

**Issued:** June 26, 2003**Responsible Executive Officer:** President**Responsible Office:** Affirmative Action Office**POLICIES**

---

**Policy Statement**

---

It is against University policy to discriminate against any member of the University community on the basis of sex or race. Harassment based on sex or race is a form of discrimination.

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 employment or enrollment provided the complaint is timely filed, and the conduct has a reasonable connection to the University.

**Educational Programs**

The University will take measures to periodically educate and train employees regarding conduct that could constitute a violation of this procedure. All employees, including faculty members, are expected to participate in such education and training and to be knowledgeable of policies and procedures concerning harassment.

**Disciplinary Action**

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.

**Responsibility of Supervisors**

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 TBR and institutional policies and guidelines. Such reporting should occur when information concerning a complaint is received formally or informally.

**University Commitment**

Harassment is reprehensible and will not be tolerated by the University. It subverts the mission of the University and threatens the careers, educational experience and well being of students, faculty and staff. Incidents involving sexual harassment or racial harassment have no place within the University. In both obvious and subtle ways, even a suggestion of sexual or racial harassment is destructive to individual students, faculty, staff and the academic community as a whole. When through fear or reprisal, a student, staff member, or faculty member submits or is pressured to submit to unwanted sexual attention, the University's ability to carry out its mission is undermined.

While sexual harassment most often takes place in situations of a power differential between the persons involved, the University also recognizes that sexual harassment may occur between persons of the same University status. The University will not tolerate such harassment between or among members of the University that creates an unacceptable work or educational environment.

---

## Purpose

---

The University of Memphis assures that fair and prompt consideration shall be given to all complaints of sexual or racial harassment in accordance with the procedures set forth below.

---

## Contents

---

### Procedures

- [Legal Requirement](#)
- [Prohibited Conduct: Sexual Harassment Defined](#)
- [Consensual Relationships](#)
- [Prohibited Conduct: Racial Harassment Defined](#)
- [Prohibited Conduct: Retaliation](#)
- [Prohibited Conduct: Other Forms](#)
- [Complaint Reporting](#)
- [Investigation Process](#)
- [Hearing](#)

### FAQs

- [Who do I contact with further questions?](#)
- [Other Contacts for Assistance](#)

### Links

- [TBR - Harassment - Sexual or Racial](#)
  - [TBR - Nondiscrimination on Basis of Sex in Programs & Activities](#)
  - [TBR - Equal Employment Opportunity, Affirmative Action, Discrimination and Nepotism](#)
  - [TBR - Academic Freedom, Responsibility, and Tenure](#)
- 

## Procedures

---

### Legal Requirement

Sexual harassment and racial harassment have been held to constitute forms of discrimination prohibited by Title VI, Title VII of the Civil Rights Act of 1964, as amended and Title IX of the Educational Amendments of 1972. The University may be held liable pursuant to Title VI or Title VII and/or lose federal funds pursuant to Title IX for failure to properly investigate and remedy claims of sexual or racial harassment.

### Prohibited Conduct: Sexual Harassment Defined

#### Sexual harassment in the working/educational environment:

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:

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;

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;

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.

### **Examples of Sexual Harassment**

Sexual harassment can take many forms, but most sexual harassment falls into three categories: verbal, visual, or physical. Some examples of behavior that may constitute sexual harassment are:

- Refusing to hire, promote, or grant or deny certain privileges because of acceptance or rejection of sexual advances.
- Promising a work-related benefit or a grade in return for sexual favors.
- Suggestive or inappropriate communications, e-mail, voicemail, notes, letters, or other written materials displaying objects or pictures which are sexual in nature that would create hostile or offensive work or living environments.
- Sexual innuendoes, comments, and remarks about a person's clothing, body or activities.
- Suggestive or insulting sounds.
- Whistling in a suggestive manner.
- Humor and jokes about sex that denigrate men or women.
- Sexual propositions, invitations, or pressure for sexual activity.
- Use in the classroom of sexual jokes, stories, remarks or images when such use is in no way germane to the subject matter of the class.
- Implied or overt sexual threats.
- Suggestive or obscene gestures.
- Patting, pinching, and other inappropriate touching.
- Unnecessary touching or brushing against the body.
- Attempted or actual kissing or fondling.
- Coerced sexual intercourse.
- Sexual assault.

The examples listed above are not exclusive, but simply represent types of conduct that may constitute sexual harassment.

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 may 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 police and/or crisis intervention centers may supersede or occur in addition to the process developed under this policy.

### **Consensual Relationships**

Intimate relationships between supervisors and their subordinates, 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.

#### **Consensual Relationships - Conflicts of Interest**

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, such as 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/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 remove the conflict of interest by, for example, assigning another individual to supervise and/or evaluate the subordinate or terminating the relationship.

