



**Angelo State University**  
**Operating Policy and Procedure**

**OP 16.02: Non-Discrimination and Anti-Harassment Policy and Complaint Procedure for Violations of Employment and Other Laws**

**DATE:** July 12, 2017

**PURPOSE:** The University is an Equal Employment Opportunity (EEO) employer and ensures compliance with federal and state employment laws and regulations. In the event an individual believes his/her rights under these or other laws have been violated, this policy sets forth the procedures to address these concerns in a fair, equitable, and prompt manner.

**REVIEW:** This Operating Policy/Procedure (OP) will be reviewed in January of odd-numbered years by the managing director of the Texas Tech University System Office of Equal Opportunity (Office of EO), the Director of Title IX/Title IX Coordinator, the Executive Director of Student Affairs, and the Director of Angelo State University Office of Human Resources with recommended revisions forwarded through the Senior Executive Assistant to the President and General Counsel to the President by March 1 of the same year.

**POLICY/PROCEDURE**

The University is committed to providing and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from any form of unlawful discrimination. The University is dedicated to fostering and supporting a culture of mutual respect and communication.

This policy applies to all University students and employees, visitors, applicants for admission to or employment with the University, as well as University affiliates and others conducting business on campus.

The University does not tolerate discrimination or harassment based on or related to sex, race, national origin, religion, age, disability, protected veteran status, genetic information, or other protected categories, classes, or characteristics. While sexual orientation and gender identity are not explicitly protected categories under state or federal law, it is the University's policy not to discriminate in employment, admission, or use of programs, activities, facilities, or services on this basis.

Discriminatory behavior is prohibited by this policy, as well as by federal laws such as Title VII, which prohibits discrimination in employment, Title IX, which prohibits discrimination on the basis of sex in education programs or activities, the Equal Pay Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Rehabilitation Act of 1973, the Civil Rights Act of 1991, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Title II of the Genetic Information Non-Discrimination Act, and state laws such as Chapter 21 of the Texas

[Minor revision: July 12, 2017]

Labor Code. Discriminatory behavior is prohibited regardless of the manner in which it is exhibited, whether verbally, in writing, by actions, or electronically displayed or conveyed.

The University expects all members of the University Community to comply with the law. Members of the University Community who violate University policies and laws may be subject to disciplinary action, up to and including termination of employment, expulsion from the University, or being barred from University premises and events.

While sexual harassment, Sexual Misconduct, and sexual assault may constitute prohibited acts of discrimination, such complaints will be addressed through OP 16.03: Sexual Harassment, Sexual Assault, Sexual Misconduct, and Title IX Policy and Complaint Procedure.

## 1. Definitions

For purposes of this policy, the definitions below apply.

- a. **Employee** – Any person who receives a W-2 or 1042-S from the University, including full and part-time faculty, staff, and students.
- b. **Harassment** – Harassment based on a person’s protected class under this policy is a form of discrimination. Unlawful harassment is verbal or physical conduct that shows hostility toward an individual based on or related to sex, race, national origin, religion, age, disability, sexual orientation, gender identity, genetic information, or other protected categories, classes, or characteristics and that:
  - (1) Creates an intimidating, hostile, or offensive working or educational environment;
  - (2) Has the purpose or effect of unreasonably interfering with an employee’s or student’s educational performance;
  - (3) Adversely affects an employee’s employment opportunities or student’s educational opportunities; and
  - (4) Is severe 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, cartoons, screen savers, emails, internet, or other multi-media materials in any format that reflects disparagingly upon a class of persons or a particular person in a protected category;
- Derogatory remarks about a person’s sex, national origin, race, or other ethnic characteristics;
- 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;

[Minor revision: July 12, 2017]

- Disparate treatment without a legitimate business reason; or
  - Other threats, discrimination, hazing, bullying, stalking, or violence based on a protected category, class, or characteristic.
- c. **Reporting Party** – A person or entity (in the case of the University) who submits a complaint alleging a violation of this policy.
- d. **Responding Party** – Generally, the Responding Party is the person who is alleged to be responsible for the prohibited conduct alleged in a complaint.
- e. **Sexual Misconduct** – A broad term encompassing all forms of gender-based harassment or discrimination and unwelcome behavior of a sexual nature. The term includes sexual harassment, nonconsensual sexual contact, nonconsensual sexual intercourse, sexual assault, sexual exploitation, stalking, public indecency, interpersonal violence, and any other form of sexual misconduct, sexual violence, or other misconduct based on sex. See OP 16.03 for matters concerning Sexual Misconduct.
- f. **University Community** – All faculty, staff, and students of and visitors to any University premises or University-affiliated activity.
2. **Angelo State University Office of Human Resources and Texas Tech University System and Equal Opportunity Office**

The Angelo State University Office of Human Resources and the Texas Tech University System Office of Equal Opportunity (Office of EO) are both designated to formally investigate reports or notices of discrimination and/or harassment by or against employees. Accordingly, employees, students, or third parties with a complaint against an employee should contact the Office of Human Resources or Office of EO. At the discretion of the Offices, any investigation may be conducted either jointly or by either office individually, but only one investigation will be conducted.

