

Policies of the University of North Texas Health Science Center	Chapter 5 Human Resources
05.210 Grievance Procedure For Alleged Discrimination In Employment Information And Procedural Guidelines For Pursuing And Resolving A Complaint Of Discrimination, Including Sexual Harassment	

Policy Statement.

Resolution of an allegation of discrimination against a member of the health science center community, a visitor, or member of the public doing business with the health science center shall follow the provisions outlined by this policy. The policy establishes the procedures for filing an allegation of discrimination and the investigation process.

Application of Policy.

Faculty, Staff, Students, Visitors and Persons Doing Business with the Health Science Center.

Definitions.

Procedures and Responsibilities.

1. General Provisions

1. **Who may file a complaint?** Anyone who believes that he or she was the victim of discrimination in violation of health science center policies may seek informal advice and/or file a complaint.

A third party who is aware of a suspected violation of these policies is obligated to notify the Equal Employment Opportunity Office or other appropriate health science center official.

- i. Faculty and staff should report suspected violations of the Nondiscrimination/Equal Employment Opportunity and Affirmative Action Policy (05.201) policy and/or the Sexual Harassment policy (05.205) to their immediate supervisor, the administrative director or chair of their department, the Human Resource Services Department or the Equal Employment Opportunity Office.
- ii. Students should report violations of the Nondiscrimination/Equal Employment Opportunity and Affirmative Action Policy (05.201) policy and/or the Sexual Harassment policy (05.205) to the administrative director or chair of the department in which the

alleged incident occurred, to the [appropriate] Dean of Students, or the Equal Employment Opportunity Office

- iii. Failure to report allegations of sexual harassment by those vested with responsibility to do so under the Sexual Harassment policy, 05.205 is a violation of that policy.
1. **Time period for filing a complaint:** Prompt reporting of a complaint is strongly encouraged, as it allows for rapid response to and resolution of objectionable behavior. Except as provided in the following paragraphs, complaints should be filed within 90 days after the alleged objectionable behavior occurred. Any complaint filed after 90 days of the alleged harassing behavior must be accompanied by written justification
 - i. In instances involving a student complaint against a faculty member charging harassing behavior that occurred in the context of a subordinate-supervisory academic relationship (e.g., teaching, advising, thesis or dissertation supervision, or coaching), the time period may be extended until 90 days after the student is no longer under the faculty member's academic supervision, or two (2) years from the date the alleged harassing behavior occurred, whichever is earlier.
 - ii. In instances involving a tenure-track faculty member's complaint against a faculty member(s) within his/her college, the time period may be extended until 90 days after the tenure decision is made or two (2) years from the date the alleged harassing behavior occurred, whichever is earlier.
 - iii. In instances involving a staff member's or administrator's complaint against a supervisor(s) charging harassing behavior that occurred in the context of a subordinate-supervisory relationship, the time period may be extended until 90 days after the staff member or administrator is no longer under the supervision of the alleged offender, or two (2) years from the date the alleged harassing behavior occurred, whichever is earlier.
 2. **Notification:** Having been made aware of a possible violation of health science center policy, the Equal Employment Opportunity Office must contact the alleged victim and when appropriate review the situation for possible action. Requirements for notification of the alleged offender are included in sections 3 and 4 of this policy
 3. **Admissibility of records and testimony:**
 - i. The original allegation and any relevant evidence gathered outside the mediation process, whether mediated or not, may be used as evidence in subsequent investigations and hearings relating to charges of discrimination and/or sexual harassment that occur within 10 years of the date the original allegation was made. Except as provided in section 7, of policy 05.902, Voluntary Alternative Dispute Resolution, mediated agreements may not be used as evidence in subsequent proceedings.
 - ii. After 10 years from the resolution of a formal complaint, only the findings that discrimination occurred (including sexual harassment) or prior mediation agreements will be admissible in any future proceedings.
 - iii. Records concerning other previous investigation not related to the subject matter of the complaint(s) in the current case are not admissible.
 - iv. A Voluntary Dispute Resolution mediation agreement is not admissible as evidence except as provided in policy 05.902 *Voluntary Alternative Dispute Resolution*
 - v. Testimony about prior accusations or similar discriminatory or harassing behavior will only be admissible if it is relevant to the current case.
 4. **Confidentiality:** All individuals who are involved in the complaint reporting, mediation and/or investigation process are obligated to maintain confidentiality of the proceedings in accordance with law. All who take part in any of the procedures under this policy will be

expected not to reveal any information that they learn in the course of these proceedings. The health science center will take reasonable measures to ensure the confidentiality of the testimony and records produced in the procedures of the policy. Notwithstanding these measures, however, the health science center cannot and does not guarantee that parties and witnesses will maintain confidentiality.

