

AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY

Affirmative Action

Sexual Harassment (6.6.2)

PURPOSE

The purpose of this policy is to ensure compliance with applicable federal and state laws and to ensure that the work and educational environment at Tennessee State University is one which is fair, comfortable, and safe.

Fair and prompt consideration shall be given to all complaints of harassment in accordance with the procedures set forth below. These procedures may be utilized by any employee, applicant for employment, or student who believes he or she has been subjected to sexual or racial harassment. Former employees or students may file complaints concerning conduct which took place during the time of his or her employment or enrollment, provided the complaint is timely filed, and the conduct has a reasonable connection to Tennessee State University.

All faculty members, students, and staff are subject to this policy. Any faculty member, student, or staff found to have violated this policy by engaging in behavior constituting sexual or racial harassment will be subject to disciplinary action which may include dismissal, expulsion or termination, or other appropriate sanction.

All faculty members, students, and staff, particularly management and supervisory personnel, are responsible for taking reasonable and necessary action to prevent and discourage sexual or racial harassment, and are required to promptly report conduct that could be in violation of this policy. Such reporting should occur when information concerning a complaint is received formally or informally.

POLICY

It is the expressed policy of Tennessee State University that harassment, in any form, is strictly prohibited.

GENERAL STATEMENT

Sexual harassment and racial harassment have been held to constitute forms of discrimination prohibited by Title VI, and Title VII of the Civil Rights Act of 1964, as amended, and Title IX of the Educational Amendments of 1972.

A. Sexual Harassment

Generally, sexual harassment may be defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when one of the following criteria is met:

1. submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment or of the individual's status in a program, course, or activity;
2. submission to or rejection of such conduct by an individual is used as a basis for employment decisions, a criterion for evaluation, or a basis for academic or other decisions affecting such individual; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or educational experience or creating an intimidating, hostile, or offensive work or educational environment.

Sexual harassment can take many forms, but most sexual harassment falls into three (3) categories: verbal, visual, and physical. Not every act that might be offensive to an individual or a group will be considered harassment. Whether the alleged conduct constitutes sexual harassment depends upon the record as a whole and the totality of the circumstances, such as the nature of sexual advances in the context within which the alleged incident occurs. Harassment does not include verbal expressions or written material that is relevant and appropriately related to course subject matter or curriculum.

Please note that sexual assaults may be criminal acts and as such, investigation and processing by the criminal justice system, local police, campus security and crisis intervention centers may supersede or occur in addition to the process developed under this policy.

B. Racial Harassment

Generally, racial harassment is defined as any person's conduct which unreasonably interferes with an employee's or student's status or performance by creating an intimidating, hostile, or offensive work or educational environment. Harassment on the basis of race, color, or national origin includes offensive or demeaning treatment of an individual, where such treatment is based on prejudicial stereotypes of a group to which that individual may belong. It includes, but is not limited to, objectionable epithets, threatened or actual physical harm or abuse, or other intimidating or insulting conduct directed against the individual because of his or her race, color, or national origin. Title VII requires employers to take prompt action to prevent bigots from expressing their opinions in a way which abuses or offends their co-workers.

C. Consensual Relationships

Intimate relationships between supervisors and their subordinates, and between faculty members and students are strongly discouraged due to the inherent inequality of power in such situations. These relationships could lead to undue

favoritism or the perception of undue favoritism, abuse of power, compromised judgment, or impaired objectivity.

Engaging in a consensual relationship with a student over whom the faculty member has either grading, supervisory, or other evaluative authority (i.e., member of dissertation committee, thesis director, etc.) constitutes a conflict of interest. The faculty member must take steps to remove the conflict by assigning a different supervisor to the student, resigning from the student's academic committees, or by terminating the relationship at least while the student is in his or her class. Likewise, it is a conflict of interest for a supervisor to engage in a consensual relationship with a subordinate over whom he or she has evaluative or supervisory authority. The supervisor must take action to resolve the conflict of interest by, for example, assigning another individual to supervise and/or evaluate the subordinate.

