

03.905 Information and Procedural Guidelines for Pursuing and Resolving a Complaint of Discrimination Including Sexual Harassment.

1. Purpose. To outline the steps necessary to file a complaint of discrimination against a member of the UNT System community, a visitor, or members of the public doing business with the UNT System as well as the subsequent investigation procedures.
2. Information for Pursuing a Complaint.
 - a. Who may file a complaint? Anyone who believes that he or she was the victim of discrimination in violation of UNT System Administration policies may seek informal advice and/or file a complaint. All formal complaints will be referred to the Office of the Associate Vice Chancellor for Equity and Diversity. A third party who is aware of a suspected violation of these policies is obligated to notify the Associate Vice Chancellor for Equity and Diversity or other appropriate UNT System official. UNT System Personnel should report suspected violations of the nondiscrimination policy and/or the sexual harassment policy to their immediate supervisor or the Associate Vice Chancellor for Equity and Diversity. Failure to report allegations of sexual harassment by those vested with responsibility to do so under the Sexual Harassment policy is a violation of that policy.
 - b. Time period for filing internal complaint. Prompt reporting of a complaint is strongly encouraged, as it allows for rapid response to and resolution of objectionable behavior. Except as provided in the following paragraphs, complaints should be filed within 90 days after the alleged objectionable behavior occurred. The deadlines in this policy apply to the filing of internal complaints only. Complaints filed after the deadlines established in this policy will be reviewed to determine whether an investigation is warranted. In instances involving a staff member's or administrator's complaint against a supervisor(s)

charging harassing behavior that occurred in the context of a subordinate-supervisory relationship, the time period may be extended until 90 days after the staff member or administrator is no longer under the supervision of the alleged offender, or two (2) years from the date the alleged harassing behavior occurred, whichever is earlier.

- c. Notification. Having been made aware of a possible violation of UNT System policy, the Associate Vice Chancellor for Equity and Diversity must contact the alleged victim and when appropriate review the situation for possible action.
- d. Admissibility of records and testimony.
 1. The original allegation and any relevant evidence gathered outside the mediation process, whether mediated or not, may be used as evidence in subsequent investigations and hearings relating to charges of discrimination and/or sexual harassment that occur within 10 years of the date the original allegation was made. Except as provided in the Voluntary Alternative Dispute Resolution System, mediated agreements may not be used as evidence in subsequent proceedings.
 2. After 10 years from the resolution of a formal complaint, only the findings that discrimination occurred (including sexual harassment) or prior mediation agreements will be admissible in any future proceedings.
 3. Records concerning other previous investigation not related to the subject matter of the complaint(s) in the current case are not admissible.
 4. A Voluntary Dispute Resolution mediation agreement is not admissible as evidence except as provided in the Voluntary Alternative Dispute Resolution System policy.

5. Testimony about prior accusations or similar discriminatory or harassing behavior will only be admissible if it is relevant to the current case.

- e. Confidentiality. All individuals who are involved in the complaint reporting, mediation and/or investigation process are obligated to maintain confidentiality of the proceedings in accordance with law. All who take part in any of the procedures under this policy will be expected not to reveal any information that they learn in the course of these proceedings unless disclosure is required by law. The UNT System will take reasonable measures to ensure the confidentiality of the testimony and records produced in the procedures of the policy. Notwithstanding these measures, the UNT System cannot and does not guarantee that parties and witnesses will maintain confidentiality.

Caution: Confidentiality does not mean that the details of the complaint will be withheld from the charged party, or that the UNT System is constrained from divulging the proceedings in appropriate circumstances. For example, the UNT System may publicly divulge details of the outcome if one of the parties discloses selective or self-serving portions of the proceedings, or when a lawsuit emerges where the complaining or charged party contests the findings or results of the investigation or if the activities are criminal in nature.

- f. Retaliation. Federal and state law and UNT System policy prohibit any form of retaliation against a person who files a discrimination complaint, including a charge of sexual harassment. It is the responsibility of the investigating office to state clearly to the charged party that any form of retaliation against a person for having filed a complaint is expressly prohibited and may result in serious disciplinary sanctions.

