

APPENDIX D

PROCEDURES FOR INVESTIGATING AND RESOLVING ALLEGATIONS OF PROHIBITED CONDUCT WHEN THE RESPONDENT IS AN EMPLOYEE OR THIRD PARTY

The University of Tennessee, Knoxville welcomes and honors people of all races, sexes, sexual orientations, creeds, and cultures. In keeping with those values, any employee, student, applicant for admission or employment, or other participant in University programs or activities who believes that he or she has been discriminated against on the basis race, color, sex (including sexual misconduct, sexual assault, sexual exploitation, sexual orientation, gender identity, pregnancy, marital status, and parental status), religion, national origin, age, disability or veteran status is encouraged to bring the matter to the University's attention. University policy prohibits retaliation against any person who in good faith opposes a practice that he or she believes to be discriminatory, who assists someone with a report of discrimination, or who participates in an investigation of a complaint. The University will take steps to prevent the recurrence of any action prohibited by its policies against discrimination and retaliation and to correct any effects of such policy violations on the Complainant and others, if appropriate. This Procedure is designed to provide a prompt, fair, and impartial resolution to complaints.

Scope of OED Authority

This Procedure applies when the individual accused of violating University policy (the Respondent) is a University employee or someone unaffiliated with the University, such as a visitor to campus or University contractor (although the University's ability to investigate and implement any necessary corrective action may be limited). When the Respondent is a University student, see titleix.utk.edu to report allegations of sex discrimination (including sexual assault, sexual exploitation, sexual harassment, and other sexual misconduct). Concerns about other types of student conduct should be reported to the Office of Student Conduct and Community Standards, (865) 974-3171, studentconduct.utk.edu.

This Procedure applies to behavior by University employees and others unaffiliated with the University that allegedly violates the University's Equal Employment Opportunity Policies, including HR0220, Equal Employment Opportunity (policy.tennessee.edu/hr_policy/hr0220/), HR0280, Sexual Harassment & Other Discriminatory Harassment (policy.tennessee.edu/hr_policy/hr0280/), and ***Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation***; or federal or state civil rights law, including prohibitions on retaliation (e.g., threats, intimidation, reprisals, or adverse actions) because a person (1) made a report of discrimination in good faith, (2) assisted someone with a report of discrimination, or (3) participated in any manner in an investigation or resolution of a report of discrimination.

Rude, inappropriate, or offensive behavior that is not based on characteristics protected under state or federal law should be addressed by the appropriate supervisor or through appropriate administrative channels, and in accordance with any other applicable policies, including but not limited to, Human Resources Policies (policy.tennessee.edu/hr_policy/), HR0580, Code of Conduct (policy.tennessee.edu/hr_policy/hr0580/) and HR0525, Disciplinary Action (policy.tennessee.edu/hr_policy/hr0525/). If a complaint does not fall within the scope of OED's authority, OED will refer the Complainant to the appropriate office.

Complaints of discrimination should be directed to the Office of Equity and Diversity, (865) 974-2498, oed.utk.edu and made within 300 calendar days of the alleged discriminatory action. Formal complaints may be submitted on a ***Discrimination Complaint Form***. Formal complaints by employees should be in writing. In certain circumstances, at the discretion of OED, complaints filed outside the 300 day time limit or not submitted in writing may be investigated.

Privacy and Requests for Limited Action

Information communicated to OED will be kept as private as possible and will be shared only as necessary to conduct a thorough and effective investigation and to comply with federal and state civil rights laws. In addition, the University may need to release certain documents in response to a public records act request.

A Complainant may request that the Complainant's contact with OED not be disclosed to the Respondent, that no investigation be conducted, or that no disciplinary action be taken. When a Complainant makes a request that the University take such limited action, the University will seriously weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all members of the University community, including Complainant. In cases of Sexual Misconduct (including Sexual Assault, Sexual Harassment, and Sexual Exploitation), Relationship Violence, Stalking, and Retaliation prohibited by the Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation, will be evaluated consistent with Section 2.5.2.4 of that policy. For example, if the University has credible information that the Respondent has violated the University's policy against discriminatory harassment, the University may decide that it should investigate the allegation, and, if appropriate, pursue disciplinary action in a manner that may make known the Complainant's identity to Respondent.

Informal Complaints and Resolution

Complainants are encouraged, but not required, to attempt to resolve issues through the administrative structure of the employment unit or academic department. OED is available to provide assistance to the Complainant and employment unit or academic department.

If a Complainant does not wish to seek resolution directly with the employment unit or academic department, he or she may decide to seek either an informal or formal resolution with OED. A Complainant who chooses an informal resolution process may decide to proceed with a formal complaint at any time during the informal process or after completion of the informal process if a mutually acceptable resolution is not reached.

The goal of the informal process is to attempt to reach a resolution that is acceptable to both the Complainant and the Respondent. The University does not make a determination as to whether a Respondent has violated University policy. Instead, OED attempts to facilitate a mutually acceptable resolution. In the informal process, OED will speak to those people whose involvement is necessary to facilitate a resolution. Frequently, this includes only the Complainant and Respondent, followed by notification to the supervisor(s) or appropriate administrator(s) to help implement a resolution. Possible informal resolutions might include, but are not limited to: (1) an agreement by Respondent to cease the behavior; (2) assisting the Respondent to better understand the effects of his or her conduct and ways in which the behavior might be changed; or (3) participation in education programs about equal opportunity or diversity.

Formal Complaints -- Where, When, and How to File

The goal of the formal complaint process is to reach a determination as to whether a Respondent has violated one or more University policies prohibiting discrimination and unlawful harassment. All investigations and proceedings, including any disciplinary proceedings, will be conducted using a "preponderance of the evidence" standard. As a part of the formal complaint process, OED will conduct an investigation into the allegations and prepare a written report. OED will consider requests for privacy and other limited action as discussed above but may not be able to honor such requests during the formal complaint process.

1. An employee making a formal complaint must include the name of the Complainant, a description of the complained of action or conduct, and the person or department that is responsible for the action. The Complainant should identify witnesses and other evidence the Complainant wants OED to consider in its investigation. OED may request that the Complainant identify resolutions that might be acceptable. The Respondent and the appropriate administrator with supervisory responsibility will be notified of the complaint.

2. OED will conduct an investigation into whether Respondent violated University policy. OED will determine the nature and scope of the investigation on a case-by-case basis. The investigation may include any or all of the following, as well as such other action as OED deems appropriate: interviewing the Complainant, interviewing the Respondent, interviewing witnesses, submitting questions to or taking statements from parties or witnesses, and reviewing documents and recordings. In rare cases, OED may set up an investigative committee to conduct an investigation in accordance with this Procedure.

3. Following its investigation, OED will prepare a written report that includes findings and recommendations as to whether Respondent should be found in violation of University policy. The report will include the rationale for the findings and recommendations and may include other information, such as recommended corrective and/or remedial actions. OED will provide the report to the appropriate administrator(s) and will simultaneously provide a copy to the Complainant and Respondent.

4. The appropriate administrator is responsible for reviewing the OED report and making a written Determination whether Respondent violated one or more University policies. The Determination will include the rationale for the findings and recommendations and may include a description of remedial and/or corrective measures that the University will implement. The appropriate administrator will simultaneously provide a copy of the Determination to the Complainant, Respondent, and OED.

5. Appeals

- (a) Employees: A Complainant or Respondent who is an employee who is not satisfied with the Determination may appeal in accordance with applicable University policies and procedures, including Human Resources Policy HR0525, Human Resources Policy HR0640, and the Faculty Handbook. For situations involving sex discrimination (including Sexual Misconduct (including Sexual Assault, Sexual Harassment, and Sexual Exploitation), Relationship Violence, Stalking, and Retaliation), if the applicable policy or practice does not provide Complainant and Respondent with the same ability to appeal, the University will offer an appeal to both parties consistent with the appeal opportunities offered in policy.
- (b) Students: Within seven (7) business days after receipt of the Determination, a Complainant who is a student and who is not satisfied with the Determination may appeal in writing to the next higher administrative level. The Determination will identify the person to whom an appeal may be made. The Complainant and

Respondent will have the same opportunity to provide information to the reviewer during an appeal and will also receive notice of the outcome of any appeal. Decisions on appeals shall be provided in writing to the Complainant and Respondent.

For complaints involving allegations of sex discrimination, OED will ensure that the Title IX Coordinator is appropriately informed.

Advisors

Both the Complainant and Respondent are permitted to bring an advisor (who is not a party or witness) of their choice to any University meetings and hearings, but the advisor's role is limited to providing advice, guidance, and/or support for the Complainant or Respondent. An advisor is not permitted to act as a participant or advocate (except in a TUAPA hearing, in which a Complainant and Respondent may retain an attorney to advocate on their behalf).

Timing of Investigation Stages

OED will conduct the investigation as promptly as possible under the circumstances, taking into account the complexity of the allegations, the complexity of the investigation and resolution, the severity and extent of the alleged misconduct, the number and availability of witnesses, the University's calendar, and/or other unforeseen circumstances. In each case, however, the University will balance the need to complete a prompt investigation and resolution with the need to conduct a thorough and fair investigation.

The University will attempt to follow the following timeframes:

- Completion of OED's investigation, findings, and recommendations; transmission of OED report to appropriate administrator: within sixty (60) business days of receipt of complaint
- Review by appropriate administrator and issuance of Determination: within fifteen (15) business days of receipt of report from OED

If the University is unable to complete these steps within the timeframes stated, the timeframes may be extended, and both the Complainant and Respondent will receive notice of the extension and the reasons for delay.

Disciplinary Action

The University's actions to correct and prevent the recurrence of any policy violations may include, but not be limited to, taking disciplinary action, up to and including termination, against employees who are found to have violated University policy. The University generally determines which policies and procedures will be followed based on the employment status of the employee being disciplined (e.g., faculty, staff, student, graduate student). The policies and procedures (including steps and anticipated timelines) applicable to disciplinary processes may be found here:

- Staff employees: Human Resources Policies (policy.tennessee.edu/hr_policy/); HR0580, Code of Conduct (policy.tennessee.edu/hr_policy/hr0580/); and HR0525, Disciplinary Action (policy.tennessee.edu/hr_policy/hr0525/)
- Faculty: BT006, Board of Trustees Policies Governing Academic Freedom, Responsibility, and Tenure (policy.tennessee.edu/bot_policy/bt0006/); Faculty Handbook (provost.utk.edu/faculty-handbook/)
- Student employees: Hilltopics (hilltopics.utk.edu/campus-policies-procedures/)

In the event that employment status is unclear, (e.g., the employee has more than one status), the appropriate administrator will determine which policies and procedures are applicable.

Employee Responsibilities Upon Learning of Sexual and Other Unlawful Harassment

An employee who learns of sexual harassment or other discriminatory harassment of an employee must report the conduct to OED (or in the case of sexual harassment, a report can be made to the Title IX Coordinator) if the employee who learns of the conduct is a supervisor of either a Complainant or Respondent or otherwise has the authority to redress the harassment (e.g., human resources administrators, OED employees, department heads, deans, vice chancellors, chancellors, vice presidents). Other employees are encouraged to report the conduct to OED/Title IX Coordinator.

Employees who learn that a student may have been subjected to sexual misconduct, relationship violence, stalking, or retaliation must report that information to the Title IX Coordinator in accordance with Section 3 of the ***Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation***.

Employees who receive information about suspected child abuse or child sexual abuse must report it in accordance with University of Tennessee System Safety Policy 0575 (Programs for Minors) (policy.tennessee.edu/safety_policy/sa0575/).

Contact Information

Title IX Coordinator
Ashley Blamey
1817 Melrose Avenue
Knoxville, TN 37996
(865) 974-9600
ashleyblamey@utk.edu
titleix@utk.edu

ADA/Section 504/Title VI
Coordinator
Jenny Richter
1840 Melrose Avenue
Knoxville, TN 37996
(865) 974-2498
jrictner@utk.edu
oed@utk.edu

United States Department of Education
Office for Civil Rights
61 Forsyth Street, S.W., Suite 19T10
Atlanta, GA 30303-8927
(404) 974-9406
Ocr.atlanta@ed.gov