PROCEDURES

A. General

1. The following procedures are intended to protect the rights of the aggrieved party (hereinafter "the Complainant") as well as the party against whom a complaint of harassment is lodged (hereinafter the "Respondent"), as required by state and federal laws. Each complaint must be properly and promptly investigated and when warranted, appropriate disciplinary action will be taken against the Respondent. Such discipline may range from reprimand or censure to termination, proportionate to the severity of the complaint.

2. In situations that require immediate action because of safety or other concerns, the University may take any disciplinary action, which is appropriate (e.g., suspension with pay or reassignment of responsibilities), pending the outcome of the investigation. The Tennessee Board of Regents Office of General Counsel (hereinafter "Office of General Counsel") should be contacted before any immediate action is taken.

B. Filing Complaints

1. Any current or former student, applicant for employment, or current or former employee who believes he or she has been subjected to harassment at the University or who believes that he or she has observed harassment taking place shall present the complaint to the EO/AA Officer or Vice President for Student Affairs (hereinafter "the Investigator") who are responsible for compliance with this policy, TBR policy, and federal law. Acts of harassment by a student or students directed against another student or students should be reported to and will be investigated by the Vice President for Student Affairs. Tennessee State

University encourages prompt reporting of incidents of harassment. Prompt reporting will allow the University to take appropriate action so that others are not subjected to the same harassment.

2. Complaints must be brought within 365 days of the last incident of harassment. Complaints brought after that time period will not be pursued absent extraordinary circumstances. The determination of whether the complaint was timely or whether extraordinary circumstances exist to extend the complaint period must be made in conjunction with the Office of General Counsel.
3. The Investigator will make every attempt to get the Complainant to provide the complaint in writing. The complaint shall include the circumstances giving rise to the complaint, the dates of the alleged occurrences, and names of witnesses, if any. The complaint shall be signed by the Complainant. However, when the Complainant refuses to provide or sign a written complaint, the matter will still be investigated and appropriate action taken. Complaints made anonymously or by a third party will still be investigated to the extent possible. In such cases, the Investigator may take appropriate action, which may or may not be the steps outlined in the remaining paragraphs of this policy.
 - 4. If the complaint does not rise to the level of harassment, the complaint may be dismissed without further investigation after consultation with the Office of General Counsel. The Complainant should be informed of other available processes such as the employee grievance/complaint process or a student non-academic complaint process.

C. Investigation

1. The Office of General Counsel shall be notified of the complaint, whether written or verbal, as soon as possible after it is brought to the attention of the Investigator and the investigation will be under the direction of the Office of General Counsel. All investigatory notes and documents shall be attorney work-product. The Investigator shall notify the President that an investigation is being initiated.
2. When the allegation of harassment is against the EO/AA Officer or the Vice President for Student Affairs, the President will identify an individual who has been trained in investigating such complaints to investigate the complaint and carry out the responsibilities assigned pursuant to this policy.
3. When the Respondent is a student, the Vice President for Student Affairs will investigate the complaint in compliance with the procedures outlined in this policy. If a finding of a violation is made, any resulting disciplinary action will be undertaken in compliance with Tennessee State University's student disciplinary procedures.
4. When the Respondent is a student, all documentation shall be subject to the provisions and protections of the Family Educational Records and Privacy Act (FERPA).
5. The purpose of the investigation is to establish whether there has been a violation of TSU Procedure No. 6.6.2. In conducting the investigation, the Investigator may

interview the Complainant, the Respondent, and other persons believed to have factual knowledge related to the investigation.

