

Equal Opportunity/Affirmative Action/ Non-Discrimination Policy

Section:	VI: Equal Opportunity
Chapter:	1
Date Updated:	April 24, 2015

1.1 Purpose

This chapter sets forth the University’s policies concerning equal opportunity, affirmative action, and non-discrimination, in compliance with 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, Sections 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 (ADA) of 1990, and the Americans with Disabilities Act Amendments Act (ADAAA) of 2008, Title II of the Genetic Information Act of 2008, 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, genetic information, veteran’s status, sexual orientation, or gender identity. In addition to this commitment, the University will take affirmative steps to insure that applicants are employed, and employees are treated, during all aspects of employment, 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 like promotions based upon documented performance, merit, and potential

achievement as well as evaluations which 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.

The Equal Opportunity Policy and Affirmative Action Plan 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 the 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, and the Americans with Disabilities Act Amendments Act (ADAAA) of 2008. 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 Act of 1974, the University will take Affirmative Action to employ and advance in employment qualified disabled individuals, veterans and veterans of the Vietnam Era at all levels of employment, including the executive level. Such action will apply to all employment practices, including but not limited to the following: hiring, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training. Compensation of a disabled veteran or Vietnam era veteran will in no way be reduced because of any disability income, pension, or other benefits the applicant or employee receives from another source.

1.4 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 discriminated against on the basis of race, color, national origin, sex, religion, age, disability, genetic information, veteran's status, sexual orientation or gender identity. Individuals wishing to utilize this procedure should contact the 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 nor 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 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 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 Office 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

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, genetic information, veteran's status, sexual orientation, or gender identity to immediately report the incident to the appropriate supervisor of the accused faculty member or employee, to the EO Office 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

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 statement 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 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.

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.