This protection from retaliation similarly applies to persons who participate as witnesses in discrimination investigations or adjudicatory proceedings.

A claim of retaliation may result in a subsequent investigation of the allegation by the Associate Vice Chancellor for Equity and Diversity and the Vice Chancellor and General Counsel.

- g. Time period for investigation of a complaint. Investigation of the complaint will normally begin within 10 working days from when it is received. The investigation shall normally be conducted within 45 working days thereafter and the letter of finding will be forwarded to the appropriate supervisor(s) at the end of the investigation.

Note: Case complexity will vary and the termination of the investigation will depend on case circumstances; however, the investigation will commence within the designated time and will conclude under normal circumstances within 45 working days. It is incumbent upon the investigating official to document a reasonable justification for extending an investigation beyond 45 working days.

- 3. Procedures for Pursuing and Resolving a Complaint of Discrimination When the Alleged Offender is a UNT System Employee. These procedures offer opportunities to resolve disputes at the lowest possible administrative level. The term “staff member” is used for full-time, part-time, and student employees to include administration of the UNT System.

- a. Stage One: Alternatives to an Investigation.

- 1. The alleged victim may seek information and informal advice from anyone with whom he/she feels comfortable. The seeking of advice will not constitute filing of a formal complaint. However the person receiving the information may be required to report the incident in accordance with state or federal law or University System policy.
- 2. The alleged victim (and/or alleged offender) may also seek mediation in accordance with the procedures found in the Voluntary Alternative Dispute Resolution Policy.

- b. Stage Two: Investigation of a Formal Complaint.

- 1. The alleged victim may file a formal complaint with the Associate Vice Chancellor for Equity and Diversity (AVC).

2. The AVC meets first with the alleged victim to determine if a formal investigation is needed or if the Voluntary Alternative Dispute Resolution process or another solution to the complaint is available.
3. Should the AVC determine that there are insufficient grounds to pursue the complaint, the alleged offender will be notified of the nature of the complaint and the decision not to pursue the complaint. Neither the alleged victim's name nor information that would reveal the alleged victim's name will be included, except as required by law.
4. Prior to involving third parties as witnesses, the AVC notifies the alleged offender and the immediate supervisor of the complaint and determines if the Voluntary Alternative Dispute Resolution process or another solution to the complaint is available.
5. Any decision not to immediately notify the alleged offender must be made by the AVC in consultation with the Chancellor and/or Vice Chancellor and General Counsel and justified in writing. The justification is included with the documentation provided to the alleged offender following the gathering of information.
6. The AVC consults with the Office of the Vice Chancellor and General Counsel to determine if a formal investigation is appropriate. If a formal investigation is warranted, the gathering of information from additional witnesses begins.
7. The alleged victim and alleged offender (after receiving notification) are kept abreast of the stage of the investigation.
8. The alleged offender is given an opportunity to respond both orally and in writing to the allegations and evidence against the alleged offender prior to any determination of culpability.

9. The alleged offender's response to allegations and evidence must be made to the AVC within ten (10) working days of notification by the AVC.
 10. The AVC prepares a written report setting out the findings of the investigation.
4. Procedures for Pursuing and Resolving a Complaint of Discrimination When the Alleged Offender is a Visitor to the UNT System or a Person Doing Business with the UNT System.
- a. Stage One: Alternatives to an Investigation.
 1. The alleged victim may seek information and informal advice from anyone with whom he/she feels comfortable including but not limited to, administrators and/or staff. The seeking of advice will not constitute filing of a formal complaint. However the person receiving the information may be required to report the incident in accordance with state or federal law or UNT System policy.
 2. The alleged victim may also seek mediation in accordance with the procedures found in the Voluntary Alternative Dispute Resolution Policy.
 - b. Stage Two: Investigation of a Formal Complaint.
 1. The alleged victim may file a formal complaint with the Associate Vice Chancellor for Equity and Diversity (AVC).
 2. The AVC meets first with the alleged victim to determine if a formal investigation is needed or if the Voluntary Alternative Dispute Resolution process or another solution to the complaint is available.
 3. Should the AVC determine that there are insufficient grounds to pursue the complaint, the alleged offender will be notified of the nature of

the complaint and the decision not to pursue the complaint. Neither alleged victim's name nor information that would reveal the alleged victim's name will be included, except as required by law.