6. To the extent possible, the investigation will be conducted in such a manner to protect the confidentiality of both parties. However, the Complainant should be informed that Tennessee State University has an obligation to address harassment and that, in order to conduct an effective investigation, complete confidentiality cannot be guaranteed. Information may need to be revealed to the Respondent and to potential witnesses. However, information about the complaint should be shared only with those who have a need to know about it. A Complainant may be informed that if he or she wants to speak privately and in confidence about harassment, he or she may wish to consult with a social worker, counselor, therapist or member of the clergy who is permitted, by law, to assure greater confidentiality. Additionally, the Complainant may be given assurances that measures will be taken against the Respondent should there be retaliation against him or her. Retaliation is prohibited and should be reported to the Investigator immediately.
7. The Investigator shall notify in writing the Respondent within five (5) working days of receipt of the complaint. The Respondent shall respond in writing to the complaint within five (5) working days of notification.

The Respondent should be notified that any retaliation against the Complainant is strictly prohibited regardless of the outcome of the investigation and may, in itself, be grounds for disciplinary action.

8. The Investigator shall meet with both the Complainant and the Respondent individually for the purpose of resolving the complaint informally. If informal resolution is successful in resolving the complaint, a report of such, having first been reviewed and approved by the Office of General Counsel, shall be submitted to the President.
9. If informal resolution is unsuccessful, the Investigator shall draft a report summarizing the investigation, which shall be sent to the Office of General Counsel for review. After review and approval by the Office of General Counsel, the report shall be submitted to the President and the Complainant and the Respondent and the appropriate Vice President within twenty (20) working days following receipt of the complaint. In rare situations where more than twenty (20) working days is needed to complete the investigation, such as difficulty in locating a necessary witness, or complexity of the complaint, additional time may be taken, but only following notice to the Office of General Counsel and notice to the Complainant.

Each report shall outline the basis of the complaint, including the dates of the alleged occurrences, the response of the Respondent, the findings of the Investigator, all attempts to resolve the complaint informally, a determination of whether there was a violation of TSU Procedure No. 6.6.2, and recommendations regarding disposition of the complaint.

10. If, after investigation, there is insufficient evidence to corroborate the complaint or, in any situation in which the Complainant refuses to cooperate in the investigation, it may be appropriate to discuss the complaint with the Respondent, informing him or her that he or she is not being accused of a TSU No. 6.6.2 violation, but that the conduct alleged, had it been substantiated, could be found to violate TSU Procedure No. 6.6.2. Any investigation and subsequent discussion should be documented and a report submitted as set forth in this Policy. It should also be noted that conduct which does not rise to the level of actionable harassment may, nevertheless, provide a basis for disciplinary action against the Respondent.
11. The President shall review the Investigator's report, make a final determination as to whether a violation has occurred, and determine what the appropriate resolution should be. This determination shall be in writing, with copies provided to the Complainant and the Respondent.
12. If the investigation reveals evidence that a violation of TSU Procedure No. 6.6.2 has occurred, the President may meet with the Respondent and/or the Complainant and attempt to resolve the problem by agreement. Appropriate steps must be taken to ensure that the harassment will not reoccur.
13. If a violation of TSU Procedure No. 6.6.2 is determined to have occurred, the Respondent shall be advised of his or her right to a hearing pursuant to the procedures set forth below. The Respondent must file a written request for a hearing in the President's Office within ten (10) working days following receipt of the President's determination.
14. In the event additional information becomes available after the conclusion of the investigation, the Equal Opportunity Office may conduct further investigation and recommend discipline, up to and including termination.
15. The President has designated the Office of Equal Opportunity and Affirmative Action as the location of where the file of the investigation will be maintained.

A. Hearing

1. If the Respondent requests a hearing, he or she shall be advised of the established institutional procedures available for resolution of the matter in question, which is Tennessee State University Procedure No. 6.10: "Complaint and Grievance Procedures for Employees."
2. The grievance hearing procedures shall include the following minimal requirements:
 - Notice to the Respondent of the hearing, which must include a summary of the facts that form the basis of the violation; the date, time and place of the hearing; and the rights afforded the Respondent during the hearing process.
 - The right of the Respondent to present his or her case.
 - The right of the Respondent to be accompanied by an advisor who may assist the Respondent but may not advocate on his or her behalf.
 - The right of the Respondent to call witnesses in his or her behalf.

