



Handbook Of Operating Procedures

SEXUAL HARASSMENT AND SEXUAL MISCONDUCT

Section I. General Policy Guidelines

A. Policy Statement

The University of Texas at Brownsville and Texas Southmost College (UTB/TSC) is committed to providing a professional working and learning environment free from sexual harassment and sexual misconduct. The University maintains a strict policy and will not tolerate sexual harassment or sexual misconduct in any form. Any person who engages in such conduct will be subject to disciplinary action, up to and including dismissal from the University. The University encourages students, faculty, staff, and visitors to promptly report sexual harassment or sexual misconduct.

B. Scope

This policy applies to the conduct of all University administrators, faculty, staff, students, visitors, and applicants for employment or admission to UTB/TSC.

C. Statutory Reference

Sexual harassment has been declared a form of sex discrimination under Title VII of the Civil Rights Act of 1964, and Title IX of the Civil Rights Act of 1972, and the Texas Commission on Human Rights Act, section 21.051, Texas Labor Code, and it is illegal and may be actionable under civil and criminal law. In addition to violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e, and Title IX of the Educational Amendments of 1972, 20 U.S.C. Sec. 1681, the act of committing sexual harassment by a public servant is considered to be a criminal offense under Texas Penal Code Sec. 39.02, and it may constitute assault, sexual assault, public lewdness, or indecent exposure under Chapters 21 and 22 of the Texas Penal Code.

D. Definition

1. Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, verbal and written comments, or physical conduct of a sexual nature may constitute sexual harassment when such conduct:

- a. Is made, either explicitly or implicitly, a term or condition of instruction, employment, or participation in a University activity.



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- b. Is used as a basis for academic or employment decisions or evaluations.
- c. Has the purpose or effect of unreasonably interfering with an individual's academic or work performance, or creating an intimidating, hostile, or offensive University environment.

In addition to the above definition, behaviors that may constitute sexual harassment may include, but are not limited to the following:

- Intentional touching.
- Explicit or implicit propositions to engage in sexual activity.
- Gratuitous comments of a sexual nature such as explicit statements, questions, jokes, or anecdotes.
- Remarks of a sexual nature about a person's clothing or body.
- Remarks about sexual activities or speculation about sexual experiences.
- Exposure to gratuitous sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials.
- Deliberate physical interference with or restriction of an individual's movements.
- Persistent, unwanted sexual/romantic attention.
- Subtle or overt pressure for sexual favors.
- Deliberate, repeated humiliation or intimidation based upon the sex of an individual.

2. Sexual Misconduct

In addition to prohibiting sexual harassment as defined by law, the University also prohibits conduct of a sexual nature that, although not so serious or pervasive that it rises to the level of sexual harassment, is unprofessional and/or inappropriate for worksites and teaching locations.



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Behaviors that may constitute sexual misconduct include but are not limited to:

- Failure to observe the appropriate boundaries of the supervisor/subordinate or faculty/student relationship.
- Repeatedly engaging in sexually oriented conversations, comments, or horseplay, including the use of language or the telling of jokes or anecdotes of a sexual nature in the workplace, office, or classroom, even if such conduct is not objected by those present.
- Gratuitous use of sexually oriented materials not directly related to the subject matter of a class or course or meeting, even if not objected to by those present.

Section II. General Procedures

It is a violation of the University's Sexual Harassment and Sexual Misconduct policy if there is a failure to comply with the procedures set forth in policy. The University shall respond to all claims of sexual harassment or misconduct in accordance with this policy.

A. Reporting Locations

Any employee, member of, or visitor to the University community who believes that he or she has been subjected to sexual harassment or sexual misconduct should report the incident to the appropriate supervisor of the accused faculty member or employee or to the Vice President for Business Affairs, EEO/ADA/Ethics Officer. Students should report such incidents to the Office of the Dean of Students. Individuals should report such incidents as soon as possible after the time of their occurrence.

No University administrator, faculty, staff, student, visitor, or applicant for employment or admission is required to report or make a complaint of sexual harassment or sexual misconduct to the person who is the subject of the complaint.

B. Referral Responsibility

Every supervisor, department chair, or administrator is responsible for promptly reporting incidents of sexual harassment and sexual misconduct that come to their attention to either the Office of the Dean of Students, in the case of student complaints, or to the Vice President for Business Affairs, EEO/ADA/Ethics Officer, for all other complaints.



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C. Complaint Procedure

An individual who reports a violation of this policy in accordance with Section II and who wishes to utilize the formal process should submit a signed, written complaint to the Vice President for Business Affairs, EEO/ADA/Ethics Officer, who is responsible for ensuring complaints made pursuant to this policy are properly investigated.

1. Contents of a Complaint

The complaint should contain 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.

