Operating Policy and Procedure

**OP 40.02: Anti-Discrimination, Sexual Harassment, and Title IX Policy and Grievance Procedure for Violations of Employment and Other Laws for Employees**

**DATE:** July 28, 2015

**PURPOSE:** Texas Tech University (TTU) is an Equal Employment Opportunity (EEO) employer and ensures compliance with federal and state employment laws and regulations. In the event an employee or student believes his/her rights under these or other laws have been violated by a TTU employee, this policy sets forth the procedures to address these concerns in a fair, equitable, and prompt manner.

**REVIEW:** This Operating Policy/Procedure (OP) will be reviewed in January of odd-numbered years by the managing director of the Office of Equal Employment Opportunity (EEO) and the managing director of Human Resources with substantive revisions forwarded to the chief of staff for the president.

**POLICY/PROCEDURE**

Texas Tech is committed to providing its students, faculty, and staff with an educational and workplace environment free from any form of unlawful discrimination. The Texas Tech community is dedicated to fostering and supporting a culture of mutual respect and communication.

Texas Tech University does not tolerate discrimination or harassment of or by employees (whether student, faculty, or staff) or applicants based on or related to sex, race, national origin, religion, age, disability, protected veteran status, genetic information, or other protected categories, classes, or characteristics. While sexual orientation and gender identity are not protected categories under state or federal law, it is Texas Tech University policy not to discriminate in employment decisions on this basis (see OP 40.04). Employment actions such as hiring, promotion, demotion, transfer, rate of pay or other forms of compensation, selection for training, and termination shall not be made based on an employee’s protected status. Discriminatory behavior is prohibited by this policy, as well as by federal laws such as Title VII and Title IX and state law such as Chapter 21 of the Texas Labor Code, regardless of the manner in which it is exhibited, whether verbally, in writing, by actions, or electronically displayed or conveyed.

Texas Tech expects all employees to comply with the law in connection with their employment and employment decisions. Employees who violate these policies and laws are subject to disciplinary action, up to and including termination.

1. **Equal Employment Opportunity Office and Title IX Coordinator**

   On behalf of Texas Tech, the TTUS Office of Equal Employment Opportunity (EEO) is designated to formally investigate reports or notices of discrimination and/or harassment by or against employees. Any person who has a question or complaint of any type of discrimination
may contact the TTUS Office of EEO at (806) 742-3627; in writing to TTUS Office of EEO, Box 1073, Lubbock, TX 79409; at the Administration Building Room 210; or via email at eeo@ttu.edu. Any investigation will be conducted in a fair and impartial manner.

Additionally, Texas Tech University has a Title IX coordinator who oversees the university’s compliance with Title IX, which prohibits discrimination based on gender. Questions regarding complaints of this policy or gender discrimination may also be directed to the Title IX coordinator, Ronald Phillips, at 806-742-2121; in writing to Ronald Phillips at Texas Tech Office of the President, Administration Building, Room 170, Lubbock, TX 79409; or via email at ronald.phillips@ttu.edu. The university has also designated deputy Title IX coordinators for students, employees, and athletics, all of whom may be contacted regarding gender discrimination issues. For more information, see the university’s Title IX websites at http://www.ttu.edu/administration/president/unicounsel/titleIX.php and http://www.depts.ttu.edu/hr/TitleIX/.

The chief of staff to the president, as well as relevant unit or college administrators, will be notified of formal investigations. Furthermore, if the investigation is regarding a faculty member, the Office of the Provost will be notified.

2. Definitions

a. Discriminatory Harassment

Discriminatory harassment is verbal or physical conduct that shows hostility toward an employee based on or related to sex, race, national origin, religion, age, disability, sexual orientation, gender identity, genetic information, or other protected categories, classes, or characteristics and that:

(1) Creates an intimidating, hostile, or offensive working environment;
(2) Has the purpose or effect of unreasonably interfering with an employee’s work performance;
(3) Adversely affects an employee’s employment opportunities; and
(4) Is severe or pervasive.

