[Major revision–posted 5/26/16 (replaces 12/4/15 edition)]

TEXAS TECH UNIVERSITY™

Operating Policy and Procedure

OP 40.02: Non-Discrimination and Anti-Harassment Policy and Complaint Procedure for Violations of Employment and Other Laws

DATE: May 26, 2016

PURPOSE: The university is an Equal Employment Opportunity (EEO) employer and ensures compliance with federal and state employment laws and regulations. In the event an individual believes his/her rights under these or other laws have been violated, 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 August of odd-numbered years by the Managing Director of the Office of Equal Employment Opportunity (EEO), the Dean of students, and the Assistant Vice President for Human Resources with recommended revisions forwarded to the Associate Vice President for Administration and Chief of Staff to the President.

POLICY/PROCEDURE

The university is committed to providing and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from any form of unlawful discrimination. The university is dedicated to fostering and supporting a culture of mutual respect and communication.

This policy applies to all university students and employees, visitors, applicants for admission to or employment with the university, as well as university affiliates and others conducting business on campus.

The university does not tolerate discrimination or harassment 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 explicitly protected categories under state or federal law, it is the university's policy not to discriminate in employment, admission, or use of programs, activities, facilities, or services on these bases.

Discriminatory behavior is prohibited by this policy, as well as by federal laws such as Title VII, which prohibits discrimination in employment, Title IX, which prohibits discrimination on the basis of sex in education programs or activities, the Equal Pay Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Rehabilitation Act of 1973, the Civil Rights Act of 1991, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Title II of the Genetic Information Non-Discrimination Act, and state laws such as Chapter 21 of the Texas Labor Code. Discriminatory behavior is prohibited regardless of the manner in which it is exhibited, whether verbally, in writing, by actions, or electronically displayed or conveyed.

The university expects all members of the University Community to comply with the law.

Members of the University Community who violate university policies and laws may be subject to disciplinary action, up to and including termination of employment, expulsion from the university, or being barred from university premises and events.

While sexual harassment, Sexual Misconduct, and sexual assault may constitute prohibited acts of discrimination, such complaints will be addressed through OP 40.03, Sexual Harassment, Sexual Assault, Sexual Misconduct, and Title IX Policy and Complaint Procedure.

1. **Definitions**

For purposes of this policy, the definitions below apply.

a. Employee – Any person who receives a W-2 or 1042-S from the university, including full- and part-time faculty, staff, and students.

b. Harassment – Harassment based on a person's protected class under this policy is a form of discrimination. Unlawful harassment is verbal or physical conduct that shows hostility toward an individual 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 or educational environment;
(2) Has the purpose or effect of unreasonably interfering with an employee's or student's educational performance;
(3) Adversely affects an employee's employment opportunities or student's educational 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, cartoons, screen savers, emails, internet, or other multi-media materials in any format that reflects disparagingly upon a class of persons or a particular person in a protected category;
- Derogatory remarks about a person's sex, 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.

c. Reporting Party – A person or entity (in the case of the university) who submits a complaint alleging a violation of this policy.

d. Responding Party – Generally, the Responding Party is the person who is alleged to be responsible for the prohibited conduct alleged in a complaint.

e. Sexual Misconduct – A broad term encompassing all forms of gender-based harassment or discrimination and unwelcome behavior of a sexual nature. The term includes sexual harassment, nonconsensual sexual contact, nonconsensual sexual intercourse, sexual assault, sexual exploitation, stalking, public indecency, interpersonal violence, and any other form of sexual misconduct, sexual violence, or other misconduct based on sex. See OP 40.03 for matters concerning Sexual Misconduct.

f. University Community – All faculty, staff, and students of and visitors to any university premises or university-affiliated activity.

2. **Equal Employment Opportunity Office and Office of the Dean of Students**

On behalf of the university, the Texas Tech University System Office of Equal Employment Opportunity (Office of EEO) is designated to formally investigate reports or notices of discrimination and/or harassment by or against employees. Accordingly, employees, students, or third parties with a complaint against an employee should contact the Office of EEO.

CONTACT	PHONE	ADDRESS	EMAIL
Managing Director Office of Equal Employment Opportunity	806.742.3627	TTU Administration Building, Room 210 Office of Equal Employment Opportunity Texas Tech University System Box 1073 Lubbock, TX 79409	eeo@ttu.edu

Employees, students, or third parties with a complaint of discrimination and/or harassment against a student should contact the Office of the Dean of Students.

CONTACT	PHONE	ADDRESS	EMAIL
Office of the Dean of Students	806.742.2984	201 Student Union Texas Tech University Box 45014 Lubbock, TX 79409	deanofstudents@ttu.edu

In instances of complaints of gender discrimination only, persons may also contact the Title IX Coordinator.