**Prohibited Conduct:  
Racial Harassment Defined**

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 working or educational environment. Harassment on the basis of race includes offensive or demeaning treatment of an individual, where such treatment is based on prejudiced stereotypes of a racial 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/her race. Title VII requires employers to take prompt action when a person expresses a racially charged opinion in a way which abuses or offends a coworker.

**Prohibited Conduct:  
Retaliation**

Retaliation is prohibited by the University. Retaliation may be defined as the seeking of revenge, reprisal or injury to another who has exercised the right to file a complaint or make a report of sexual or racial harassment, or has participated in an investigation into allegations of sexual or racial harassment.

Any retaliation against a person filing a complaint is strictly prohibited regardless of the outcome of the investigation and may, in itself, be grounds for disciplinary action.

**Prohibited Conduct:  
Other Forms**

Title VII also prohibits discrimination (and harassment) of individuals based on color, ethnicity, national origin and religion. Complaints of discrimination on these grounds may be filed with the University EEO/AA Officer and or pursuant to the University's grievance and complaint procedures. However, the procedure utilized for these complaints differs from the process used for sexual and racial harassment complaints.

**Complaint Reporting**

**General and Contact Offices**

The University seeks to encourage the prompt reporting of sexual or racial harassment and its prompt resolution through University procedures. Where the charge of harassment is by one student against another student, the Associate Dean of Judicial and Ethical Programs, 105 University Center, will investigate and resolve the complaint in accordance with appropriate student procedures. Other charges, not relating to complaints against students, should be directed to the University Equal Employment/Affirmative Action Compliance Officer (hereinafter, EEO/AA Officer), 156 Administration Building. The EEO/AA Officer will investigate all charges and make recommendations to the President regarding their resolution, following the procedures set forth in this document.

**Protection of Rights**

The following procedures are intended to protect the rights of the aggrieved party (hereinafter, 'the Complainant') as well as the party against whom the harassment complaint 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 taken against the Respondent.

The Office of General Counsel (TBR) and the Office of Legal Counsel (U of M) shall always be consulted prior to investigation. Both offices will be kept informed during the investigation.

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 pending the outcome of the investigation. Legal Counsel must be contacted before any immediate action is taken.

### **Initiating a Complaint**

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/she has observed harassment taking place shall present the complaint to the designated EEO/AA Officer or the Associate Dean of Judicial and Ethical Programs, (hereinafter 'the Investigator') responsible for compliance with Title VII of the Civil Rights Act of 1964, Title VI, Title IX of the Education Amendments of 1972.

### **Time Period for Filing a Complaint**

Complaints must be brought within 365 days of the last incident of harassment. Complaints brought after that 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 Legal Counsel and TBR General Counsel.

Every attempt will be made to obtain a written complaint from the Complainant. 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 Complainant refuses to provide or sign a written complaint, the matter will still be investigated to the extent possible, and appropriate action taken. Complaints made anonymously or by a third party must also be investigated to the extent possible.

If the complaint does not rise to the level of harassment, the complaint may be dismissed without further investigation after consultation with Legal Counsel. The Complainant should be informed of other available processes such as the employee grievance/complaint process, or a student non-academic complaint process.

## **Investigation Process**

### **Initiation of Investigation**

Legal 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 shall be conducted under the direction of Legal Counsel. All investigatory notes and documents shall be attorney work product. The Investigator shall notify the President that an investigation is being initiated.

### **Sexual Harassment by EEO/AA Officer or Associate Dean of Ethical and Judicial Programs**

When the allegation of harassment is against the EEO/AA Officer or Associate Dean of Judicial and Ethical Programs, 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.

### **Sexual Harassment by Students**

When the Respondent is a student, the Associate Dean of Judicial and Ethical Programs will investigate 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 the University's student disciplinary procedures.

When the Respondent is a student, all documentation shall, in addition to the attorney work product, be subject to the provisions and protections of the Family Educational Records and Privacy Act (FERPA).

### **Conducting an Investigation**

In consultation with and under the direction of Legal Counsel, the Investigator shall conduct an investigation of the complaint. The purpose of the investigation is to establish whether there has been a violation of the policy. In conducting the investigation, the Investigator may interview the Complainant, the Respondent, and other persons believed to have factual knowledge related to the investigation.

### **Confidentiality**

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 the 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 should be informed 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.

### **Notification of Complaint**

The Investigator shall notify the alleged harasser (herein after referred to as Respondent) in writing 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.

### **Protection from Retaliation for Complainant**

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.

### **Informal Resolution**

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 Legal Counsel, shall be submitted to the President.

