

## Prohibition of Sexual Harassment

UPPS No. 04.04.42

Issue No. 4

Effective Date: 04/30/2009

Review: October 1 E2Y

[Attachment I](#)

## 01. POLICY STATEMENTS

01.01 It is university policy that no faculty, staff, student, or contractor will sexually harass another member of the university community or visitor to the university. The university will not tolerate sexual harassment, whether it occurs on or off campus. Any faculty, staff, or student who violates this policy will face disciplinary action; a contractor may face loss of contract or other sanctions.

01.02 Sexual harassment violates:

- a. academic ethics (National Education Association, 1991 resolution; American Association of University Professors, policy adopted June 1990);
- b. state law (Texas Penal Code section 39.03);
- c. federal law (Title VII, Section 703, Civil Rights Act of 1964; and Title IX, Section 106.31, Education Amendments of 1972);
- d. Rules and Regulations of the Board of Regents of The Texas State University System, Chapter VII, Section 4.4; and
- e. contractual agreements that require the contractor to comply with all state and federal laws, including those cited above.

## 02. RATIONALE

02.01 Texas State strives to provide faculty, staff, students and members of the public visiting Texas State University-San Marcos a work place and educational environment free of sexual harassment and intimidation.

02.02 Members of the university community have the privilege to learn, work and live in a civil, supportive, and professional atmosphere. Sexual harassment violates these privileges. It creates a formidable barrier to the free exchange of ideas; damages the integrity of the work place; and deprives the institution of productivity, a sense of community and a positive image.

## 03. DEFINITIONS AND EXAMPLES

03.01 The Equal Employment Opportunity Commission's amended "Guidelines on Discrimination Because of Sex" (29 C.F.R. 1604.11[a]) and the Rules and Regulations of the Board of Regents of The Texas State University System, Chapter

VII, Section 4.4.1, define sexual harassment as: unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic career;
- b. submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting the individual; or
- c. such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile or offensive employment or academic environment.

03.02 Texas State intends that its sexual harassment policy comply with all state and federal law. Accordingly, Texas State will judge sexual harassment claims based on an intimidating, hostile, or offensive employment or academic environment from the perspective of a reasonable person in the complainant's position. In order to violate university policy, the conduct must be substantively and objectively offensive, severe, or pervasive.

03.03 In addition to prohibiting sexual harassment as defined by law, the university strongly advises against any unprofessional or inappropriate conduct of a sexual nature in workplace and teaching locations, even that which is not so serious or pervasive that it rises to the level of sexual harassment. Even if conduct does not violate policy, investigation of these complaints may find the conduct inappropriate, resulting in remedial action.

03.04 Behaviors, if sufficiently offensive, severe, or pervasive, that may constitute sexual harassment include:

- a. intentional and unwelcome touching of a sexual nature;
- b. explicit or implicit propositions to engage in sexual activity;
- c. gratuitous comments of a sexual nature such as explicit statements, questions, jokes, anecdotes or remarks of a sexual nature about a person's clothing or body;
- d. remarks about sexual activities or speculation about sexual experiences;
- e. exposure to gratuitous sexually suggestive visual displays such as photographs, graffiti, posters, calendars, or other materials;
- f. deliberate physical interference with or restriction of an individual's movements;
- g. persistent, unwanted sexual or romantic attention;
- h. subtle or overt pressure for sexual favors; or
- i. deliberate, repeated humiliation or intimidation that is sexual in nature.

03.05 The Office of the Chief Diversity Officer and Director of Equity and Access has developed a brochure, available on request, to provide thorough information and examples of sexual harassment.

03.06 Sexual Harassment and Conflicts of Interest Arising from Consensual Relationships

- a. The issues of conflict of interest and sexual harassment may arise between two persons in a consensual relationship when one is in a position to supervise or evaluate the other. The exercise of power through praise or criticism, performance evaluations, grades, or recommendation for further study or current and future employment may diminish freedom of choice for a student or subordinate.
- b. For example, a subordinate or student in a relationship, who freely consents in the beginning, may construe the relationship as sexual harassment if he or she feels pressure to continue the relationship.
- c. Persons in positions of authority should exercise sensitivity to the potential for sexual harassment and conflicts of interest in personal relationships with subordinates (Refer to [UPPS No. 04.04.39](#), Consensual Relationships).
- d. This policy may cover complainants that perceive these cases as sexual harassment.

