

AUSTIN PEAY STATE UNIVERSITY
POLICIES AND PROCEDURES MANUAL

Policy Number: 5:003	Supersedes Policy Number: 5:003
Date: November 13, 2009	Dated: January 26, 2006
Subject: Complaints Alleging Discrimination and/or Harassment	Mandatory Review Date: November 13, 2014
Initiating Authority: Vice President for Finance and Administration	TBR Policy/Guideline Reference: P-080
Approved: <p style="text-align: right;">President: signature on file</p>	

I. Purpose

The purpose of this policy is to provide a procedure for the orderly resolution of complaints of discrimination and harassment based on legally recognized protected classes (such as race, sex and disability) at the University. Fair and prompt consideration shall be given to all complaints of discrimination and harassment based on legally recognized protected classes in accordance with the procedures set forth below. Any employee, applicant for employment or student who believes he or she has been subjected to discrimination and/or harassment based on legally recognized protected classes may utilize the procedure(s) provided for herein. Former employees or students may file complaints concerning conduct that took place during the time of employment or enrollment provided the complaint is filed on time, and the conduct has a reasonable connection to the University.

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

All faculty members, students, and staff are subject to this guideline. Any faculty member, student, or staff found to have violated this guideline by engaging in behavior constituting discrimination and/or harassment based on legally recognized protected classes will be subject to disciplinary action that may include dismissal, expulsion or termination, or other appropriate sanction.

Because the courts have imposed stricter obligations on employers with regard to sexual harassment, the university is required to take measures to periodically educate and train employees regarding conduct that could constitute discrimination or harassment. All faculty members, students and staff,

particularly management and supervisory personnel, are responsible for taking reasonable and necessary action to prevent and discourage discrimination and/or harassment based on legally recognized protected classes, and are required to promptly report conduct that could be in violation of TBR and University policies and guidelines. Such reporting should occur when information concerning a complaint is received formally or informally.

II. General Statement

The university intends to fully comply with Executive Order 11246, as amended; the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Vietnam Era Veterans Readjustment Act of 1974, as amended; the Equal Pay Act of 1963, as amended; the Age Discrimination Act of 1975; the Pregnancy Discrimination Act; applicable state statutes and all regulations promulgated pursuant hereto. The university will promote and ensure equal opportunity for all persons without regard to race, color, religion, ethnic or national origin, sex, disability, age, or status as a covered veteran.

It is the intent of the university that its campuses and facilities shall be free of discrimination on the basis of sex, race, color, religion, ethnic or national origin, age or any other protected status and shall fully comply with the applicable provisions of Titles VI and VII of the Civil Rights Act of 1964, as amended; Title IX of the Educational Amendments of 1972, as amended; the federal and state constitutions; and, all other applicable federal and state statutes.

The university affirms that discrimination against any employee or applicant for employment because of race, color, religion, ethnic or national origin, sex, sexual orientation or gender identity, disability, age or status as a covered veteran will not be tolerated. The university also affirms that harassment on the basis of race or sex will not be tolerated.

Similarly, the university will not subject any student to discrimination or harassment under any educational program and no student shall be discriminatorily excluded from participation nor denied the benefits of any educational program on the basis of race, color, religion, ethnic or national origin, sex, sexual orientation or gender identity, disability, age or status as a covered veteran.

A. Discrimination

Discrimination may occur by:

1. Treating members of a protected class less favorably because of their membership in that class. The protected groups are based upon race, color, religion, ethnic or national origin, sex, sexual orientation/gender identity, disability, age or status as a covered veteran; or,

2. Having a policy or practice that has a disproportionately adverse impact on protected class members.

B. Sexual Harassment

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:

1. 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;
2. 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; or
3. 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.

Sexual harassment can take many forms, but most sexual harassment falls into three categories: verbal, visual, and 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, 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 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
- Suggestive or inappropriate acts, such as comments, innuendoes, or physical contact based on one's actual or perceived sexual orientation and/or gender identity.

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 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 does 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 security, and crisis intervention centers may supersede or occur in addition to the process developed under this policy.