Examples of inappropriate behavior that may constitute unlawful harassment include, but are not limited to:

· Slurs and jokes about a protected class of persons or about a particular person based on protected status, such as sex or race;
· Display of explicit or offensive calendars, posters, pictures, drawings, screen savers, emails, or cartoons in any format that reflects disparagingly upon a class of persons or a particular person;
· Derogatory remarks about a person’s national origin, race, or other ethnic characteristics;
· Disparaging or disrespectful comments if such comments are made because of a person’s protected status;
· Loud or angry outbursts or obscenities in the workplace directed toward another employee, student, customer, contractor, or visitor;
· Disparate treatment without a legitimate business reason; or
· Other threats, discrimination, hazing, bullying, stalking, or violence based on a
protected category, class, or characteristic.

b. Sexual Harassment

Sexual harassment, which is another form of discriminatory harassment, is unwelcome verbal, written, or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an employee’s employment;
2. Submission to or rejection of such conduct by an employee is used as a basis for employment decisions affecting the employee;
3. Such conduct has the purpose or effect of interfering with the employee’s work performance or of creating an intimidating, hostile, or offensive working environment; or
4. In instances involving non-employee students, such conduct has the purpose or effect of unreasonably interfering with the student’s educational experience.

To constitute unlawful sexual harassment, the behavior must be severe or pervasive.

Examples of inappropriate behavior that may constitute unlawful sexual harassment or sexual misconduct include, but are not limited to:

- Sexual teasing, jokes, remarks, or questions;
- Sexual looks and gestures;
- Sexual innuendoes or stories;
- Communicating in a demeaning manner with sexual overtones;
- Inappropriate comments about dress or physical appearance;
- Inappropriate discussion of private sexual behavior;
- Gifts, letters, calls, emails, or materials of a sexual nature;
- Sexually explicit visual material (calendars, posters, cards, software, internet materials);
- Sexual favoritism;
- Pressure for dates or sexual favors;
- Unwelcome physical contact (touching, patting, stroking, rubbing);
- Non-consensual video or audio-taping of sexual activity;
- Exposing one’s genitals or inducing another to expose his/her genitals;
- Stalking;
- Domestic or dating violence;
- Sexual assault; or
- Other gender-based threats, discrimination, intimidation, hazing, bullying, stalking, or violence.

c. Grievance

A grievance is a formal complaint pertaining to adverse employment actions taken on the basis of the employee’s protected status or other violation of law or TTU policy.

If an employee separates from TTU for any reason after filing a grievance, the grievance shall be dismissed. A termination cannot be grieved unless the employee has reason to
believe that the termination was prohibited by law. A violation of a university policy alone does not necessarily constitute a violation of law or an action prohibited by law. In the event the employee alleges his or her termination was the result of discrimination or a violation of the law, an employee may file a grievance pursuant to section 3 below.

3. **General Provisions**

   a. While not appropriate, not all rude or offensive comments or conduct constitute sexual or other harassment or unlawful discrimination.

   b. This grievance procedure is applicable to all employees, whether staff or faculty, who choose to complain about unlawful discrimination or other violations of the law that adversely affect their employment.

   c. All grievance investigations and procedures will be non-adversarial in nature. The employee filing the grievance may represent himself or herself or be accompanied by a representative who does not claim the right to strike. Language interpreters and other individuals intended to aid the employee in communicating will be permitted.

   No TTU funds may be used to pay expenses for salary, travel, or per diem of a public employee who represents an employee in the presentation of grievances, nor may other resources be used, except that an employee is allowed to take annual leave, compensatory leave, or leave without pay subject to established TTU operating policies and procedures to engage in this activity.

   d. Retaliation against an employee who reports discrimination or other violation of the law or who participates in an investigation under this policy is strictly forbidden. Any manager or supervisor or other employee who is found to have taken any adverse employment action against an employee because of the employee’s good faith report of discrimination or other violation of the law or participation in an investigation under this policy is subject to severe penalties, which may include immediate termination. This may apply even if it is determined that the underlying grievance is not a violation of TTU policy or law.

   e. However, the filing of a grievance shall not affect the ability of TTU to pursue disciplinary action or separation action for reasons other than the employee’s filing of a grievance.

   f. Employment at TTU is governed by the employment at will doctrine. Employment is for an indefinite duration and can be terminated at any time, with or without cause and with or without notice, by either TTU or the employee unless otherwise prohibited by law. Nothing in this or any other TTU operating policy and procedure constitutes an employment agreement, either expressed or implied, a contract, a contractual relationship, a guarantee of continued employment, or a property right.

   g. Nothing in this policy shall prevent an employee from presenting a charge of discrimination or other grievance covered by this policy to an external agency, such as the Equal Employment Opportunity Commission or Texas Workforce Commission. However, if an employee files a complaint with an external agency, while the TTU Office of EEO may continue its investigation, the internal process shall terminate and any response to the complaint will be made to the external agency and not to the employee.