04. PROCEDURES FOR REPORTING INSTANCES OF SEXUAL HARASSMENT

04.01 Faculty, staff, students and guests of the university who believe that an individual sexually harassed them or are aware of possible sexual harassment, are encouraged to seek resolution through informal (see Section 06. below) or formal (see Section 07. below) university procedures. If several persons believe the same individual sexually harassed them, they should report the incident and have the option to file as a group.

04.02 Individuals should report sexual harassment orally or in writing, as soon as possible, but no later than 90 workdays from the date of the alleged incident to any of the following:

- a. an academic or administrative official responsible for the unit involved;
- b. the immediate supervisor of the alleged harasser or the next higher management level if the person is an employee;
- c. the Dean of Students, if the person making the report or the alleged harasser is a student; or
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- d. the Office of the Chief Diversity Officer and Director of Equity and Access.

04.03 For support, a third party may accompany the person reporting the conduct.

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04.04 Persons who believe they may have been sexually harassed should document all relevant events, incidents and communications. Documentation may include the name of the alleged harasser, the date and nature of the incident, why the incident

was considered possible sexual harassment, and the names of any witnesses.

## 05. RESPONSIBILITIES OF MEMBERS OF THE UNIVERSITY COMMUNITY REGARDING SEXUAL HARASSMENT REPORTS

- 05.01 Vice presidents, deans, directors, chairs, department heads, and supervisors are required to notify the Office of the Chief Diversity Officer and Director of Equity and Access when they learn of a possible instance of sexual harassment. Disregarding, failing to investigate, or delaying the investigation of allegations of sexual harassment violates this policy.
- 05.02 All members of the university community who do not hold a supervisory position are urged to notify the Office of the Chief Diversity Officer and Director of Equity and Access when they learn of a possible instance of sexual harassment.
- 05.03 Persons receiving reports of sexual harassment should: (1) consider them confidential; (2) disclose them only to authorized persons; and (3) handle them expeditiously.
- 05.04 Once an individual reports an incident, the university may not dismiss it before resolution, in accordance with Regents' Rules, Chapter VII, Section 4.43. If the person decides not to file a formal complaint, the university may still take action.
- 05.05 The university may subject any person who knowingly files a false or malicious charge of sexual harassment to disciplinary action.

## 06. PROCEDURES FOR INFORMAL COUNSELING AND RESOLUTION OF SEXUAL HARASSMENT REPORTS

- 06.01 Because of the sensitive nature of sexual harassment, the university will make every reasonable effort to provide informal avenues for counseling and resolution. As part of an informal process, the complainant can receive support and assistance from the Office of the Chief Diversity Officer and Director of Equity and Access. Records of corrective actions are not maintained in informal resolution.
- 06.02 As one method of informal resolution, a person who believes sexual harassment has occurred may communicate with the alleged harasser directly, and may bring a third party. Students are encouraged to consult the Counseling Center before confronting a person whose conduct is offensive. Staff and faculty are encouraged to first seek assistance from a supervisor or the Office of the Chief Diversity Officer and Director of Equity and Access.
- a. Persons may seek direct resolution of the matter through discussions with the alleged harasser.
  - b. Persons may seek a resolution of the matter by sending to the alleged harasser a certified, return request letter through the US Postal Service. The letter should include the following three parts:
    - 1) a factual account of what happened;
    - 2) a description of how the writer feels about what happened; and

