

NONDISCRIMINATION POLICY

I. Policy Statement

It is the policy of The University of Texas at San Antonio (UTSA) to provide an educational and working environment that provides equal opportunity to all members of the UTSA community. In accordance with federal and state law, UTSA prohibits unlawful discrimination on the basis of race, color, gender, sex, religion, national origin, age, disability, citizenship, gender identity, gender expression, and veteran status in all aspects of employment and education. Discrimination on the basis of sexual orientation is also prohibited pursuant to this policy.

II. Rationale

This policy is the principal prohibition of all forms of discrimination regardless of where it occurs, including both on and off university property, if it potentially affects the alleged victim's education or employment with the following exceptions: discrimination based upon disability (which is controlled by the Handbook of Operating Procedures (HOP) policy 9.02 Persons with Disabilities (<https://www.utsa.edu/hop/chapter9/9-2.html>)), and Sexual Harassment/Sexual Misconduct (which is controlled by the HOP policy 9.24 (<https://www.utsa.edu/hop/chapter9/9-24.html>)).

III. Scope

This policy and its complaint procedure apply to all UTSA administrators, faculty, staff, students, visitors and applicants for employment or admission.

IV. Website Address for This Policy

<http://www.utsa.edu/hop/chapter9/9-1.html>

V. Related Statutes, Policies, Requirements or Standards

Relevant Federal and State Statutes (This list is not inclusive of all laws prohibiting discrimination.)

1. The United States Constitution, First Amendment (http://www.usconstitution.net/xconst_Am1.html)
2. Title IX of the Education Amendments of 1972 (<https://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq/>)
3. Section 504 of the Rehabilitation Act of 1973 (<http://www2.ed.gov/about/offices/list/ocr/504faq.html#introduction>)
4. The Uniformed Services Employment and Reemployment Rights Act (<http://webapps.dol.gov/elaws/vets/userra/userra.asp>)
5. Title VI of the Civil Rights Act of 1964 (<http://www.dol.gov/oasam/regs/statutes/titlevi.htm>)
6. Title VII of the Civil Rights Act of 1964 (<http://www.eeoc.gov/laws/statutes/titlevii.cfm>)
7. The Age Discrimination Act of 1975 (<http://www.dol.gov/dol/topic/discrimination/agedisc.htm>)
8. Texas Labor Code Chapter 21 (<http://www.statutes.legis.state.tx.us/Docs/LA/htm/LA.21.htm>)

UTSA or UT System or the Board of Regents' Rules & Regulations

1. UTSA HOP policy 2.34 (<https://www.utsa.edu/hop/chapter2/2-34.html>), Faculty Grievance Procedure
2. UTSA HOP policy 3.03 (<https://www.utsa.edu/hop/chapter3/3-3.html>), Discipline and Dismissal of Classified Employees
3. UTSA HOP policy 3.04 (<https://www.utsa.edu/hop/chapter3/3-4.html>), Grievances of Non-Faculty Employees
4. Student Code of Conduct (<http://catalog.utsa.edu/informationbulletin/appendices/studentcodeofconduct/>) Section 701, et seq.
5. UT System Regents Rules and Regulations, Rule 10701 Policy Against Discrimination (<http://www.utsystem.edu/board-of-regents/rules/10701-policy-against-discrimination/>)
6. UT System Regents Rules and Regulations, Rule 30107 Veteran's Employment Preferences (<http://www.utsystem.edu/board-of-regents/rules/30107-veterans-employment-preferences/>)
7. UT System Administrative Policy UTS105 Sexual Orientation Nondiscrimination Policy (<http://www.utsystem.edu/board-of-regents/policy-library/policies/uts105-sexual-orientation-nondiscrimination-policy/>)

Other Policies & Standards

1. U. S. Equal Employment Opportunity Commission - Discrimination (<http://www.eeoc.gov/laws/types/>)
2. U.S. Department of Education Office for Civil Rights (<http://www2.ed.gov/about/offices/list/ocr/know.html>)

VI. Contacts

If you have any questions about HOP policy 9.01, Nondiscrimination, contact the following office:

Office of Equal Opportunity Services/ EEO Officer/Title IX Coordinator
210-458-4120

VII. Definitions

Discrimination, including harassment, is defined as conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment or education on account of race, color, sex, religion, national origin, age, disability, citizenship, veteran status, gender identity/expression or sexual orientation.