   h. In some instances, the conduct complained of may also constitute a violation of federal, state,
or local law. Employees have the option of reporting misconduct to the university, to law enforcement, or to both. An employee will be informed by university officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities.

i. If a non-university individual has a complaint of discrimination or harassment by a university employee acting in the scope of his or her employment, the individual involved may file a report with the TTUS Office of EEO, and the university will investigate and take steps to address the situation.

j. If a university employee has a complaint of discrimination or harassment by a non-university party that affects the employee’s work environment, the employee may make a report to the TTUS Office of EEO. The university will conduct an inquiry and take action, if possible, to prevent further misconduct. However, the university’s response may differ for complaints regarding third parties based on the level of control the university has over the third party. Even though the university’s ability to take direct action against a third party may be limited, Texas Tech University will take steps to provide appropriate remedies for the employee and, where appropriate, the broader campus population.

4. Employee Grievance Procedures, Including Student Employees

a. Prior to filing a formal grievance, the employee should attempt to resolve the situation by addressing the offending party in an informal manner and in an atmosphere of mutual respect. If the employee is not comfortable addressing the offending party, he/she may address his/her concerns to his/her first or second level supervisor. If the situation is not resolved by informal means or if the employee is not comfortable with doing so, the employee may file a formal grievance.

An employee may also consult with the Office of EEO to determine if he/she wishes to file a formal grievance. While an investigation is not normally initiated without a written grievance submitted by the employee, the EEO Office or TTU may take action as deemed appropriate by the office. Such action may include notifying key personnel with a need to know about the allegations, conferring with supervisors or other administrators concerning inappropriate behavior occurring within their area of responsibility, informing alleged offenders of TTU’s policy, and educating departments and supervisors as needed on this and other policies.

b. An employee having a grievance should submit a completed Grievance form, which is available on the TTU Human Resources website at the following link: http://www.depts.ttu.edu/hr/formsPolProc/forms.php to the Office of EEO within 10 business days from the date of the action giving rise to the grievance or within 10 business days of the conclusion of informal attempts to resolve the situation.

A written grievance shall contain:

(1) A clear and concise statement of the grievance;
(2) The date the incident took place;
(3) The name and contact information of the grieving party, the party complained about, and any witnesses;
(4) The specific resolution sought by the employee; and
(5) Additional relevant information to be considered in support of the grievance.
Any changes to the grievance must be in writing.

c. Only one subject matter shall be covered in any one grievance.

d. Once a signed grievance form is received by the Office of EEO, an investigation may be conducted by that office and the appropriate administrative officers including, in the case of grievances involving gender discrimination, notification to the Title IX coordinator and the appropriate deputy coordinator.

e. The investigation may consist of the review of the grievance and any supporting documentation, examination of other relevant documentation, and interviews with relevant individuals. The extent of the investigation and its procedures will be determined by and at the discretion of the Office of EEO. Any findings in the investigation will be based upon a preponderance of the evidence (i.e., whether the findings are more likely than not).

f. During the pendency of the investigation, the EEO office will confer with appropriate administrators so that the university may provide interim remedies intended to address the short-term effects of discrimination, harassment, and/or retaliation. At the university’s discretion, these remedies may include, but are not limited to:

· Altering work arrangements for employees;
· Implementing contact limitations between the parties;
· Administrative leave as provided for in OP 70.31;
· Referral to the Employee Assistance Program; or
· Referral to counseling and/or other health services.

g. Investigations will be completed as expeditiously as possible. In the case of complaints that may be covered by Title IX, all efforts will be made to complete such investigation within 60 days.

h. After the investigation is complete, the Office of EEO will provide a written determination to the employee who has filed the grievance and to the appropriate department administrator.

i. The finding of the Office of EEO is final.

j. In the event of a finding of a violation of this policy or other violation of the law is made, appropriate disciplinary action will be taken as determined by the appropriate administrator. Disciplinary action may range from coaching up to and including termination. Termination procedures for tenured faculty will be conducted pursuant to OP 32.02.

k. Any employee subjected to disciplinary action may appeal any such action, but not the determination of the EEO office, within 10 business days through procedures established for faculty in OP 32.05 and for staff in OP 70.10. A copy of the appeal should be forwarded to the Office of EEO.

l. Any disciplinary action taken in connection with a grievance filed pursuant to this policy shall be reported in writing to the Office of EEO at the time the disciplinary
action is implemented. Confirmation of the disciplinary action can be provided via a
copy of a counseling or other written disciplinary action, resignation, termination
document, etc.

m. At the conclusion of the investigation, the complaining party shall be advised that if the
discrimination or unlawful activity persists the employee should contact the Office of
EEO. Likewise, in the event the employee believes unlawful retaliation for filing a
grievance has taken place the employee should contact the Office of EEO and/or file a
grievance for retaliation.

n. In the event of a finding of a violation of this policy, the Office of EEO will follow up
with the grievant within 60 days to ensure that the complained of behavior has ceased.