C. Racial Harassment

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 based on race, color, or national origin includes offensive or demeaning treatment of an individual, where such treatment is based on prejudiced stereotypes of a 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, color, or national origin. Title VII requires employers to take prompt action to prevent bigots from expressing their opinions in a way which abuses or offends their coworkers.

III. 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.

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 by 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 that he or she has evaluative or supervisory authority. The supervisor must take action to resolve the conflict of interest by, for example, assigning another individual to supervise and/or evaluate the subordinate.

IV. Procedures

A. General

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

2. The university's Office of Legal Affairs shall always be consulted prior to investigation. Hereinafter, references to "Legal Counsel" shall mean the university's Office of Legal Affairs.
3. In situations that require immediate action, because of safety or other concerns, the University may take any disciplinary action that is appropriate, e.g., suspension with pay pending the outcome of the investigation. Legal Counsel should be contacted before any immediate action is taken.
4. Each employee, applicant for employment and student shall be notified of the name, office, and telephone number of the designated EEO/AA, Student Affairs, Title VI, or Title IX officer(s) responsible for assuring compliance with this policy, TBR policy, and federal law.

B. Filing Complaints

1. Any current or former student, applicant for employment or current or former employee who believes he or she has been subjected to discrimination or harassment at the University or who believes that he/she has observed harassment taking place shall present the complaint to the Director of Affirmative Action, or to the university's Chief Student Affairs Officer, (hereinafter, "the Investigator"). Contact information for the Director of Affirmative Action, and the university's Chief Student Affairs Officer may be accessed from the following web addresses:

Director of Affirmative Action, http://www.apsu.edu/affirm_action
Chief Student Affairs Officer, http://www.apsu.edu/student_affairs

2. Complaints must be brought within 365 days of the last incident of discrimination or harassment. Complaints brought after that time 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.
3. The Investigator will make every attempt to get the Complainant to provide the complaint in writing. The complaint shall include the circumstances giving rise to the complaint, the dates of the alleged occurrences, and names of witnesses, if any. Appendix A is a sample complaint form. The Complainant shall sign the complaint. However, when the Complainant refuses to provide or sign a written complaint, the matter will still be investigated and

appropriate action taken. Complaints made anonymously or by a third, party must also be investigated to the extent possible.

4. If the complaint does not rise to the level of discrimination or 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.

C. Investigation

1. 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 will be 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.
2. When the allegation of discrimination or harassment is against the EEO/AA/ Title VI or Title IX, or Student Affairs Officer, 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.
3. When the Respondent is a student, the Student Affairs Office will investigate the complaint in compliance with the procedures outlined in this policy. If a finding of violation is made, any resulting disciplinary action will be undertaken in compliance with the University's disciplinary procedures.
4. When a student is involved as the Complainant, the Respondent or an individual interviewed, all documentation referring to that student shall be subject to the provisions and protections of the Family Educational Records and Privacy Act (FERPA) and Tennessee Code Annotated Section 10-7-504(a) (4) which requires that certain student disciplinary records are subject to disclosure pursuant to a public records request.
5. 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.

6. 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 discrimination and/or 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. The Complainant and Respondent shall also be informed that a request to inspect documents made pursuant to the Public Records Act may result in certain documents being released.
7. A Complainant may be informed that if he or she wants to speak privately and in confidence about discrimination or 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 may be given assurances 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. Allegations of retaliation must also be investigated pursuant to the procedure set out in this Guideline.
8. The Investigator shall notify in writing the Respondent 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. If either the Complainant or the Respondent is a student, the Investigator should communicate the prohibition against disclosure of personally identifiable information with regard to the student, based on FERPA.
9. The Complainant, the Respondent and all individuals interviewed shall be notified in writing that any retaliation engaged in connection with the complaint or its investigation is strictly prohibited regardless of the outcome of the investigation and may, in itself, be grounds for disciplinary action.
10. At any time during the course of the investigation, the Investigator may 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.