Harassment, as a form of discrimination, is defined as verbal or physical conduct that is directed at an individual or group because of race, color, sex, religion, national origin, age, disability, citizenship, veteran status, gender identity/expression or sexual orientation when such conduct is sufficiently severe, pervasive or persistent so as to have the purpose or effect of interfering with an individual's or group's academic or work performance; or of creating a hostile academic or work environment. Constitutionally protected expression cannot be considered harassment under this policy.

Retaliation is defined as any adverse action threatened or taken against an individual because the individual has filed, supported, provided information in connection with a complaint of discrimination or engaged in other legal protected activities. Retaliation includes, but is not limited to, intimidation, threats or harassment against any complainant, witness or third party.

VIII. Responsibilities

1. **Applicants/Employees/Students/Visitors**
 - a. Any person who believes that he or she has been subjected to prohibited discrimination should immediately file a complaint with UTSA's Office of Equal Opportunity Services (the "EOS Office") and utilize the procedures set forth in this policy.
 - b. Individual(s) who witness or are aware of suspected incidents of prohibited discrimination are strongly encouraged to immediately report the incident to the EOS Office.
2. **Supervisor/Administrator/UTSA official**
 - a. Every supervisor, administrator and UTSA official is responsible for promptly reporting incidents of prohibited discrimination that come to their attention to the EOS Office.
3. **EOS Office**
 - a. Determines what immediate and effective steps can be taken to end prohibited discrimination and protect the alleged victim.
 - b. Advises alleged victims of their right to file a complaint and/or to participate in the applicable student, faculty or staff discipline process. The EOS Office also must assess the best way to proceed in the event an alleged victim does not wish to file a complaint and/or participate in an investigation or subsequent disciplinary process so as to protect the alleged victim while also ensuring that UTSA maintains an environment free from prohibited discrimination and harassment.
 - c. Reviews and processes complaints of alleged prohibited discrimination.
 - d. Consults with the UTSA Police Department (UTSAPD), as appropriate, in cases involving potential criminal conduct to determine if criminal authorities need to be notified.
 - e. Advises the alleged victim of the right to file a criminal complaint in cases involving potential criminal conduct.
 - f. Explains the resolution options available under the Informal and Formal processes, as outlined under Section IX of this policy, and proceeds accordingly.
4. **The Director of Equal Opportunity Services** serves as UTSA's EEO Officer and Title IX Coordinator. The EEO Officer/Title IX Coordinator may be reached at 210-458-4120. The Director of Equal Opportunity Services:
 - a. Investigates complaints based on discrimination.
 - b. Meets with students, faculty and staff wanting to file complaints or seeking information.
 - c. Ensures that UTSA has robust notice practices and education programs for students, faculty, and staff in accordance with Department of Education regulations and guidelines.
5. **UTSA Police Department**
 - a. Advise alleged victims of their right to file a discrimination complaint under this policy in cases where an incident is reported to UTSAPD.
 - b. Provides UTSA officials investigating discrimination complaints access to any related UTSA law enforcement records as permitted by state and federal law and so long as it does not compromise any criminal investigation.
6. **Student Counseling Services**
 - a. Is available to all UTSA students, including victims of unlawful discrimination, to provide support for such individuals and to advise them of their options under UTSA policy and procedures.

IX. Procedures

1. **Reporting Responsibilities**

UTSA encourages any person who believes that he or she has been subjected to prohibited discrimination to immediately file a complaint with UTSA's Office of Equal Opportunity Services and to utilize the procedures set forth in this policy. Every supervisor, administrator and UTSA official is responsible for promptly reporting incidents of prohibited discrimination and harassment that comes to their attention. Students, faculty, staff and visitors who witness or are aware of suspected incidents of prohibited discrimination are strongly encouraged to immediately report the incident to:

Suzanne Patrick
Director and Title IX Coordinator
Office of Equal Opportunity Services
North Paseo Building – Suite 5.130
Suzanne.Patrick@utsa.edu
210-458-4120
<https://www.utsa.edu/eos/>

Individuals shall not be penalized, disciplined, or prejudiced who in good faith report a violation of policy, procedure or law.