5. **Complaints by Students or Involving Students**

   a. If a student has a non-employment based complaint of discrimination or harassment by an
      employee, whether faculty, staff, or student, the student should contact the Office of the Dean
      of Students and/or file an incident report form, found at the Office of Student Conduct

      (1) Student complaints of discrimination or harassment by an employee will be
          investigated jointly by the Office of EEO and the Office of the Dean of Students.

      (2) The investigation may consist of the review of the grievance and any supporting
          documentation, examination of other relevant documentation, and interviews with
          relevant individuals. The extent of the investigation and its procedures will be
          determined by and at the discretion of the Office of EEO or the Office of the Dean of
          Students. Other administrators may be consulted to assist with the investigation.

      (3) After the investigation is complete, the Office of the Dean of Students or the Office of
          EEO will provide a written determination to the student who has filed the grievance, to
          the accused parties, and to the appropriate administrators.

      (4) The finding of either the Office of the Dean of Students or the Office of EEO is final
          and not appealable by either party.

      (5) In the event a finding of a violation of this policy is made, appropriate disciplinary
          action will be taken as determined by the appropriate administrator.

      (6) If either party disagrees with the imposed disciplinary action or lack thereof, he or she
          may appeal within 10 business days through procedures established in OP 32.05 for
          faculty and OP 70.10 for staff.

   b. Student employees having a complaint of discrimination or harassment in employment should
      follow the procedure set forth in section 3 above.

   c. If an employee has a complaint of discrimination, harassment, or other misconduct against a
      student, the employee should contact the Office of the Dean of Students and/or file an
      incident report form, found at the Office of Student Conduct website:

OP 40.02
6. **Reporting Requirements**

All employees who are either the subject of, witness to, or receive a report of unlawful discrimination or other violations of the law have the obligation to report such actions to their immediate supervisor, the Office of EEO, the Title IX coordinator, a deputy Title IX coordinator, the Texas Tech Police Department, or other appropriate law enforcement authority.

For reporting requirements relating to claims of gender based discrimination or harassment or other forms of sexual misconduct involving non-employee students, see OP 40.03.

7. **Confidentiality**

The confidentiality of both the employee and the party who is the subject of the complaint will be honored to the extent possible without compromising the university's commitment to investigate allegations of discrimination or violations of law and to the extent allowed by law. The willful and unnecessary disclosure of confidential information by anyone, including the employee filing the grievance, regarding a complaint of discrimination or violation of law to any person outside of the investigation process may result in appropriate disciplinary measures against the offending party.

Students may make confidential disclosures to the Texas Tech University Student Counseling Center.

8. **Training**

Pursuant to state legislation, all employees must attend EEO non-discrimination and sex/gender discrimination, harassment, and campus crime mandated reporter training within the first 30 days of employment and receive supplemental training every two years. Compliance records for training requirements are retained in the university’s learning management system administered by Human Resources.

Employees are informed of the EEO and Title IX policy through new employee orientation, EEO training sessions, this anti-discrimination policy and other operating policies, and the placement of the EEO federal and state posters at various locations throughout the campus. Information about the Texas Tech EEO and Title IX policy can also be obtained from Human Resources, at the Texas Tech University System EEO Office, at http://www.depts.ttu.edu/hr/TitleIX/, or at http://www.texastech.edu/offices/equal-employment/.

Students are informed of policies regarding or related to discriminatory harassment, sexual harassment, sexual violence, and other forms of sexual misconduct at new student orientation and via the Student Handbook and other outreach, awareness, and educational programs offered by the university.

9. **Authoritative References**

- Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972
- Age Discrimination in Employment Act of 1967
- Title IX of the Education Amendments of 1972
10. **Right to Change Policy**

TTU reserves the right to interpret, change, modify, amend, or rescind this policy, in whole or in part, at any time without notice to or consent of its employees.

The employee *Grievance* form is available on the TTU Human Resources website at the following link [http://www.depts.ttu.edu/hr/forms.asp](http://www.depts.ttu.edu/hr/forms.asp).