11. If informal resolution is unsuccessful, the Investigator shall draft a report summarizing the investigation that shall be sent to Legal Counsel for review. 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, whether there were any attempts made to resolve the complaint informally, a determination of whether there was a violation of the Guideline, and recommendations regarding disposition of the complaint. 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. No working papers, statements, etc. generated in the investigation should be attached to the report to the President. In 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.
12. 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 discuss the complaint with the Respondent, informing him or her that he or she is not being accused of a policy violation, but that the conduct alleged, had it been substantiated, could be found to violate this policy. Any investigation and subsequent discussion should be documented and a report submitted as set forth in this procedure. It should also be noted that conduct that does not rise to the level of actionable harassment might, provide a basis for disciplinary action against the Respondent.
13. 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. After the President/Director has made this determination, the Investigator shall provide both the Complainant and the Respondent with a copy of the determination, along with a copy of the Investigator's report.
13. 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 discrimination or harassment will not reoccur.

14. If a violation of this policy is determined to have occurred, the Respondent shall be advised of his/her right to a hearing 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.
15. 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. If such action was taken, copies of documentation establishing disciplinary action taken against the Respondent, whether employee or student, shall also be maintained in the Respondent's personnel or student record, as appropriate. Some documents involved in a P-080 matter may be subject to the Public Records Act and thus open to public inspection. Other documents may be protected under FERPA, the attorney/client privilege, or attorney work product and would not be releasable. If a Public Records request is received, Legal Counsel must be consulted prior to the release of any documents.
16. A complaint found to have been intentionally dishonest or maliciously made will subject the Complainant to appropriate disciplinary action.

D. Hearing

1. If the Respondent requests a hearing, he or she shall be advised of hearing procedures available under the University's grievance procedure (APSU Policy 5:027) which is available for resolution of the matter in question.
2. The grievance hearing procedures shall include the following minimal requirements:
 - a. Notice to the Respondent of the hearing that 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.
 - b. The right of the Respondent to present his or her case.

- c. 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.
 - d. The right of the Respondent to call witnesses in his or her behalf.
 - e. The right of the Respondent to confront and cross-examine.
3. In the following situations the Respondent must be given the option either of an institutional hearing, or of having the hearing held pursuant to the Tennessee Uniform Administrative Procedures Act (TUAPA):
- a. The Respondent is a support staff employee whom the President has determined should be demoted, suspended without pay or terminated; or,
 - b. The Respondent is a student whom the President has determined should be suspended or expelled.

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

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

Under either hearing procedure, the Respondent bears the burden of proof to establish that no violation of this Guideline occurred. The standard of proof in these hearings which the Respondent must meet shall be by a preponderance of the evidence.

4. 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 APSU Policy No. 5:060 should be undertaken in consideration of the termination of a tenured faculty member, the matter will then proceed directly to a hearing under APSU Policy 5:060.

V. Other Related Policies

The following University policies reference other processes that concern allegations of harassment.

Grievance and Complaint Procedures for Employees 5:027

Support Staff Grievance 5:059

Grievance Procedure for Persons with Complaints Related to the Americans with Disabilities Act 5:057

Non-Academic Grievance Policy – Copy available in the Office of the Vice President for Student Affairs

Academic Grievance Policy – Student Handbook and Planner

Source: November 14, 1984 TBR Presidents Meeting and November 16, 1984 AVTS Sub-Council meeting. Revised: August 16, 1988 Presidents Meeting. Revised: February 14, 1989 - Presidents Meeting. Revised: November 10, 1992 - Presidents Meeting. Revised: August 13, 1996 - Presidents Meeting. Revised: February 13, 2001 - Presidents Meeting. Revised: February 13, 2008 – Presidents Meeting.

DISCRIMINATION/HARASSMENT COMPLAINT FORM

Date: _____

Complainant: _____

Address: _____

Phone: (home) _____ (work) _____

Name(s) of person(s) accused of wrongdoing: _____

Describe all actions of person(s) named above. Be as detailed as possible; include the date, time and place of each event(s) or conduct involved. Attach additional pages, if needed.

What effect has this had on you? _____

Names of witnesses to the above-described events. Include phone number(s), if known.

Names of anyone with whom you discussed the above-described events. Include phone number, if known.

How would you like this matter resolved? _____

Complainant Signature: _____