Complaints and reports of any prohibited discrimination should be filed as soon as possible after the conduct giving rise to the complaint. Delay in filing or reporting can greatly limit UTSA's ability to stop the harassment/discrimination and take effective action against the alleged respondent. Complaints regarding unlawful discrimination or harassment should be filed within thirty (30) calendar days after the event occurred.

2. **Resolution Options**

A person who believes that he or she has been subjected to prohibited discrimination or harassment in violation of this policy and seeks to take action may use either the Informal Resolution process or the Formal Complaint process, or both. Both processes are administered by the EOS Office. The Informal Resolution and Formal Complaint processes described in this policy are not mutually exclusive and neither is required as a pre-condition for choosing the other; however, they cannot both be used at the same time.

 - a. **Informal Resolution Process**

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 subjected to discrimination or harassment may immediately file a Formal Complaint as described in Subsection (2) below. Informal Resolution may be an appropriate choice when the conduct involved is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation.

 - i. **Informal Assistance** - The individual is provided assistance in attempting to resolve possible harassment or discrimination if the individual does not wish to file a Formal Complaint. Such assistance includes strategies for the individual to effectively inform the offending party that his or her behavior is unwelcomed and/or offensive and should cease, action by an appropriate UTSA official to stop the unwelcomed and/or offensive conduct and modification of the situation in which the unwelcomed and/or offensive conduct occurred. However, UTSA may take more formal action, including disciplinary action, to ensure an environment is free of unlawful harassment and discrimination.

- ii. Timeframe - Informal Resolutions will be completed within 30 (thirty) calendar days from receipt of a request for Informal Resolution.

b. Formal Complaint Investigation Procedures

This complaint procedure also constitutes the grievance procedure for complaints alleging unlawful gender discrimination (excluding sexual harassment) required under Title IX of the Education Amendments of 1972. As used herein, "complaint" is synonymous with "grievance."

- i. Formal Complaint - In order to initiate the investigation process, the complainant should submit 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; the name of the person directly responsible for the alleged violation; a detailed description of the conduct or event that is the basis of the alleged violation; the date(s) and location(s) of the occurrence(s); the names of any witnesses to the occurrence(s); the resolution sought; and 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. When a UTSA employee, supervisor or University office receives a complaint with a written statement, the individual receiving the complaint shall immediately notify the EOS Office. EOS Complaint Forms are located on the EOS website located at www.utsa.edu/eos (<http://www.utsa.edu/eos/>).

ii. Complaint Investigation

- 1. The EOS Office 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.
- 2. Within ten (10) work days of receipt of a complaint, the EOS investigator, as appropriate, may either dismiss the complaint or authorize an investigation of the complaint. A complaint may be dismissed if the facts alleged in the complaint, even if taken as true, do not constitute prohibited harassment or discrimination; the complaint fails to allege any facts that suggest prohibited harassment or discrimination occurred; or the appropriate resolution or remedy has already been achieved, or has been offered and rejected.

If it is determined that a complaint will not be investigated, the EOS Office will contact the complainant and/or send the complainant a notification letter explaining the reason for the dismissal and informing the complainant that, within 15 (fifteen) work days of the notification, he or she may appeal the decision not to proceed with a complaint investigation to the Compliance Officer. The written appeal must explain why the decision to dismiss the complaint was in error. The Compliance Officer will respond within twenty (20) work days of receipt of the appeal. The Compliance Officer's decision is final. If the decision to dismiss is overturned, the complaint is sent back to the EOS Office for investigation in accordance with the procedures outlined below.

- 3. As part of the investigation process, the accused individual shall be provided with a copy of the complaint

and allegations or a statement from the EOS Office that explains the allegations as the EOS office and the complainant understand them to be. The accused will be allowed a reasonable time to respond in writing as determined by EOS.