<b>CONTACT</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>EMAIL</b>
Director of Human Resources Office of Human Resources	325-942-2168	East Office Annex ASU Station #11009 San Angelo, TX 76909	<a href="mailto:Kurtis.neal@angelo.edu">Kurtis.neal@angelo.edu</a>
Managing Director Office of Equal Opportunity	806-742-3627	TTU System Administration Building, 1508 Knoxville Ave., Suite 208 Office of Equal Opportunity Texas Tech University System Box 1073 Lubbock, TX 79409	<a href="mailto:eeo@ttu.edu">eeo@ttu.edu</a>

Complaints of gender discrimination may also be reported to the Director of Title IX Compliance/Title IX Coordinator.

<b>CONTACT</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>EMAIL</b>
ASU Director of Title IX Compliance/Title IX Coordinator  Michelle Boone, Student Affairs and Enrollment Management	325-942-2047	Houston Harte University Center, 112C  Student Affairs and Enrollment Management ASU Station #11047 San Angelo, TX 76909	<a href="mailto:michelle.boone@angelo.edu">michelle.boone@angelo.edu</a>

Employees, students, or third parties with a complaint of discrimination and/or harassment other than gender discrimination, against a student should contact the Executive Director of Student Affairs.

<b>CONTACT</b>	<b>PHONE</b>	<b>ADDRESS</b>	<b>EMAIL</b>
Executive Director of Student Affairs	325-942-2047	Houston Harte University Center, 112  Student Affairs and Enrollment Management ASU Station #11047 San Angelo, TX 76909	<a href="mailto:Bradley.petty@angelo.edu">Bradley.petty@angelo.edu</a>

### 3. General Provisions Relating to Employees

- a. While not appropriate, not all rude or offensive comments or conduct constitute unlawful discrimination or harassment.
- b. This complaint procedure is applicable to all employees, whether staff or faculty, who choose to complain about unlawful discrimination or other violations of the law that adversely affect their employment.
- c. All complaint investigations and procedures will be non-adversarial in nature and will be conducted in a fair and impartial manner. Language interpreters and other individuals intended to aid the employee in communicating will be permitted.

No University funds may be used to pay expenses for salary, travel, or per diem of a public employee engaged in the complaint process, nor may other University resources be used. Except that an employee is allowed to take vacation leave or leave without pay subject to established University operating policies and procedures to engage in this activity.

- d. Relevant administrators will be notified of formal investigations. The Office of the Provost will be notified of any complaints involving faculty.
- e. Except as otherwise provided by University policy or written contract, employment at the University 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 the University or the employee unless otherwise prohibited by law, University policy, or written contract. Nothing in this University 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. The filing of a complaint shall not affect the ability of the University to pursue disciplinary action or separation action for reasons other than the employee's filing of a complaint.
- g. A termination of employment cannot be the subject of a complaint 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.
- h. Nothing in this policy shall prevent an employee from presenting a charge of discrimination or other complaint covered by this policy to an external agency, such as the Equal Employment Opportunity Commission or Texas Workforce Commission. However, if an employee files a complaint with an external agency, with the exception of a complaint of Sexual Misconduct, while the ASU Office of Human Resources or TTU System Office of EO 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.
- i. For complaints that do not involve discrimination, harassment, or protected status, see OP 52.17 Staff Employee Complaint Procedure or OP 06.11 Faculty Grievance Procedures.

#### **4. Employee Complaint Procedures, Including Student Employees**

- a. Prior to filing a formal complaint, the employee should attempt to resolve the situation by addressing the Responding Party in an informal manner and in an atmosphere of mutual respect. However, in cases of sexual assault, the foregoing provision does not apply (see OP 16.03). If the employee is not comfortable addressing that individual, the prospective Reporting Party may address 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 complaint. Mediation will not be used in complaints of Sexual Assault and Interpersonal Violence.

