



Angelo State University
Operating Policy and Procedure

OP 52.40: Anti-Discrimination Policy and Grievance Procedure for Violations of Employment and Other Laws

DATE: September 8, 2014

PURPOSE: The purpose of this Operating Policy and/or Procedure (OP) is to establish the university's policy and grievance procedures on violations of employment discrimination, including sexual harassment.

REVIEW: This OP will be reviewed in July every three years, or as needed, by the director of human resources with recommended revisions forwarded through the vice president for finance and administration to the president by August 15 of the same year.

POLICY/PROCEDURE

Angelo State University does not tolerate discrimination or harassment of employees and applicants based on or related to sex, race, national origin, religion, age, disability, status as a covered veteran, genetic information, or other protected categories, classes, or characteristics. While sexual orientation is not a protected category under state or federal law, it is Angelo State University policy not to discriminate in employment decisions on this basis (see OP 02.08). Employment actions such as hiring, promotion, demotion, transfer, rate of pay or other forms of compensation, selection for training, and termination shall not be made based on an employee's protected status. Discriminatory behavior is prohibited regardless of the manner in which it is exhibited, whether verbally, in writing, or electronically displayed or conveyed.

Angelo State expects all employees to comply with the law in connection with their employment and employment decisions. Employees who violate these policies and laws are subject to disciplinary action, up to and including termination.

1. Definitions

a. Discriminatory Harassment

Discriminatory harassment is verbal or physical conduct that shows hostility toward an employee based on or related to sex, race, national origin, religion, age, disability, sexual orientation, genetic information, or other protected categories, classes, or characteristics and that:

- (1) Creates an intimidating, hostile, or offensive working environment;
- (2) Has the purpose or effect of unreasonably interfering with an employee's work performance;

- (3) Adversely affects an employee's employment opportunities; and
- (4) Is severe and/or pervasive.

Examples of inappropriate behavior that may constitute unlawful harassment include, but are not limited to:

- Slurs and jokes about a protected class of persons or about a particular person based on protected status, such as sex or race;
- Display of explicit or offensive calendars, posters, pictures, drawings, screen savers, e-mails, or cartoons in any format that reflects disparagingly upon a class of persons or a particular person;
- Derogatory remarks about a person's national origin, race, or other ethnic characteristic;
- Disparaging or disrespectful comments if such comments are made because of a person's protected status;
- Loud or angry outbursts or obscenities in the workplace directed toward another employee, student, customer, contractor, or visitor; or
- Disparate treatment without a legitimate business reason.

b. Sexual Harassment

Sexual harassment, which is another form of discriminatory harassment, is unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an employee's employment;
- (2) Submission to or rejection of such conduct by an employee is used as a basis for employment decisions affecting the employee; or
- (3) Such conduct has the purpose or effect of interfering with the employee's work performance or of creating an intimidating, hostile, or offensive working environment.

To constitute unlawful sexual harassment, the behavior must be severe and/or pervasive.

Examples of inappropriate behavior that may constitute unlawful sexual harassment include, but are not limited to:

- Sexual teasing, jokes, remarks, or questions;
- Sexual looks and gestures;
- Sexual innuendoes or stories;
- Sexual favoritism;
- Pressure for dates or sexual favors;
- Gifts, letters, calls, e-mails, or materials of a sexual nature;
- Unwelcome physical contact (touching, patting, stroking, rubbing);
- Sexually explicit visual material (calendars, posters, cards, software, internet materials);

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- Communicating in a demeaning manner with sexual overtones;
- Inappropriate comments about dress or physical appearance; or
- Inappropriate discussion of private sexual behavior.

c. Grievance

A grievance is a formal complaint pertaining to adverse employment actions taken on the basis of the employee's protected status or other violation of law or ASU policy.

If an employee separates from ASU for any reason after filing a grievance, the grievance shall be dismissed. A termination cannot be grieved unless the employee has reason to believe that the termination was prohibited by law. A violation of a university policy alone does not necessarily constitute a violation of law or an action prohibited by law. In the event the employee alleges his or her termination was the result of discrimination or a violation of the law, an employee may file a grievance pursuant to section 3 below.

2. General Provisions

- a. This grievance procedure is applicable to all employees, whether staff or faculty, who choose to complain about unlawful discrimination or other violations of law that adversely affect their employment.
- b. While not appropriate, not all rude or offensive comments or conduct constitute sexual harassment or unlawful discrimination.
- c. All grievance investigations and procedures will be non-adversarial in nature. The employee filing the grievance may represent himself or herself or be accompanied by a representative who does not claim the right to strike. Language interpreters and other individuals intended to aid the employee in communicating will be permitted.

No ASU funds may be used to pay expenses for salary, travel, or per diem of a public employee who represents an employee in the presentation of grievances, nor may other resources be used except that an employee is allowed to take annual leave, compensatory leave, or leave without pay subject to established ASU operating policies and procedures to engage in this activity.

- d. An employee may present a grievance without fear of retaliation.

Retaliation against an employee who reports discrimination or other violation of the law or who participates in an investigation under this policy is strictly forbidden. Any manager or supervisor or other employee who is found to have taken any adverse employment action against an employee because of the employee's good faith report of discrimination or other violation of the law or participation in an investigation under this policy is subject to severe penalties, including immediate termination. This may apply even if it is determined that the underlying grievance is not a violation of ASU policy or law.

However, the filing of a grievance shall not affect the ability of ASU to pursue disciplinary action or separation action for reasons other than the employee's filing of a grievance.