### **Investigation Report**

If informal resolution is unsuccessful, the Investigator shall draft a report summarizing the investigation which shall be sent to Legal Counsel for review. After review and approval by Legal Counsel, the report shall be submitted to the President, the Complainant and the Respondent within twenty (20) working days following receipt of the complaint. In rare situations where more than 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 Legal 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 the policy, and recommendations regarding disposition of the complaint.

### **'No Cause' Finding**

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 inform the Respondent, that he or she is not being accused of a harassment violation, but that the conduct alleged, had it been substantiated, would have violated this policy. Any such investigation and related discussion should be documented and a report submitted as set forth in this procedure. 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.

### **'Cause' Finding**

If the investigation reveals evidence that a violation of the policy 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.

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.

### **Recourse Procedures**

If a violation of this policy is determined to have occurred, the Respondent shall be advised of his/her right to a hearing, if such right exists, pursuant to the procedures set forth below. The Respondent must file the request for a hearing within ten (10) working days following receipt of the President's determination.

### **Record-Keeping**

After completion of the investigation and any subsequent disciplinary proceedings, all documentation shall be forwarded to Legal Counsel. However, the President's determination, the Investigator's report and documentation of any disciplinary action taken against the Respondent should be placed in a file maintained on campus. This file shall be maintained in a location designated by the President.

**Respondent: Protection from Bad Faith Complaints**

A complaint found to have been intentionally dishonest or maliciously made will subject the Complainant to appropriate disciplinary action.

**Hearing****Request for a Hearing**

If the Respondent requests and is entitled to a hearing, he or she shall be advised of the established University procedures available for resolution of the matter in question which will generally be the procedure for the hearing of a grievance before a grievance committee.

**Minimal Requirements: Grievance Hearing Procedures**

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.

**Hearing Option: University vs. TUAPA**

In the following situations the Respondent must be given the option of either a University hearing, or of having the hearing held pursuant to the Tennessee Uniform Administrative Procedures Act (TUAPA):

The Respondent is a support staff employee whom the President has determined should be demoted, suspended without pay or terminated (refer to U of M Policy *Grievance Process and Conflict Resolution*); or,

The Respondent is a student whom the President has determined should be suspended or expelled (contact the Office of Judicial and Ethical Programs).

**Election of Hearing**

The election of which hearing process to utilize must be in writing, signed by the Respondent, expressly waiving the TUAPA option if such option is available.

If the Respondent elects to proceed pursuant to the TUAPA, Legal Counsel should be notified immediately.

**Faculty Recourse Procedures**

When an allegation involves a tenured faculty member, the same informal and formal procedures set out above shall be utilized. Tenured faculty members shall have the same right to elect hearing procedures as set out in this section. 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, Academic Freedom, Responsibility, and Tenure, 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 University policy for termination of tenure or TBR Policy 5:02:03:00.

---

## FAQs

---

### Who do I contact with further questions?

Complaint by student against faculty member or staff; faculty member against staff; faculty member against faculty member or supervisor; or staff against faculty member, staff, supervisor or outside University vendor:

Affirmative Action Office, 156 Administration Building,  
(901) 678-2713

Complaint by faculty member or staff against student

Office of Judicial and Ethical Programs, 105 University Center,  
(901) 678-2298

### Other Contacts for Assistance

Psychological/Emotional Assistance and Support Services,  
**Employees**

Employee Assistance Program (877) 237-8574

Psychological/Emotional Assistance and Support Services, **Students**

Psychological Counseling Unit (901) 678-2068

---

## Links

---

### TBR - Harassment - Sexual or Racial

[http://www.tbr.state.tn.us/policies\\_guidelines/personnel\\_guidelines/P-080.htm](http://www.tbr.state.tn.us/policies_guidelines/personnel_guidelines/P-080.htm)

### TBR - Nondiscrimination on Basis of Sex in Programs & Activities

[http://www.tbr.state.tn.us/policies\\_guidelines/academic\\_policies/2\\_02\\_10\\_01.htm](http://www.tbr.state.tn.us/policies_guidelines/academic_policies/2_02_10_01.htm)

### TBR - Equal Employment Opportunity, Affirmative Action, Discrimination and Nepotism

[http://www.tbr.state.tn.us/policies\\_guidelines/personnel\\_policies/5-01-02-00.htm](http://www.tbr.state.tn.us/policies_guidelines/personnel_policies/5-01-02-00.htm)

### TBR - Academic Freedom, Responsibility, and Tenure

[http://www.tbr.state.tn.us/policies\\_guidelines/personnel\\_policies/5-02-03-00.htm](http://www.tbr.state.tn.us/policies_guidelines/personnel_policies/5-02-03-00.htm)

---

## Revision Dates

---

UM1391 - Issued: June 26, 2003 - supercedes policy number 1:2A:12:04 and 2A:12:04A

---

## Subject Areas:

Academic	Finance	General	Human Resources	Information Technology	Student Services/Affairs
		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>

---