- 4. The complainant and the accused individual may present any document or information that is believed to be relevant to the complaint.
 - 5. Any persons thought to have information relevant to the complaint will be interviewed and such interviews will be appropriately documented.
 - 6. Both the accused individual and the complainant may recommend witnesses for interview and suggest questions that should be asked. Neither the complainant nor the accused individual may attend investigation interviews of witnesses or the gathering of evidence.
 - 7. The investigation of a complaint will be conducted as soon as possible after receipt of the written complaint. In investigations exceeding sixty (60) work days, a justification for the delay will be presented to and reviewed by the Compliance Officer overseeing the investigative office. The complainant, accused individual and appropriate supervisor will be provided an update on the progress of the investigation and issuance of the report.
- iii. 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, any relevant evidence, recommended disciplinary action if a violation of the policy occurred. Factual conclusions shall be based upon a preponderance of the evidence standard. The EOS Office may also make recommendations to resolve any workplace issues it may discover during the investigation process regardless of whether prohibited harassment or discrimination can be substantiated.
 - iv. A copy of the report will be provided to the complainant, the respondent, and the vice president who has authority over the respondent. (The vice president may delegate responsibility for reviewing the EOS report and any submitted comments and taking the actions identified in (e) below.) The complainant and respondent have seven (7) work days from the date of the report to submit written comments regarding the report to the appropriate vice president. However, in accordance with the Family Education Rights and Privacy Act, in complaints involving student-on-student conduct, neither the complainant nor the respondent will receive a copy of the report. Instead both students will receive a memorandum from EOS stating the findings and recommendations included in the report provided to the vice president.
 - v. Within ten (10) work days of receiving any comments submitted by the complainant or respondent, or, if no comments were submitted, within seven (7) work days of the date of the report, the appropriate vice president who has authority over the respondent will take one of the following actions:
 - 1. Notify both the complainant and respondent that a review is in progress;
 - 2. Request the EOS Office to do further investigation into the complaint;

3. Dismiss the complaint if the results of the completed investigation are inconclusive or there is not a preponderance of the evidence (i.e., there is insufficient reasonable, credible evidence to support the allegation(s)); or
4. Find that the policy was violated.
 - a. 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.
 - b. If the appropriate vice president who has authority over the respondent determines that this policy was violated, he or she will refer the matter for disciplinary action in accordance with UTSA's applicable disciplinary procedures. Implementation of disciplinary action against faculty and staff will be handled in accordance with UTSA's policy and procedures for discipline and dismissal of faculty and employees. Disciplinary actions can include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension, and dismissal. Implementation of disciplinary action against students will be referred to the Office of Student Conduct and Community Standards for processing in accordance with the Student Code of Conduct. The Student Code of Conduct is located in *UTSA Student Policies* at <https://catalog.utsa.edu/policies/>. Student disciplinary actions may include, but are not limited to, probation, suspension, or expulsion.
- vi. The complainant and the respondent shall be informed in writing of the appropriate vice president's decision and be provided a copy of the final statement of findings. However, if a complaint is filed against a student, information sent to the complainant will be in compliance with the Family Education Rights and Privacy Act.
- vii. Both the complainant and the respondent shall be afforded an opportunity to appeal any disciplinary action imposed by utilizing the established policies governing such appeals:
 1. Faculty: HOP policy 2.34 (<https://www.utsa.edu/hop/chapter2/2-34.html>), Faculty Grievance Procedure
 2. Staff: HOP policy 3.03 (<https://www.utsa.edu/hop/chapter3/3-3.html>), Discipline and Dismissal of Classified Employees, or HOP policy 3.04 (<https://www.utsa.edu/hop/chapter3/3-4.html>), Grievances of Non-Faculty Employees;
 3. Students: Student Code of Conduct (<http://catalog.utsa.edu/policies/administrativepoliciesandprocedures/studentcodeofconduct/>) Section 701, et seq.