- The right of the Respondent to confront and cross-examine witnesses against him or her.

3. In the following situations, the Respondent must be given the option of either an institutional hearing (i.e. Tennessee State University Procedure No. 6.10 "Complaint and Grievance Procedures for Employees") or have a hearing held pursuant to the Tennessee Uniform Administrative Procedures Act (TUAPA):

- a. The Respondent is a support staff employee whom the President has determined should be demoted, suspended without pay, or terminated; or
- b. The Respondent is a student whom the President has determined should be suspended or expelled.

- The election of which hearing process to utilize must be in writing, and signed by the Respondent.
- If the Respondent opts to have an institutional hearing, he or she must expressly waive the right to a TUAPA hearing.
- If the Respondent elects to proceed pursuant to the TUAPA, the Office of General Counsel should be notified immediately.

4. Formal procedures set out above shall be utilized. However, where the investigation results in a finding that the harassment policy was violated and the President concurs with that finding and determines that procedures pursuant to TBR Policy 5:02:03:00 should be undertaken in consideration of the termination of a tenured faculty member, the matter will then proceed directly to a hearing under either the TSU policy for termination of tenure or TBR Policy 5:02:03:00.

OTHER TYPES OF HARASSMENT

Complaints of harassment based on other constitutionally protected classes may be filed with the EO/AA Office pursuant to TSU Procedure 6.6.1.

DISSEMINATING THE POLICY

It is the responsibility of all administrators, with the assistance of the Affirmative Action Officer, to ensure that employees under their supervision are made aware of the University's policy on harassment and procedures for reporting harassment. It is the responsibility of the Vice President for Student Affairs, with the assistance of the Affirmative Action Officer, to ensure that students are made aware of the policy and procedures.

In order to assist administrators in meeting these responsibilities, the policy will be disseminated in at least the following ways:

1. The policy or summary approved by the EO/AA Officer (hereinafter "Affirmative Action Officer") will be published in the Faculty Handbook and in the Personnel Handbook.
2. The policy or a summary approved by the EO/AA Officer will be published in the Student Handbook.
3. Presentation of the policy will be included by the Human Resources Office in new employee orientation.
4. The Affirmative Action Officer, with the assistance of the Human Resources Director, will ensure that a copy of the policy is posted in an appropriate location in or near the Human Resources Office.
5. The Affirmative Action Officer will provide a statement about the policy for the student newspaper at least once a year.
6. The Affirmative Action Officer will make a general presentation regarding the policy to faculty and staff at least once every two years and will work with administrators to provide in-service workshops regarding the policy for departments or other organizational units.
7. The Affirmative Action Officer will work with the Vice President for Student Affairs or his/her designee to provide workshops or informational sessions regarding the policy for students.
8. The Affirmative Action Officer is available to meet with individuals and/or groups to discuss the policy and procedures and to answer questions or address concerns.

• **AFFIRMATIVE ACTION OFFICER:**

Sandra E. Keith
Equal Opportunity and Affirmative Action Office
Administration Building, Room 266
963-7435
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REFERENCES

TBR Guidelines P-080
TBR Policy 1:06:00:05
TBR Policy 5:02:03:00
TSU Policy 6.10 Complaint and Grievance Procedures for Employees
TSU Policy on Termination of Tenure as outlined in the TSU Faculty Handbook

Supersedes Sexual Harassment Policy No. 5:06 in the University-Wide Policy Manual

This Policy Supplements TBR Policies 2:02:10:01 and 5:01:02:00 Relative to the Orderly Resolution of Complaints of Sexual or Racial Harassment and Supersedes TSU Procedure No. 6.6.2 in the Vice President For Business and Finance Personnel Policy and Procedures Manual (Issue Number 1)