- e. Employment at ASU is governed by the employment at will doctrine. Employment is for an indefinite duration and can be terminated at any time, with or without cause and with or without notice, by either ASU or the employee unless otherwise prohibited by law. Nothing in this or any other ASU operating policy and procedure constitutes an employment agreement, either expressed or implied, a contract, a contractual relationship, a guarantee of continued employment, or a property right.
- f. Nothing in this policy shall prevent an employee from presenting a charge of discrimination or other grievance covered by this policy to an external agency, such as the Equal Employment Opportunity (EEO) Commission or Texas Workforce Commission. However, if an employee files a complaint with an external agency, while the Office of EEO may continue its investigation, the internal process shall terminate and any response to the complaint will be made to the external agency and not to the employee.

3. Procedures for Reporting a Grievance

- a. Prior to filing a formal grievance, the employee should attempt to resolve the situation by addressing the offending party in an informal manner and in an atmosphere of mutual respect. If the employee is not comfortable addressing the offending party, he/she may address his/her concerns to his/her first or second level supervisor. If the situation is not resolved by informal means or if the employee is not comfortable with doing so, the employee may file a formal grievance.

An employee may also consult with the Office of EEO to determine if he/she wishes to file formal grievance. Although the Office of EEO will undertake no official action on behalf of the employee without a filed, signed complaint, it may notify key personnel with a need to know about the allegation. However, other action may be taken by ASU as deemed appropriate. Such action may include conferring with supervisors or other administrators concerning inappropriate behavior occurring within their area of responsibility, informing alleged offenders of ASU's policy and educating departments and supervisors as needed on this and other policies.

- b. An employee having a grievance should submit a completed *Grievance Report*, which is available on the ASU Human Resources website or at the following link http://www.angelo.edu/dept/human_resources/hr%20forms.php, to the Office of EEO within 10 business days from the date of the action giving rise to the grievance or within 10 days of the conclusion of informal attempts to resolve the situation.

A written grievance shall contain:

- (1) A clear and concise statement of the grievance;
- (2) The date the incident took place;
- (3) The name and contact information of any witnesses;
- (4) The specific resolution sought by the employee; and
- (5) Additional relevant information to be considered in support of the grievance.

- (6) Any changes to the grievance must be in writing.
- c. Only one subject matter shall be covered in any one grievance.
- d. Once a signed grievance form is received by the Office of EEO, an investigation will be conducted by that office. The vice president of the appropriate administrative division or the provost and appropriate academic dean will be notified of the grievance.
- e. The investigation may consist of the review of the grievance and any supporting documentation, examination of other relevant documentation, and interviews with relevant individuals. The extent of the investigation and its procedures will be determined by and at the discretion of the Office of EEO.
- f. After the investigation is complete, the Office of EEO will provide a written determination to the employee who has filed the grievance and to the appropriate department administrator.
- g. The finding of the Office of EEO is final.
- h. In the event of a finding of a violation of this policy or other violation of the law is made, appropriate disciplinary action will be taken as determined by the appropriate administrator. Disciplinary action may range from coaching up to and including termination. Termination procedures for tenured faculty will be conducted pursuant to OP 06.23.
- i. Any employee subject to disciplinary action may appeal any proposed disciplinary action, but not the determination of the Office of EEO, within 10 business days through procedures established for faculty in OP 06.11 and for staff in OP 52.17. A copy of the appeal should be forwarded to the Office of EEO.
- j. Any disciplinary action taken in connection with a grievance filed pursuant to this policy shall be reported in writing to the Office of EEO at the time the disciplinary action is implemented. Confirmation of the disciplinary action can be provided via a copy of a counseling or other written disciplinary action, resignation, termination document, etc.
- k. At the conclusion of the investigation, the complaining party shall be advised that if the discrimination or unlawful activity persists the employee should contact the Office of EEO. Likewise, in the event the employee believes unlawful retaliation for filing a grievance has taken place, the employee should contact the Office of EEO and/or file a grievance for retaliation.

4. Reporting Requirements

All employees who are either the subject of or witness to unlawful discrimination or other violations of the law have the obligation to report such actions to their immediate supervisor, the Office of EEO, the University Police Department, or other appropriate law enforcement authority. The employee may also follow the procedures set for in OP 52.02 to meet these reporting requirements.

5. Confidentiality

The confidentiality of both the employee and the party complained of will be honored to the extent possible without compromising the university's commitment to investigate allegations of discrimination or violations of law and the extent allowed by law. The willful and unnecessary disclosure of confidential information by anyone, including the employee filing the grievance, regarding a complaint of discrimination or violation of law to any person outside of the investigation process may result in appropriate disciplinary measures against the offending party.

6. Training

Pursuant to state legislation, all employees must attend EEO non-discrimination training within the first 30 days of employment and receive supplemental training every two years. Employees are required to sign a statement that verifies participation in this training. Signed participation statements will be included in the employee's personnel file.

Employees are informed of the EEO policy through new employee orientation, EEO training sessions, this anti-discrimination policy and other operating policies, and placement of the EEO federal and state posters at various locations throughout the campus. Information about the Angelo State EEO policy can also be obtained from the Office of Human Resources or the Texas Tech EEO Office.

7. Authoritative References

- Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972
- Age Discrimination in Employment Act of 1967
- Title IX of the Education Amendments of 1972
- Rehabilitation Act of 1973, as amended
- Vietnam Era Veterans Readjustment Assistance Act of 1974
- Americans with Disabilities Act of 1990 and Amendments
- Civil Rights Act of 1991
- Title II of the Genetic Information Nondiscrimination Act of 2008
- Texas Labor Code Chapter 21

8. Right to Change Policy

ASU reserves the right to interpret, change, modify, amend, or rescind this policy, in whole or in part, at any time without notice to or consent of its employees.

The employee *Grievance Report* is available on the ASU Human Resources website or at the following link http://www.angelo.edu/dept/human_resources/hr%20forms.php.