3. Veteran's Employment Preference Complaint Procedure

The University of Texas System Board of Regents has delegated authority to the president to review all written complaints from

individuals who believe they did not receive a veteran's employment preference relating to hiring or to retention of the individual if the institution reduced its work force. The president has delegated review of all written complaints to the University EEO officer. UTSA has adopted the following grievance procedure in order to provide prompt and equitable resolution of complaints alleging any action in violation of state provisions for veteran's preference.

- a. Complaints should be submitted to EOS within 60 (sixty) working days from the date after the applicant or employee received notification of non-selection or reduction in force status, or became aware of the disputed decision. In computing the 60th working day filing deadline, the next working day after the decision or notification is counted as the first day.
 - b. Applicants or employees must complete the Intake Form from EOS and may submit to EOS by mail, fax or e-mail.
 - c. The complaint will be processed in accordance with the complaint procedures set in paragraph Section B "Resolution Options" above, except that Handbook of Operating Procedures deadlines set forth in that paragraph do not apply. A written decision will be mailed by the appropriate vice president to the complainant no later than the 15th work day after the complaint is received by EOS. The appropriate vice president (or his/her designee) will make a final determination concerning whether an individual was denied a Veteran's Employment Preference.
4. **Pay Transparency Nondiscrimination Provision**
UTSA will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the University, or (c) consistent with the University's legal duty to furnish information.
5. **Provisions Applicable to all Complaints**
Assistance - During the complaint process, a complainant, respondent or witness may be accompanied by an uninvolved person of his or her choice, including an attorney, unless doing so would violate FERPA; however, this individual may not actively participate in the meeting or interview. In addition, this individual must not have any personal knowledge regarding the facts surrounding the complaint.
 - a. 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.
 - b. Confidentiality and Documentation - UTSA shall document complaints and their resolution. The EOS Office shall retain such documentation in accordance with State and Federal records laws and UTSA policy. 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. Where the individual's desire to maintain anonymity constrains attempts at establishing facts and eliminating the potential harassment or discrimination, UTSA will attempt to find the right balance between the individual's desire for privacy and confidentiality with the responsibility of

UTSA to provide an environment free of prohibited harassment and discrimination.

- c. No recording devices are allowed during EOS interviews or meetings and no recording is allowed of telephone conversations.
- d. Deadlines - Deadlines in this procedure may be modified by the EOS Office upon a written showing of good cause by either party or UTSA.
- e. Concurrent Criminal or Civil Proceedings. Police and criminal or civil justice procedures, findings, or outcomes are not determinative of either these complaint/investigation procedures or UTSA disciplinary procedures. UTSA does not wait for criminal or civil justice outcomes to take action as it has an independent duty to respond to complaints of prohibited discrimination and harassment.

6. Dissemination of Policy and Education

- a. The policy will be made available to all faculty, employees and students online and in publications. Regular compliance training will provide guidance to employees and faculty about UTSA's Nondiscrimination Policy and will include information about complaint procedures and will refer individuals to designated offices or officials for additional information. Periodic notices will be sent to students, faculty, and staff about UTSA's Nondiscrimination Policy. The notice will specify the right to file a complaint under this policy and will refer individuals to designated offices or officials for additional information.
- b. UTSA may periodically educate and train employees and supervisors regarding the policy and conduct that could constitute a policy violation. Preventive education and training programs will be provided to students, faculty and staff.
- c. In accordance with Texas Labor Code 21.010, all UTSA employees, including faculty, are required to complete discrimination training no later than the 30th calendar day after the date the employee is hired and shall complete supplemental training every two years. The electronic training record is the acknowledgement and verification that the training has been conducted.
- d. Each vice president or designee will periodically assess their area of authority to make sure a climate is maintained that promotes an educational and working environment that provides equal opportunity to all members of the UTSA community. If problems are noted or if the circumstances surrounding a complaint are not remedied, the EOS Office shall be notified immediately for assistance in taking corrective actions.

7. Title IX Coordinator Information

Suzanne Patrick
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North Paseo Building – Suite 5.130
Suzanne.Patrick@utsa.edu
210-458-4120
<https://www.utsa.edu/eos/>