Caution: Confidentiality does not mean that the details of the complaint will be withheld from the charged party, or that the health science center is constrained from divulging the proceedings in appropriate circumstances. For example, the health science center may publicly divulge details of the outcome if one of the parties discloses selective or self-serving portions of the proceedings, or when a lawsuit emerges where the complaining or charged party contests the findings or results of the health science center's investigation or if the activities are criminal in nature.

6. **Retaliation:** Federal and state law and health science center policy prohibit any form of retaliation against a person who files a discrimination complaint, including a charge of sexual harassment. It is the responsibility of the investigating party to state clearly to the charged party that any form of retaliation against a person for having filed a complaint is expressly prohibited and may result in serious disciplinary sanctions.

This protection from retaliation similarly applies to persons who participate as witnesses in discrimination investigations or adjudicatory proceedings.

A claim of retaliation may result in a subsequent investigation of the allegation by the Equal Employment Opportunity Office.

7. **Time period for investigation of a complaint:**

Investigation of the complaint will normally begin within 10 working days from when it is received. The investigation shall normally be conducted within 45 working days thereafter and the letter of finding will be forwarded to the appropriate supervisor(s) at the end of the investigation.

***Note:** Case complexity will vary and the termination of the investigation will depend on case circumstances; however, the investigation will commence within the designated time and will conclude under normal circumstances within 45 working days. It is incumbent upon the investigating party to document a reasonable justification for extending an investigation beyond 45 working days.*

Responsible Party: Senior Administrative Officer/Office of Student Affairs

2. **Procedures for Pursuing and Resolving a Complaint of Discrimination When the Alleged Offender is a Health Science Center Employee:**

These procedures offer opportunities to resolve disputes at the lowest possible administrative level. Throughout this section the term "department Chair" is used for the senior administrative officer within the immediate unit. The term "staff member" is used for full-time and part-time employees (other than faculty and administrators) of the health science center. The term "staff member" includes student employees acting in their capacity as an employee of the health science center. If a student is the alleged victim or offender, the Office of Student Affairs will be notified.

The initiating of a complaint will follow one of the alternatives listed below. However, at any time the complaint may be taken directly to the Equal Employment Opportunity Office.

1. Alleged Offender is a Staff Member:

i. Stage One: Alternatives to an Investigation

- The alleged victim may seek information and informal advice from anyone with whom he/she feels comfortable including, but not limited to, faculty, administrators, and/or staff. The seeking of advice will not constitute filing of a formal complaint. However the person receiving the information may be required to report the incident in accordance with state or federal law or university policy.
- The alleged victim (and/or alleged offender) may also seek mediation in accordance with the procedures found in the Voluntary Alternative Dispute Resolution Policy 05.902.

ii Stage Two: Investigation of a Formal Complaint (See Section G. Time period for investigation of a complaint)

- The alleged victim may file a formal complaint with the Equal Employment Opportunity Office (EEO).
- The EEO Office meets first with the alleged victim to determine if a formal investigation is needed or if the Alternative Dispute Resolution process (09.02) or another solution to the complaint is available.
- Should the EEO Office determine that there are insufficient grounds to pursue the complaint; EEO will notify the alleged offender of the nature of the complaint and the decision not to pursue the complaint. Neither the alleged victim's name nor information that would reveal the alleged victim's name will be included, except as required by law.
- Prior to involving third parties as witnesses, EEO notifies the alleged offender and the immediate supervisor and department head of the complaint and determines if the Alternative Dispute Resolution process (05.902) or another solution to the complaint is available.
- Any decision not to immediately notify the alleged offender must be made by EEO in consultation with Human Resource Services Department and justified in writing. The justification is included with the documentation provided to the alleged offender following the gathering of information.
- EEO consults with the Office of the Vice Chancellor and General Counsel to determine if a formal investigation is appropriate. If a formal investigation is warranted, the gathering of information from additional witnesses begins by the EEO.
- The alleged victim and alleged offender (after receiving notification) are kept abreast of the stage of the investigation.
- The alleged offender is given an opportunity to respond both orally and in writing to the allegations and evidence against the alleged offender prior to any determination of culpability.

- The alleged offender's response to allegations and evidence must be made to the EEO Office within ten (10) working days of notification by the EEO Office.
- EEO prepares a written report setting out the findings of the investigation.

b.) Alleged Offender is a Faculty Member:

Note: The term "faculty member" in this section of the policy includes persons with faculty appointments, those persons acting in the capacity of teachers or academic researchers, as well as those students employed as teaching fellows or teaching assistants. For purposes of section 6., Appeal of Findings and/or Sanctions, teaching fellows or teaching assistants will use the Complaint and Grievance Procedures.