4. Prior to involving third parties as witness, the AVC notifies the alleged offender of the complaint and determines if the Voluntary Alternative Dispute Resolution process or another solution to the complaint is available.
5. A decision not to immediately notify the alleged offender is made by the AVC in consultation with the Office of the Vice Chancellor and General Counsel and justified in writing. The justification is included with the documentation provided to the alleged offender following the gathering of information.
6. The AVC consults with the Office of the Vice Chancellor and General Counsel to determine if a formal investigation is appropriate. If a formal investigation is warranted, the gathering of information from additional witnesses begins.
7. The alleged victim and alleged offender (after receiving notification) are kept abreast of the stage of the investigation.
8. The alleged offender is given an opportunity to respond both orally and in writing to the allegations and evidence against the alleged offender prior to any determination of culpability.
9. The alleged offender's response to the allegations and evidence must be made to the AVC within ten (10) working days of notification by the AVC.
10. The AVC prepares a written report setting out the findings of the investigation.

5. Resolution of the Complaint. Upon completion of the investigation, the findings will be forwarded to the respective

administrative level who should consult with the Office of the Vice Chancellor and General Counsel prior to determining appropriate actions and/or sanctions. In cases involving visitors or persons doing business with the UNT System, the findings will be forwarded to the Office of the Vice Chancellor and General Counsel for determination of appropriate action and/or sanctions.

6. Sanctions. In cases of findings against an accused, or in cases of a determination that an accuser has made claims falsely and maliciously, sanctions may be imposed. In all instances, the sanctions imposed must be reported to the Associate Vice Chancellor for Equity and Diversity for inclusion in the official record of the investigation. Sanctions are disciplinary actions imposed on an individual, which may include punishment or other corrective actions. Sanctions for UNT System employees may include, but are not specifically limited to reprimand, remediation, reassignment, ineligibility for pay raises, suspension, and dismissal. In some instances the employee may be placed on leave of absence until final action is taken.
 - a. UNT System Imposed. UNT System sanctions for violations of the UNT System policy on discrimination (including sexual harassment) may include any disciplinary action, up to and including termination of employment. These activities may not be a violation of state or federal law, but such activities may be viewed as a major work rule violation under the UNT System *Performance Counseling and Discipline Policy*.
 - b. Civil. Discrimination is illegal under federal and state law. Official governmental investigations by the Equal Employment Opportunity Commission, the Texas Commission on Human Rights, and/or the Office of Civil Rights of the Department of Education may result in civil liability against the UNT System and any person found to have committed illegal discrimination.
 - c. Criminal. Sexual harassment by a public servant is a criminal offense under 39.02 of the *Texas Penal Code*. Depending on the severity of the acts, sexual harassment may also specifically include indecent exposure, public lewdness,

assault, or sexual assault under Chapter 21 and 22 of the *Texas Penal Code*.

- d. False Charges. False charges may result in disciplinary action against the complainant by the UNT System or civil action against the complainant by the accused. An unsubstantiated charge is not considered "false" unless it is made with the knowledge that it is false.
7. Appeal of Findings and/or Sanctions. The Associate Vice Chancellor for Equity and Diversity will provide a summary of the investigation, the findings, the decision, and sanctions for the appeals process.
- a. UNT System Personnel. UNT System personnel may appeal findings and/or sanctions under the *Complaint and Grievance Procedures* policy.
 - b. Visitors and Persons Doing Business with the UNT System. Visitors and persons doing business with the UNT System may appeal findings and sanctions to the Chancellor.
8. Record Retention. Unless otherwise required by state law or the *Records Retention Policy*, records of complaints and investigations will be confidentially maintained by the UNT System Archivist and discarded after 10 years unless other incidents occur within the 10 years. In all cases, access to complaint and investigation records is strictly limited to those UNT System/University officials directly investigating or adjudicating a complaint or implementing a complaint resolution, unless otherwise compelled by law.

Approved:
Effective:
Revised: