

Sam Houston State University
A Member of The Texas State University System

President's Office Policy PRE-29
Prohibition of Discrimination

1. NON-DISCRIMINATION POLICY

Sam Houston State University (SHSU or University) is committed to an inclusive educational and work environment that provides equal opportunity and access to all qualified persons. SHSU in accordance with applicable federal and state law (including Title VII and Title IX) and institutional values, prohibits discrimination or harassment on the basis of race, creed, ancestry, marital status, citizenship, color, national origin, sex, religion, age, disability, veteran's status, sexual orientation, gender identity, or gender expression in employment, educational programs, activities, and admissions. Each supervisor, faculty member, employee, and student is responsible for maintaining an environment that is free of discrimination and for addressing behaviors that violate this obligation in accordance with this policy.

With this policy, the SHSU President designates the Chief Diversity Officer (CDO) to receive complaints of discrimination, designate the investigation and hearing of such matters, and to make final decisions, unless another process is appropriate under TSUS Rules and Regulations or SHSU policies and as stated within.

2. PURPOSE

This policy details reporting procedures for presenting, reviewing, and resolving discrimination complaints, including employee grievances. SHSU reviews and resolves complaints of discrimination by any member of the University community, including faculty, staff, and students or third parties utilizing or providing services to the University. Faculty members, staff employees, and students who discriminate against others in connection with a University activity, program, or workplace in violation of this policy are subject to disciplinary action.

This policy aligns with the Texas State University System (TSUS) Rules and Regulations including Chapter V, section 2.114 and Chapter VII, sections 4.3 and 4.4. Accordingly, complaints alleging sexual harassment or misconduct are governed by and investigated under the TSUS Sexual Misconduct Policy and Procedures.

3. DEFINITIONS

3.01 Complainant – the person who reports being the victim of discrimination.

3.02 Discrimination – conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that:

3.02.1 adversely affects the individual or group's employment or education, and

3.02.2 is different than similarly situated individuals or groups with regard to a SHSU service, benefit, or privilege because of the race, color, national origin, ancestry, citizenship, age, sex, religion, disability, marital status, veterans' status, sexual orientation, gender identity, or gender expression of the individual or group.

- 3.03 Harassment – is a form of Discrimination consisting of unwelcome verbal, written, graphic, or physical conduct that:
- 3.03.1 is directed at an individual or group because of race, or other categories listed at 3.02.2, or
 - 3.03.2 is intended to harass, intimidate, or humiliate an individual or group based upon race or other categories listed at 3.02.2; and
 - 3.03.3 is sufficiently severe or pervasive to have the purpose or effect of interfering with the individual's or group's employment, education, academic environment, or participation in institution programs or activities; and/or creates a hostile working, learning, program, or activity environment.
- 3.04 *Prima facie* case – one presenting facts or documents that, so far as can be judged from first disclosure, would create a presumption of validity in the absence of response, contradiction or rebuttal by the University. Unsubstantiated allegations shall not be sufficient to establish a *prima facie* case.
- 3.05 Respondent – a person reported to have discriminated against an individual or group. The Respondent must be an enrolled student, registered student organization, or currently employed faculty, staff or administrator at the time of the incident.
- 3.06 Retaliation – “Retaliation” means any adverse action, treatment, or condition taken because of an individual's participation in a protected activity (i.e., reporting or opposing discrimination or harassment, or participating in an investigation regarding discrimination or harassment), including an act intended to intimidate, threaten, or coerce, that is likely to dissuade a reasonable person from opposing discriminatory or harassing practices, filing a charge of discrimination or harassment, or participating in an investigation regarding discrimination or harassment.

4. FIRST AMENDMENT RIGHTS

Freedom of speech and principles of academic freedom are central to the mission of the University. Constitutionally protected expression cannot be considered discriminatory under this policy. However, freedom of speech and academic freedom are not without limits and do not protect speech or expression that violates anti-discrimination laws.

5. RESOURCES FOR COMPLAINANTS AND RESPONDENTS

- 5.01 Recognizing the sensitive nature of discrimination, the University will make every reasonable effort to provide informal avenues for resolution.
- 5.02 Staff, faculty and student employees experiencing discrimination in the workplace should notify and may seek assistance from a supervisor, Diversity & Inclusion, Human Resources, and the CDO.
- 5.03 Benefit-eligible staff and faculty may utilize the SHSU Employee Assistance Program.
- 5.04 When part of an informal process, both the Complainant and Respondent may receive support and assistance from the CDO.
- 5.05 The University encourages student Complainants and Respondents to consult the Counseling Center or the Dean of Students' Office.

6. SUPERVISORS IDENTIFYING DISCRIMINATORY BEHAVIOR OR ACTIONS IN THE WORKPLACE

Supervisors receiving reports of workplace discrimination should consult with the CDO. The CDO may consult with Human Resources and other appropriate office. Following consultation with the CDO, the supervisor or administrator will base corrective action on a full review of the circumstances. If the supervisor finds discrimination, the supervisor shall take appropriate action including but not limited to exploring informal resolution, training, or employee discipline appropriate for the situation up to and including termination.

7. INFORMAL RESOLUTION

- 7.01 Informal resolution may be appropriate when the conduct involved is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. No formal investigation is involved in the informal resolution process and no finding is made. Complainants are also encouraged to try recommended dispute resolution techniques described in SHSU F&O, Human Resources Policy ER-1, 3.e., before making a formal written report of discrimination.
- 7.02 A request for informal resolution should be made within one year (365 calendar days) of the date of the alleged incident to the CDO, who will determine whether the nature of the problem is such that it can be resolved by agreement on an informal basis, and if so, which office will facilitate the informal resolution process.
- 7.03 Methods for informal resolution may include, but are not limited to: coaching the person on how to directly address a situation which is causing a problem; mediating the dispute with the parties; aiding in the modification of a situation in which the offensive conduct occurred; training designed for a department or division; assisting with the resolution of a real or perceived problem; or arranging a documented meeting with the alleged offender that involves a discussion of the requirements of this Policy.
- 7.04 The University will document any reported informal resolution. Such documentation will be retained by the CDO and will be kept confidential to the extent permitted by law.

8. REPORTS OF DISCRIMINATION

- 8.01 An individual who is subjected to discrimination should report the incident in writing to the CDO as soon as possible after the time of occurrence for review, investigation, and or resolution. Reports submitted within one year (365 calendar days) of the alleged discriminatory event will be investigated.
- 8.02 Any individual who at the time of the actions complained of was employed by the University, was an applicant for University employment, was enrolled as a student or an applicant for admission at the University should report incidents of discrimination to the CDO..
- 8.03 Reports may be made through the online portal located on the website at <https://www.shsu.edu/dept/diversity-inclusion/reporting> or via:
 - 8.03.1 email to nondiscrim@shsu.edu
 - 8.03.2 in person at the John W. Thomason Building, Suite 302

8.03.3 mail at:
Office of Institutional Diversity & Inclusion
Box 2542
Huntsville, Texas 77341-2542

8.04 Reports must include

8.04.1 the Complainant's name, email address, and a telephone number where Complainant be reached during business hours;

8.04.2 names and, if known, contact information to include job title and department of the person or persons alleged to have committed the discriminatory act (the Respondent(s)); and

8.04.3 a description of the alleged discriminatory act or acts in sufficient detail to enable a reviewer to understand what occurred, when it occurred, and the basis for the alleged discrimination (e.g., race, color, national origin, ancestry, citizenship, age, sex, religion, disability, marital status, veterans' status, sexual orientation, gender identity, or gender expression).

8.05 Every attempt will be made to keep reported information confidential and restricted to only those identified in this policy, individuals that have information related to the investigation or supervisors that otherwise have a need to know. A person who makes a complaint should be advised that principles of fairness and due process require disclosure to the alleged harasser.

8.06 SHSU prohibits retaliation against a person who, in good faith, files a discrimination complaint, assists or participates in the investigation of a report of discrimination, or opposes discrimination. Retaliation may include threats, intimidation or taking any form of employment, academic, or benefit-related adverse action against a person because of their filing of a report/complaint of discrimination and/or participating or assisting in any manner with an investigation or resolution of a complaint of discrimination.

8.07 Any person knowingly filing a false charge of discrimination may be subject to disciplinary action.

8.08 The University may, in the University's discretion, determine not to investigate under the following circumstances:

8.08.1 a complaint fails to describe in sufficient detail the conduct that is the basis of the complaint (does not present a *prima facie* case of discrimination or retaliation);

8.08.2 the conduct described in the complaint is not covered by this policy;

8.08.3 The respondent is no longer enrolled or employed at the University;

8.08.4 the complaint has been withdrawn; or

8.08.5 informal resolution or other appropriate resolution or remedy has already been achieved or has been offered and rejected.

8.09 The CDO shall maintain records and advise the President of reports of discrimination.

9. INVESTIGATING REPORTS OF DISCRIMINATION

- 9.01 Written reports of discrimination that are not dismissed under Section 8.08 of this policy will be investigated by D&I or such other office as the CDO designates. Additionally, the CDO may individually initiate an investigation without a formal complaint when in receipt of information of discriminatory conduct by a SHSU student, faculty or staff member.
- 9.02 When the incident or alleged behavior may violate other SHSU policies, the matter may be co-investigated with the Dean of Students' Office or Human Resources.
- 9.03 For employee complaints of discrimination in the workplace, the CDO will initially determine whether the Complainant has established a *prima facie* case of discrimination.
- 9.04 Upon determining a *prima facie* case of discrimination is established for an employee grievance, or that the complaint is otherwise appropriate for investigation, the assigned investigator shall provide the Respondent with written notification of the complaint in sufficient detail to allow the Respondent an opportunity to respond.
- 9.05 Complainant and Respondent may use an advisor, including legal counsel, for advisory purposes. The advisor may only advise the party and may not otherwise participate in the investigation or meetings related thereto.
- 9.06 The investigator will:
 - 9.06.1 review all aspects of the complaint;
 - 9.06.2 ascertain the Complainant's desired resolution;
 - 9.06.3 interview and obtain pertinent information from Complainant, Respondent, appropriate witnesses, and other sources;
 - 9.06.4 notify the TSUS Office of General Counsel when an attorney serves as advisor for a party to the complaint. The Complainant and Respondent may have an advisor present, including legal counsel, during any investigatory meetings, so long as the investigator is notified of the name of the advisor in writing at least forty-eight (48) hours prior to the meeting;
 - 9.06.5 within ninety (90) days conclude the investigation and determine whether discrimination occurred; and
 - 9.06.6 when the Complainant is an employee asserting discrimination in the workplace, the investigator shall:
 - 9.06.6.1 provide the administration an opportunity to respond to the claim;
 - 9.06.6.2 determine whether the administration has stated a legitimate, nondiscriminatory reason for its decision or actions; and
 - 9.06.6.3 advise the CDO an investigative summary and recommendation.
- 9.07 The CDO shall make a finding regarding the complaint .

10. NOTICE OF FINDING OF INVESTIGATION

- 10.01 For complaints alleging discrimination the CDO will communicate the findings to the Complainant, and other parties and departments, as necessary.
- 10.02 When a finding of discrimination is made, appropriate corrective actions may include:
 - 10.02.1 Respondent and/or departmental or group training;
 - 10.02.2 counseling;
 - 10.02.3 written reprimand;
 - 10.02.4 for students, such actions detailed in the TSUS Rules and Regulations Chapter VI, § 5.9;
 - 10.02.5 for staff employees, such actions detailed in the SHSU Finance & Operations Human Resources Policy ER-2; and/or
 - 10.02.6 for faculty members, actions provided in the TSUS Rules and Regulations Chapter V § 4 or the SHSU Faculty Handbook.
- 10.03 A finding of discrimination by a third party may include a recommendation of removal of the Respondent's access to the campus.
- 10.04 When the CDO determines discrimination occurred, the finding shall also be sent to the appropriate SHSU administrators, as follows:
 - 10.04.1 to the Dean of Students, when the Respondent is a student;
 - 10.04.2 to the Dean of Students and the department head of the office where the student works, when the Respondent is a student employee; or
 - 10.04.3 to the AVP of Human Resources, department head, dean, and vice president in the Respondent's reporting line, when the Respondent is a staff employee or faculty member.

11. CORRECTIVE ACTIONS

- 11.01 The appropriate SHSU administrator in receipt of a finding that includes a recommended corrective action shall review and independently determine whether to impose the recommendations or take another course of action.
- 11.02 The SHSU administrator must notify the Respondent in writing of any corrective actions to be imposed as soon as possible, but not later than ten (10) business days of the receipt of the finding.
- 11.03 When a disciplinary action is imposed upon the Respondent, the Respondent may seek review of the disciplinary action only (not to include the finding) through the regular grievance process:

- 11.03.1 Students may seek due process procedures for a sanction of suspension, expulsion, or dismissal through the TSUS Rules and Regulation, Chapter VI, section 5.6 and 5.7;
- 11.03.2 Staff employees and faculty members (when the sanction does not implicate faculty rights under TSUS Rules and Regulations Chapter V) may grieve a sanction under Finance and Operations Human Resources policy ER-1; and
- 11.03.3 When a faculty member's correction action involves non-renewal, revocation of tenure or other rights detailed in TSUS Rules and Regulations Chapter V, § 4, the faculty member may assert due process rights in accordance with that chapter.

12. GENERAL PROVISIONS

- 12.01 Administrative Closure. The CDO may administratively close and consider a formal discrimination complaint resolved under the following circumstances:
 - 12.01.1 Complainant lacks standing to file a complaint under this policy;
 - 12.01.2 the University cannot locate Complainant;
 - 12.01.3 Complainant resigns from employment or enrollment;
 - 12.01.4 the University approves Complainant's request for case dismissal;
 - 12.01.5 the parties negotiate full remedy or settlement; or
 - 12.01.6. for other reasons identified in applicable laws, regulations, or policies.
- 12.02 Timelines. The deadlines specified for investigation, findings, and corrective action may be extended by the CDO or assigned investigator, for legitimate educational, investigatory, or business purposes.
- 12.03 Designee. References to the CDO throughout this policy include the Chief Diversity Officer or designee(s).
- 12.04 Transfer of Function. If an employee grievance alleging discrimination is directed against a Supervisor, Vice President, or the CDO, the investigatory, finding, and discipline functions assigned to the person by these procedures may be transferred to the AVP for Human Resources or other administrator designated by the President. Likewise, if a student complaint is directed against the CDO, the functions assigned to the CDO will transfer to the AVP of Human Resources or designee.
- 12.05 Resort to Other Procedures. If prior to filing a report of discrimination, or while a formal complaint is under investigation, a Complainant seeks resolution of discrimination in any other forum, whether administrative or judicial, the University shall have no obligation to proceed further with the complaint investigation or resolution procedure.
- 12.06 Conflict. This policy is subject to the TSUS Rules & Regulations and in the event of any conflict, the Rules & Regulations shall control. If this policy conflicts with any SHSU policy or rule, this non-discrimination prohibition policy shall take precedence.

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Review by: Chief Diversity Officer
Next review: September 1, 2023