An employee may also consult with the ASU Office of Human Resources or the TTU System Office of EO to determine if he/she wishes to file a formal complaint. While an investigation is not normally initiated without a written complaint submitted by the employee, the ASU Office of Human Resources, the TTU System Office of EO, or the University may take action as deemed appropriate by the office. Such action may include notifying key personnel with a need to know about the allegations, conferring with supervisors or other administrators concerning inappropriate behavior occurring within their area of responsibility, informing the Responding Party of the University's non-discrimination policies, and educating departments and supervisors as needed on this and other policies.

- b. An employee having a formal complaint should submit a completed *Discrimination or Harassment Complaint* form, which is available on the University's Human Resources website at the following link:

[http://www.angelo.edu/dept/human\\_resources/hr\\_forms.php](http://www.angelo.edu/dept/human_resources/hr_forms.php). Except as otherwise provided by University policy or law, this complaint should be submitted to the ASU Office of Human Resources or the TTU System Office of EO within 30 days from the date of the complained of action.

A written complaint shall contain:

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

**Any changes to the complaint must be in writing.**

- c. Only one subject matter shall be covered in any one complaint.
- d. Once a signed complaint form is received by the ASU Office of Human Resources or the TTU System Office of EO, an investigation may be conducted by that office and the appropriate administrators.
- e. The investigation may consist of review of the complaint and any supporting documentation, examination of other relevant documentation, and interviews with relevant individuals. Each party will be given the opportunity to present their side and identify witnesses and other relevant evidence. The extent of the investigation and its procedures will be determined by and at the discretion of the ASU Office of Human Resources or the TTU System Office of EO. Any findings in the investigation will be based upon a preponderance of the evidence (i.e., whether the findings are more likely than not).
- f. Investigations will be completed as expeditiously as possible.
- g. After the investigation is complete, the ASU Office of Human Resources or the TTU System Office of EO will provide a written determination to the Reporting Party, the Responding Party, and to the appropriate department administrator.
- h. The findings of the ASU Office of Human Resources or the TTU System Office of EO are final.
- i. 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 counseling up to and including termination. Termination procedures for tenured faculty will be conducted pursuant to OP 06.23.

- j. Any employee subjected to disciplinary action may appeal any such action, but not the findings of the ASU Office of Human Resources or the TTU System Office of EO, within the time periods and the through procedures established for faculty in OP 06.11 and for staff in OP 52.10. A copy of the appeal should be forwarded to the ASU Office of Human Resources or the TTU System Office of EO.
- k. Any disciplinary action taken in connection with a complaint filed pursuant to this policy shall be reported in writing to the ASU Office of Human Resources or the TTU System Office of EO 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.
- l. At the conclusion of the investigation, the Reporting Party shall be advised that if the discrimination or unlawful activity persists the employee should contact the ASU Office of Human Resources or the TTU System Office of EO. Likewise, in the event the employee believes unlawful retaliation for filing a complaint has taken place the employee should contact the ASU Office of Human Resources or the TTU System Office of EO and/or file a complaint for retaliation.
- m. In the event of a finding of a violation of this policy, the ASU Office of Human Resources or the TTU System Office of EO will follow up with the Reporting Party within 60 days to ensure that the complained of behavior has ceased.

## **5. Complaints by Students or Involving Students**

- a. If a student has a complaint of discrimination or harassment by another student, see Part I, Section C: Conduct Procedures for Students in the ASU Student Handbook. <http://www.angelo.edu/student-handbook/>.
- b. If a student has a complaint regarding discrimination or harassment involving a student organization, see Part I, Section D: Conduct Procedures for Student Organizations in the ASU Student Handbook. <http://www.angelo.edu/student-handbook/>.
- c. If a student has a non-employment based complaint of discrimination or harassment by an employee or student, the student should follow the processes outlined in Part II, Section C: Anti-Discrimination Policy in the ASU Student Handbook. <http://www.angelo.edu/student-handbook/>.
- d. Student employees having a complaint of discrimination or harassment in employment should follow the procedure set forth in the previous section of this policy.
- e. If an employee has a complaint of Sexual Misconduct against a student, the employee should contact Director of Title IX/Title IX Coordinator and/or file an incident report form, found at the Title IX website: [www.angelo.edu/titleix](http://www.angelo.edu/titleix).
- f. This policy does not apply to grade appeals, regardless of the basis of the appeal. All grade appeals will be handled pursuant to the University's grade grievance policy. See OP 10.03: Grade Grievance.