CONTACT	PHONE	ADDRESS	EMAIL
TTU Title IX Coordinator Ronald Phillips University Counsel, Texas Tech Office of the President	806.742.2121	TTU Administration Building Room 170 Office of the President Texas Tech University System Box 42005 Lubbock, TX 79409	Ronald.phillips@ttu.edu —

3. **General Provisions Relating to Employees**

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

   b. This complaint 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 complaint investigations and procedures will be non-adversarial in nature and will be conducted in a fair and impartial manner. Language interpreters and other individuals intended to aid the employee in communicating will be permitted.

      No university funds may be used to pay expenses for salary, travel, or per diem of a public employee engaged in the complaint process, nor may other university resources be used, except that an employee is allowed to take vacation leave or leave without pay subject to established university operating policies and procedures to engage in this activity.

   d. Relevant administrators will be notified of formal investigations. The Office of the Provost will be notified of any complaints involving faculty.

   e. Except as otherwise provided by university policy or written contract, employment at the university 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 the university or the employee unless otherwise prohibited by law, university policy, or written contract. Nothing in this university 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.

   f. The filing of a complaint shall not affect the ability of the university to pursue disciplinary action or separation action for reasons other than the employee's filing of a complaint.

   g. A termination of employment cannot be the subject of a complaint 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.

h. Nothing in this policy shall prevent an employee from presenting a charge of discrimination or other complaint 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, with the exception of a complaint of Sexual Misconduct, while the 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.

i. For complaints that do not involve discrimination, harassment, or protected status, see OP 70.10, Non-Faculty Employee Complaint Procedures, http://www.depts.ttu.edu/opmanual/OP70.10.php, or OP 32.05, Faculty Grievance Procedures, http://www.depts.ttu.edu/opmanual/OP32.05.php

4. **Employee Complaint Procedures, Including Student Employees**

a. Prior to filing a formal complaint, the employee should attempt to resolve the situation by addressing the Responding Party in an informal manner and in an atmosphere of mutual respect. However, in cases of Sexual Assault and Interpersonal Violence, as defined in OP 40.03, the foregoing provision does not apply (see OP 40.03). If the employee is not comfortable addressing that individual, the prospective Reporting Party may address 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 complaint. Informal resolution will not be used in complaints of Sexual Assault and Interpersonal Violence.

An employee may also consult with the Office of EEO to determine if he/she wishes to file a formal complaint. While an investigation is not normally initiated without a written complaint submitted by the employee, the Office of EEO or the university 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 the Responding Party of the university's non-discrimination policies, and educating departments and supervisors as needed on this and other policies.

b. An employee having a complaint should submit a completed *Complaint of Discrimination* form, which is available on the university's Human Resources website at the following link: http://www.depts.ttu.edu/hr/formsPolProc/forms.php. Except as otherwise provided by university policy or law, this complaint should be submitted to the Office of EEO within 30 days from the date of the complained of action.

A written complaint shall contain:

(1) A clear and concise statement of the complaint;
(2) The date the incident took place;
(3) The name and contact information of the Reporting Party, the Responding Party, and any witnesses;
(4) The specific resolution sought by the employee; and
(5) Additional relevant information to be considered in support of the complaint.

Any changes to the complaint must be in writing.

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

d. Once a signed complaint form is received by the Office of EEO, an investigation may be conducted by that office and the appropriate administrators.

e. The investigation may consist of review of the complaint and any supporting documentation, examination of other relevant documentation, and interviews with relevant individuals. Each party will be given the opportunity to present his/her side and identify witnesses and other relevant evidence. 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. Investigations will be completed as expeditiously as possible.

g. After the investigation is complete, the Office of EEO will provide a written determination to the Reporting Party, the Responding Party, and to the appropriate department administrator.

h. The findings of the Office of EEO are final.

i. 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 counseling up to and including termination. Termination procedures for tenured faculty will be conducted pursuant to OP 32.02.

j. Any employee subjected to disciplinary action may appeal any such action, but not the findings of the Office of EEO, within the time periods and through the procedures established or 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.

k. Any disciplinary action taken in connection with a complaint 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.

l. At the conclusion of the investigation, the Reporting 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 complaint has taken place the employee should contact the Office of EEO and/or file a complaint for retaliation.

m. In the event of a finding of a violation of this policy, the Office of EEO will follow up with the Reporting Party 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 complaint of discrimination or harassment by another student, see Part I, Section C: Conduct Procedures for Students in the TTU *Student Handbook*. www.ttu.edu/studenthandbook.

   b. If a student has a complaint regarding discrimination or harassment involving a student organization, see Part I, Section D: Conduct Procedures for Student Organizations in the TTU *Student Handbook*. www.ttu.edu/studenthandbook.

   c. If a student has a non-employment based complaint of discrimination or harassment by an employee, the student should follow the processes outlined in Part II, Section C: Anti- Discrimination Policy in the TTU *Student Handbook*. www.ttu.edu/studenthandbook.

   d. Student employees having a complaint of discrimination or harassment in employment should follow the procedure set forth in the previous section of this policy.

   e. If an employee has a complaint of discrimination or harassment against a student, the employee should contact the Office of Student Conduct and/or file an incident report form, found at www.depts.ttu.edu/studentconduct.

   f. This policy does not apply to grade appeals, regardless of the basis of the appeal. All grade appeals will be handled pursuant to the university's grade appeal policy. See OP 34.03, Student Grade Appeal.