- 3) what the writer wants to happen next, for example, the behavior to stop.
  - c. If direct communication with the alleged harasser does not result in resolution, the person should report the incident or incidents to any university authority identified in Section 04.02. The person who receives the report must notify the Office of the Chief Diversity Officer and Director of Equity and Access.
- 06.03 If direct resolution is inappropriate, a person should seek other informal counseling and resolution with a supervisor, department chair or head, dean or advisor, counselor, or the Office of the Chief Diversity Officer and Director of Equity and Access.
- a. The person reporting the sexual harassment and the recipient of the report may discuss the specifics of the situation and explore possible avenues for informal resolution that may include how to file a formal complaint, if desired (see Section 07.).
  - b. Supervisors must consult with the Office of the Chief Diversity Officer and Director of Equity and Access. After consultation with the Office of the Chief Diversity Officer and Director of Equity and Access, the recipient of the report may attempt resolution while maintaining the anonymity of the person reporting the incident. The recipient of the report must take action toward resolution within thirty workdays of receiving the report.
  - c. Following mandatory consultation with the Office of the Chief Diversity Officer and Director of Equity and Access, the supervisor or administrator will base corrective action on a full review of the circumstances.
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  - d. If the supervisor or administrator finds sexual harassment did occur, an admission of guilt, a warning, a promise not to commit such an abuse again or other appropriate action directed toward the harasser may suffice to resolve the incident.
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  - e. The supervisor is responsible for notifying the Office of the Chief Diversity Officer and Director of Equity and Access and both parties of the results of the efforts at informal resolution of a sexual harassment report.

06.04 If the informal resolution does not satisfy the person reporting the harassment, or if the thirty workday timeframe has lapsed without resolution, the complainant is encouraged to file a formal sexual harassment complaint with the Office of the Chief Diversity Officer and Director of Equity and Access within ninety workdays of the alleged incident (see Section 07.).

## 07. PROCEDURES FOR FORMALLY INVESTIGATING AND DISPOSING OF REPORTS OF SEXUAL HARASSMENT

07.01 A person wishing to file a formal complaint of harassment must notify the Office of the Chief Diversity Officer and Director of Equity and Access. The complainant must complete and submit the appropriate forms (see [Attachment I](#)) within ninety workdays of the alleged incident. The Chief Diversity Officer and Director of Equity and Access should keep the information as confidential as possible.

- 07.02 The Office of the Chief Diversity Officer and Director of Equity and Access will conduct a preliminary investigation of an allegation of sexual harassment within sixty workdays of the receipt of the signed form. This includes separate interviews with the person reporting the harassment and the alleged harasser, as well as other witnesses, if necessary. During the preliminary investigation, the Office of the Chief Diversity Officer and Director of Equity and Access will determine if the complaint has merit. If the complaint does not have merit, the Office of the Chief Diversity Officer and Director of Equity and Access will issue a final report to the complainant and the respondent and close the investigation. If the Office of the Chief Diversity Officer and Director of Equity and Access determines that sufficient evidence exists to warrant further investigation, the Office of the Chief Diversity Officer and Director of Equity and Access, in conjunction with two members of the Equity and Access Investigating Committee (see Section 07.03), will review all aspects of the complaint to determine whether a violation has occurred. These offices must complete the additional investigation within sixty workdays. From the receipt of the initial signed complaint, the Office of the Chief Diversity Officer and Director of Equity and Access will complete the investigation and render a decision within 120 workdays.
- 07.03 The Equity and Access Investigating Committee will draw individual investigating committees from a pool of members to investigate any specific complaint. The membership pool for the full committee will consist of seven or more faculty (at least one per college) recommended by the academic dean, three or more students (to be used only in cases where sexual harassment of students is involved), and six or more staff members (at least one from each division) recommended by the vice president. The President, in consultation with the Faculty Senate, Staff Council, and the Associated Student Government will appoint members, with faculty and staff members appointed to rotating three-year terms. The Chief Diversity Officer and Director of Equity and Access, in conjunction with a panel of two members selected by the Chair of the Equity and Access Investigating Committee will:
- a. review all aspects of the complaint;
  - b. investigate all written, signed reports of sexual harassment (see [Attachment I](#));
  - c. ascertain the desired resolution from the person reporting the harassment. The Equity and Access Investigating Committee may hear witnesses or ask them to submit first-hand, written information regarding the complaint;
  - d. inform the alleged harasser of the specific complaints and give him or her the opportunity to respond and present information and witnesses; and
  - e. provide the alleged harasser with written notice of the complaint in sufficient detail to allow him or her the opportunity to respond effectively. The notice will include the name of each person complaining, a summary of the conduct giving rise to the complaint, and the date and location of the alleged conduct.
- 07.04 Upon request, the University Attorney will inform the investigating committee of the university's confidentiality policy in these matters and the possibility of individual liability for defamation. The alleged harasser may use an advisor, including legal counsel for advisory purposes. The advisor may only advise the alleged harasser

and may not otherwise participate in the investigation.