2. Time for Filing a Complaint

Complaints should be filed as soon as possible after the conduct-giving rise to the complaint, but no later than 60 calendar days after the event occurred.

3. Withdrawal of a Complaint

Withdrawal of a complaint will not necessarily result in the termination of the investigation into the allegations. The University retains the right to resolve complaints in order to ensure an educational and working environment free from sexual harassment and sexual misconduct.

4. Complaint Investigation

The investigation shall include providing the alleged offender with a copy of the complaint and an opportunity to respond to it, interviewing the complainant and the alleged offender and any witnesses who have relevant information concerning the complaint, and the gathering and examining of documents relevant to the complaint. The complainant and the accused individual may present any document or information that is believed to be relevant to the complaint.



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5. Investigation Timeframe

The investigation of a complaint will be concluded as soon as possible after receipt of the written complaint. In investigations exceeding 60 calendar days, a justification for the delay shall be presented to the Vice President for Business Affairs, EEO/ADA/Ethics Officer. The complainant, accused individual, and supervisor will be provided an update on the progress of the investigation after the review by the Vice President for Business Affairs, EEO/ADA/Ethics Officer.

6. Report

Upon completion of the investigation, the designated investigator will issue a report to the Vice President for Business Affairs, EEO/ADA/Ethics Officer. The report shall include: findings of facts, a recommendation of whether a violation of the policy occurred, and recommended disciplinary action if a violation of the policy occurred.

The Vice President for Business Affairs, EEO/ADA/Ethics Officer, shall forward a copy of the report to the complainant, the accused individual, and the appropriate administrative head and vice president. The complainant and the accused individual will be afforded an opportunity to submit comments regarding the report to the Vice President for Business Affairs, EEO/ADA/Ethics Officer. Note, however, that if a complaint is filed against a student, then the complainant will not be sent a copy of the report for comments due to the Family Education Rights and Privacy Act's restriction on disclosure of educational records.

7. Decision

Within 10 working days of receiving any comments submitted by the complainant or the accused individual, the Vice President for Business Affairs, EEO/ADA/Ethics Officer, will take one of the following actions:

- a. Request further investigation into the complaint.
- b. Dismiss the complaint if the results of the completed investigation are inconclusive or there is insufficient reasonable, credible evidence to support the allegation(s).
- c. Find that this policy was violated. 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 the accused individual and shall be based on the totality of circumstances surrounding the conduct



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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.

If the Vice President for Business Affairs, EEO/ADA/Ethics Officer, determines that this policy was violated, disciplinary action that is appropriate for the severity of the conduct will be imposed. Disciplinary actions can include, but are not limited to:

- Written reprimands
- Imposition of Conditions
- Reassignment
- Suspension without pay
- Termination
- Expulsion

The Vice President for Business Affairs, EEO/ADA/Ethics Officer, shall inform the complainant in writing of the decision. Note, however, that if a complaint is filed against a student, then the complainant may not receive this information as the Family Education Rights and Privacy Act prohibits such disclosures.

Imposition of any disciplinary action will be handled in accordance with the University's policy and procedures for discipline and dismissal of faculty and employees. The Dean of Students will proceed with the imposition of any disciplinary action against a student in accordance with the University's student disciplinary procedures. Follow-ups will be made on all required actions to ensure that the actions are completed within the specified timeline.

8. Confidentiality

The University shall maintain documents related to the formally resolved complaints as required by law. The confidentiality of such documents will be maintained to the extent permitted by law.



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Section III. Miscellaneous

A. Training and Dissemination of Policy

This policy will be made available to all faculty, employees, and students. Periodic notices sent to students, employees, and faculty about the University's Sexual Harassment and Sexual Misconduct Policy will include information about the complaint procedure and will refer individuals to designated offices or officials for additional information. The University will periodically educate and train employees and supervisors regarding the policy and conduct that could constitute a violation of the policy.

B. Assistance

During the complaint process, a complainant or respondent may be assisted by a person of his or her choice; however, the assistant may not examine witnesses or otherwise actively participate in a meeting or interview.

C. Retaliation Prohibited

A student, faculty, or staff member who retaliates in any way against an individual who has brought a complaint pursuant to this policy or participated in any investigation of such a complaint, is subject to disciplinary action, up to and including dismissal from the University.

D. False Complaints or Statements

Any person who knowingly and intentionally files a false complaint or makes a false statement during the course of an investigation under this policy is subject to disciplinary action up to and including dismissal from the University.

E. Effects on Pending Personnel Actions

The filing of sexual harassment, sexual misconduct, or retaliation complaint will not stop or delay any evaluation or disciplinary action related to the complainant who is not performing up to acceptable standards or who has violated University rules or policies.

Section IV. Review

This policy will be reviewed after each legislative session (every odd numbered year), no later than December 31, by the Vice President for Business Affairs.