6. **Complaints Involving Non-University Individuals**

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

   b. If a student or university employee has a complaint of discrimination or harassment by a non- university party that affects the student's educational environment or the employee's work environment, the individual may make a report to the Office of the Dean of Students or the Office of EEO. The university may 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, the university may take steps to provide appropriate remedies for the employee and, where appropriate, the broader University Community.

7. **Retaliation**

   Retaliation against a person who reports a potential violation under this policy, assists someone with a report of a violation, or participates in any manner in an investigation or in the resolution of a complaint made under this policy is strictly prohibited and will not be tolerated. Retaliation includes, but is not limited to threats, intimidation, reprisals, and/or adverse actions related to an individual's employment or education. The university will take appropriate steps to assure that a person who in good faith reports, complains about, or

participates in an investigation pursuant to this policy will not be subjected to retaliation. Individuals who believe they are experiencing retaliation are strongly encouraged to lodge a complaint with the university using the same procedure outlined in this policy.

Individuals who are found to have retaliated under this policy will be subject to disciplinary action, up to and including termination of employment, expulsion from the university, or being barred from university premises and events.

8. **Interim Measures**

The Reporting Parties may request and the university may implement interim measures, as may be necessary to assure the safety and well-being of the participants in the complaint process, to maintain an environment free from harassment, discrimination, or retaliation, and to protect the safety and well-being of the University Community. Appropriate university officials will decide if and what interim measures are necessary. Such interim measures may include, but are not limited to:

- Separating the Reporting Party's and Responding Party's academic or working situations;
- Forbidding contact between parties involved in a complaint;
- Suspending the right of the Responding Party to be present on campus or otherwise altering the university status of the Responding Party.

Other interim measures may be implemented depending upon the Responding Party's relationship with the University. These interim measures may be kept in place through the conclusion of any review, investigation, or appeal process. Interim measures can be implemented regardless of whether or not the Reporting Party pursues formal university or criminal action.

9. **Reporting Requirements**

All employees who witness 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 Texas Tech Police Department, or other appropriate law enforcement authority. A supervisor who receives a report of discrimination shall notify the Office of EEO of such report.

For reporting requirements relating to claims of Sexual Misconduct, see OP 40.03, Sexual Harassment, Sexual Assault, Sexual Misconduct, and Title IX Policy and Complaint Procedure.

10. **Confidentiality**

The confidentiality of both the Reporting Party and the Responding Party will be honored by the university to the extent possible without compromising the university's commitment and obligation to investigate allegations of discrimination or violations of law, to protect the University Community, and to the extent allowed by law. The willful and unnecessary disclosure of confidential information by anyone, including the Reporting Party or Responding Party, may affect the integrity of the investigation.

11. Interference with an Investigation

Any person who knowingly and intentionally interferes with an investigation conducted under this policy is subject to disciplinary action up to and including dismissal or separation from the university. Interference with an investigation may include, but is not limited to:

- Attempting to coerce, compel, influence, or prevent an individual from providing testimony or relevant information;
- Divulging confidential information;
- Removing, destroying, or altering documentation relevant to the investigation; or
- Providing false or misleading information to the investigator, or encouraging others to do so.

12. Training

All employees must attend EEO non-discrimination and sex/gender discrimination training including sexual assault, sexual harassment, and campus crime mandated reporter training within the first 30 days of employment and receive supplemental EEO non-discrimination training every two years.

Employees are informed of the EEO policy through new employee orientation, EEO training sessions, this non-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 policy can also be obtained from Human Resources, at the Texas Tech University System EEO Office, at http://www.texastech.edu/offices/equal-employment/.

Students are informed of policies regarding non-discrimination at new student orientation and via the *Student Handbook* and other outreach, awareness, and educational programs offered by the university.

13. Authoritative References

- Title VII of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1972
- Equal Pay Act
- Texas Labor Code Chapter 21
- Age Discrimination in Employment Act of 1967
- Americans with Disabilities Act
- Rehabilitation Act of 1973
- Civil Rights Act of 1991
- Vietnam Era Veterans Readjustment Assistance Act of 1974
- Title II of the Genetic Information Nondiscrimination Act of 2008

14. Right to Change Policy

The university 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.