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07.05 If the panel determines that sexual harassment has occurred, it will recommend appropriate disciplinary or educational actions in a written report within the 120 workday timeframe.

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07.06 If the panel finds that no sexual harassment occurred, it can still determine that the conduct was inappropriate. The panel will provide a written report within the 120 workday timeframe.

07.07 Within five workdays of the decision, the panel will provide its report of its findings to the University Attorney for review. The University Attorney will have ten workdays to review the decision.

07.08 The panel, after consultation with the University Attorney, will issue a final report. The complainant, the respondent, and the appropriate vice president will receive it.

07.09 The vice president in the reporting line will implement any disciplinary action and will monitor the circumstances to ensure a remedied situation.

07.10 The respondent may appeal any disciplinary action through the regular grievance process (see [UPPS No. 04.04.41](#)).

07.11 The supervisor of the person determined to have engaged in inappropriate behavior will inform the person about the impropriety of his or her actions in consultation with the Office of the Chief Diversity Officer and Director of Equity and Access. The university may give an oral warning following the filing of a second formal complaint and a written warning following the filing of a third complaint. The respondent may appeal the warning through the regular grievance process.

07.12 Texas State prohibits retaliation against a person filing a sexual harassment complaint or anyone who assists or participates in the investigation of a report.

## 08. PROCEDURES FOR PUBLICATION AND DISSEMINATION OF THIS POLICY

08.01 The Office of the Chief Diversity Officer and Director of Equity and Access will provide training to all full-time regular employees through brochures, workshops, and other appropriate means, concerning:

- a. definitions of sexual harassment;
- b. examples of incidents of sexual harassment;
- c. descriptions of how and when to report sexual harassment;
- d. descriptions of available informal and formal resolution mechanisms; and
- e. sources of support and information for victims and respondents, as mandated by Texas law. All full-time employees are required by Chapter 21, Texas Labor Code to receive supplemental training biennially.

- 08.02 Deans and heads of administrative units should discuss this policy and issues of harassment at meetings of faculty, staff, and teaching assistants at least once each year.
- 08.03 The Office of the Chief Diversity Officer and Director of Equity and Access will discuss this policy in orientation programs for new faculty and staff employees within thirty workdays of beginning employment, as mandated by Texas law.
- 08.04 The Chief Diversity Officer and Director of Equity and Access will provide training programs for persons who advise and counsel students or respond to crisis situations. These programs will include information about sexual harassment (definitions, informal counseling and formal report procedures). Employees who receive the biennial training will sign a statement of verification.
- 08.05 The Dean of Students will develop an educational program for students dealing with issues of sexual harassment. The university should direct this educational program toward, but not be restricted to, new undergraduate and graduate students.
- 08.06 The university will summarize this policy in the [Faculty Handbook](#), the [Staff Handbook](#), and the [Student Handbook](#).

## 09. SANCTIONS

- 09.01 The university may impose the following sanctions for violation of this policy:
- a. for faculty or staff, disciplinary action up to and including termination of employment;
  - b. for students, disciplinary action up to and including dismissal from the university;
  - c. for contractors, cancellation of their contract with Texas State or other appropriate action.

## 10. CONFLICTS

- 10.01 If this policy conflicts with any other policy, rule or regulation at the university, including procedures and policies found in the [Faculty Handbook](#), the grievance and appeals policy in the [Staff Handbook](#), or the [Code of Student Conduct](#), this sexual harassment policy shall take precedence.

## 11. REVIEWERS OF THIS UPPS

- 11.01 Reviewers of this UPPS include the following:

<u>Position</u>	<u>Date</u>
Chief Diversity Officer and Director of Equity and Access	October 1 E2Y
University Attorney	October 1 E2Y

Dean of Students	October 1 E2Y
Chair, Staff Council	October 1 E2Y
Chair, Faculty Senate	October 1 E2Y
Co-Chair, President's Council for Women	October 1 E2Y

## 12. CERTIFICATION STATEMENT

This UPPS has been approved by the following individuals in their official capacities and represents Texas State policy and procedure from the date of this document until superseded.

Chief Diversity Officer and Director of Equity and Access; senior reviewer of this UPPS

Special Assistant to the President

President