The complaint procedure herein also constitutes the grievance procedure for complaints alleging unlawful sex discrimination, required under Title IX of the education amendments of 1972. As used herein, "complaint" is synonymous with "grievance."

The University of Texas at El Paso 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 EO/AA Officer or, when a student is the accused individual, to the Dean of Students. In no case will a complainant be required to report such conduct to the person accused of the misconduct, for example, where the accused is the complainant's supervisor. The complainant will be advised of the procedures for filing a formal complaint of sexual harassment or sexual misconduct. When a supervisor or the Dean of Students receives a complaint, he or she will immediately notify the EO/AA Officer.

3.6.2.1 Complaints should be filed as soon as possible after the conduct giving rise to the complaint, but not later than 60 calendar days after the event occurred.

3.6.2.2 In order to initiate the investigation process, the complainant should submit:

a. 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;

b. the name of the person directly responsible for the alleged violation;

c. a detailed description of the conduct or event that is the basis of the alleged violation;

d. the date(s) and location(s) of the occurrence(s);

e. the names of any witnesses to the occurrence(s);

f. the resolution sought;

g. 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. 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. When the supervisor or the Dean of Students receives a complaint with a written statement, he/she shall immediately notify the EO/AA Officer.

3.6.3 Formal Complaint Investigation Procedure

3.6.3.1 The Dean of Students, and/or the 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.

3.6.3.2 Within five (5) working days after receipt of a complaint, the Dean of Students, and/or the EO/AA Officer, as appropriate, will send the complainant a brief acknowledgment of the complaint, stating that the complaint will be evaluated and advising the complainant that he or she will be contacted within ten (10) working days as to whether the complaint is dismissed or an investigation has been authorized. A formal investigation will be initiated if a complaint is complete, timely, within the scope of this policy and articulates sufficient specific facts, which, if determined to be true would support a finding that this policy was violated. A complaint may be dismissed for a variety of reasons, for example: the complaint fails to describe in sufficient detail the conduct that is the basis of the complaint; the facts alleged in the complaint, even if taken as true, do not constitute discrimination on a protected basis; the complaint fails to allege any facts that suggest discrimination; the complainant declines to cooperate in the investigation; or the appropriate resolution or remedy has already been achieved, or has been offered and rejected.

3.6.3.3 If it is determined that a complaint will not be investigated, the Dean of Students and/or the EO/AA Officer, as appropriate, will send the complainant a notification letter explaining the reason and informing the complainant that, within ten (10) working days of the notification, he or she may appeal the decision not to proceed with a complaint investigation to the appropriate Vice President. The written appeal must explain why the decision to dismiss the complaint was in error. The appropriate vice president will respond within twenty (20) working days of receipt of the appeal. The vice president's decision is final. If the decision to dismiss is overturned, the complaint is sent back to the Equal Opportunity/Affirmative Action Office or the Office of the Dean of Students, as appropriate, for investigation in accordance with the procedures outlined below.

3.6.3.4 As part of the investigation process, the accused individual shall be provided with a copy of the complaint and allowed ten (10) working days to respond in writing, unless unusual circumstances warrant additional time.

3.6.3.5 The complainant and the accused individual may present any document or information that is believed to be relevant to the complaint.

3.6.3.6 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.

3.6.3.7 The investigation of a complaint will be concluded as soon as possible after receipt of the written complaint. In investigations exceeding 60 working days, a justification for the delay shall be presented to

and reviewed by the vice president overseeing the investigative office. The complainant, accused individual, and supervisor will be provided an update on the progress of the investigation after the review.

3.6.3.8 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.

3.6.3.9 The investigator will provide a copy of the report and copies of relevant documents or other evidence considered to the appropriate vice president or to the vice president's designee. The investigator will provide a copy of the report to the complainant and respondent, who will have seven (7) working days from the date of the report to submit comments regarding the report to the vice president or his/her designee. However, if a complaint is filed against a student, then the complainant may not receive or comment on the report in accordance with the Family Education Rights and Privacy Act's restrictions on disclosure of educational records.

3.6.3.10 Within ten (10) working days of the complainant and respondent's deadline for submitting comments regarding the report, the vice president or his/her designee and the investigator shall meet to discuss the findings, and review the record, including any comments or proposed corrections submitted by the complainant and respondent.

3.6.3.11 Within ten (10) working days of that meeting, the vice president or his/her designee 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, any comments 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, and its 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.

3.6.3.12 The complainant and the respondent shall be informed in writing by the vice president or his/her designee, of the 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 this information, as the Family Education Rights and Privacy Act prohibits such disclosures.

3.6.3.13 If the vice president or his/her designee 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, written reprimands, the imposition of conditions, reassignment, suspension, and dismissal.

3.6.3.14 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 Dean of Students will impose disciplinary action, if any, against a student in accordance with the University's student disciplinary procedures. Where the resolution requires continued monitoring

to ensure that the concerns raised have been addressed, the file documenting the complaint will reflect the monitoring plan.

3.7 Provisions Applicable to All Complaints

Please refer to the next section

3.7.1 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.

3.7.2 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 against an individual who has participated in an investigation of such a complaint is subject to disciplinary action, including dismissal.

3.7.3 Confidentiality and Documentation

The University shall document complaints and their resolution. The Office of the Dean of Students or the Equal Opportunity/Affirmative Action Office, as appropriate, shall retain such 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.

3.8 Dissemination and Training

The Equal Opportunity/Affirmative Action Office shall disseminate this policy regularly including by annual notice to all faculty, employees, and students and will periodically provide training programs for employees and supervisors regarding the requirements of this policy and conduct that could constitute a violation of this policy. Pursuant to Texas Labor Code, Section 21.0.10, new employees shall receive this training and this policy within 30 days of hire, and all employees shall participate in refresher training every two years. Such training shall be documented in each employee's personal file via an employee statement of training.