## **6. Complaints Involving Non-University Individuals**

- a. If a non-University individual has a complaint of discrimination or harassment by a student or University employee acting in the scope of his or her employment, the individual involved may file a report with either the Director of Title IX/ Title IX Coordinator, the ASU Office of Human Resources, or the TTU System Office of EO, and the University may investigate and take steps to address the situation.
- b. If a student or University employee has a complaint of discrimination or harassment by a non-University party that affects the student's educational environment or the employee's work environment, the individual may make a report to the Director of Title IX/Title IX Coordinator, the ASU Office of Human Resources, or TTU System the Office of EO. The University may conduct an inquiry and take action, if possible, to prevent further misconduct. However, the University's response may differ for complaints regarding third parties based on the level of control the University has over the third party. Even though the University's ability to take direct action against a third party may be limited, the University may take steps to provide appropriate remedies for the employee and, where appropriate, the broader University Community.

## **7. Retaliation**

Retaliation against a person who reports a potential violation under this policy, assists someone with a report of a violation, or participates in any manner in an investigation or in the resolution of a complaint made under this policy is strictly prohibited and will not be tolerated. Retaliation includes, but is not limited to threats, intimidation, reprisals and/or adverse actions related to an individual's employment or education. The University will take appropriate steps to assure that a person who in good faith reports, complains about, or participates in an investigation pursuant to this policy will not be subjected to retaliation. Individuals who believe they are experiencing retaliation are strongly encouraged to lodge a complaint with the University using the same procedure outlined in this policy.

Individuals who are found to have retaliated under this policy will be subject to disciplinary action, up to and including termination of employment, expulsion from the University, or being barred from University premises and events.

## **8. Interim Measures**

The Reporting Parties may request and the University may implement interim measures, as may be necessary to assure the safety and well-being of the participants in the complaint process, to maintain an environment free from harassment, discrimination, or retaliation, and to protect the safety and well-being of the University Community. Appropriate University officials will decide if and what interim measures are necessary. Such interim measures may include, but are not limited to:

- Separating the Reporting Party's and Responding Party's academic or working situations;
- Forbidding contact between parties involved in a complaint;
- Suspending the right of the Responding Party to be present on campus or otherwise altering the University status of the Responding Party.



## **9. Reporting Requirements**

All employees who witness or receive a report of unlawful discrimination or other violations of the law have the obligation to report such actions to their immediate supervisor, the ASU Office of Human Resources, the Office of EO, the University Police Department, or other appropriate law enforcement authority. A supervisor who receives a report of discrimination shall notify ASU Office of Human Resources or the TTU System Office of EO of such report.

For reporting requirements relating to claims of Sexual Misconduct, see OP 16.03: Sexual Harassment, Sexual Assault, Sexual Misconduct, and Title IX Policy and Complaint Procedure.

## **10. Confidentiality**

The confidentiality of both the Reporting Party and the Responding Party will be honored by the University to the extent possible without compromising the University's commitment and obligation to investigate allegations of discrimination or violations of law, to protect the University Community, and to the extent allowed by law. The willful and unnecessary disclosure of confidential information by anyone, including the Reporting Party, or Responding Party, may affect the integrity of the investigation.

## **11. Interference with an Investigation**

Any person who knowingly and intentionally interferes with an investigation conducted under this policy is subject to disciplinary action up to and including dismissal or separation from the University. Interference with an investigation may include, but is not limited to:

- Attempting to coerce, compel, influence, or prevent an individual from providing testimony or relevant information;
- Divulging confidential information;
- Removing, destroying, or altering documentation relevant to the investigation; or
- Providing false or misleading information to the investigator, or encouraging others to do so.

## **12. Training**

All employees must attend EO non-discrimination and sex/gender discrimination training including sexual assault, sexual harassment, and campus crime mandated reporter training within the first 30 days of employment and receive supplemental EO non-discrimination training every two years.

Employees are informed of the EO policy through new employee orientation, EO training sessions, this non-discrimination policy and other operating policies, and the placement of the EO federal and state posters at various locations throughout the campus. Information about the university EO policy can also be obtained from the ASU Office of Human Resources or at the TTU System EO Office, at <http://www.texastech.edu/offices/equal-employment/>.

[Minor revision: July 12, 2017]

Students are informed of policies regarding non-discrimination at new student orientation and via the Student Handbook and other outreach, awareness, and educational programs offered by the University.

### **13. Authoritative References**

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

### **14. Right to Change Policy**

The University 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.