If the alleged victim is a faculty member and alleges that the employment discrimination occurred through a decision of the Promotion and Tenure Committee, or another constituted health science center committee, the faculty member may pursue a complaint through the procedures in the department and/or college charter, the Faculty Handbook, or through the Equal Employment Opportunity Office.

If the alleged offender is a Chair or Director, the EEO Office will notify and consult with the Dean of the school in Stage Two: Formal Investigation.

i. Stage One: Alternatives to an Investigation

- The alleged victim may seek information and informal advice from anyone with whom he/she feels comfortable including, but not limited to, faculty, administrators, and/or staff. The seeking of advice will not constitute filing of a formal complaint. However the person receiving the information may be required to report the incident in accordance with state or federal law or health science center policy.
- The alleged victim (and/or alleged offender) may also seek mediation in accordance with the procedures found in the Voluntary Alternative Dispute Resolution Policy 05.902.

ii. Stage Two: Investigation of a Formal Complaint (See Section G. Time period for investigation of a complaint).

- The alleged victim may file a formal complaint with the Equal Employment Opportunity Office (EEO).
- EEO meets first with the alleged victim to determine if a formal investigation is needed or if the Alternative Dispute Resolution process (09.02) or another solution to the complaint is available.
- Should the EEO Office determine that there are insufficient grounds to pursue the complaint; the EEO Office will notify the alleged offender of the nature of the complaint and the decision not to pursue the complaint. Neither alleged victim's name nor information that would reveal

the alleged victim's name will be included, except as required by law.

- Prior to involving third parties as witnesses, the EEO Office will notify the alleged offender of the complaint and determines if the Alternative Dispute Resolution process (05.902) or another solution to the complaint is available.
- A decision not to immediately notify the alleged offender is made by the EEO Office in consultation with the Dean of the college or school and justified in writing. The justification is included with the documentation provided to the alleged offender following the gathering of information.
- The EEO Office notifies the alleged offender's chair and Dean of the complaint and if the Alternative Dispute Resolution process (05.902), another solution to the complaint or an investigation is in progress.
- The EEO Office consults with the Office of the Vice Chancellor and General Counsel to determine if a formal investigation is appropriate. If a formal investigation is warranted, the gathering of information from additional witnesses begins by the EEO Office.
- The alleged victim and alleged offender (after receiving notification) are kept abreast of the stage of the investigation.
- The alleged offender is given an opportunity to respond both orally and in writing to the allegations and evidence against the alleged offender prior to any determination of culpability.
- The alleged offender's response must be made within ten (10) working days to the EEO Office.
- The EEO Office prepares a written report setting out the findings of the investigation.

3. **Alleged Offender is an Administrator:**

Note: For purposes of this policy "administrator" is defined as persons holding the position of Assistant Dean or above, Assistant Vice President or above, and Director or above.

i. **Stage One: Alternatives to an Investigation**

- The alleged victim may seek information and informal advice from anyone with whom he/she feels comfortable including but not limited to, administrators and/or staff. The seeking of advice will not constitute filing of a formal complaint. However the person receiving the information may be required to report the incident in accordance with state or federal law or university policy.
- The alleged victim (and/or alleged offender) may also seek mediation in accordance with the procedures found in the Voluntary Alternative Dispute Resolution Policy 05.902.

ii. **Stage Two: Investigation of a Formal Complaint** (See Section G. Time Period for Investigation of a Complaint.)

- The alleged victim may file a formal complaint with the Equal Employment Office (EEO).
- The EEO Office meets first with the alleged victim to determine if a formal investigation is needed or if the Alternative Dispute Resolution process (05.902) or another solution to the complaint is available.
- Should the EEO Office determine that there are insufficient grounds to pursue the complaint; EEO Office will notify the alleged offender of the nature of the complaint and the decision not to pursue

the complaint. Neither alleged victim's name nor information that would reveal the alleged victim's name will be included, except as required by law.

- Prior to involving third parties as witnesses, the EEO Office notifies the alleged offender of the complaint and determines if the Alternative Dispute Resolution process (05.902) or another solution to the complaint is available.
- A decision not to immediately notify the alleged offender is made by the EEO Office in consultation with the Office of the Vice Chancellor and General Counsel and justified in writing. The justification is included with the documentation provided to the alleged offender following the gathering of information.
- The EEO Office consults with the Office of the Vice Chancellor and General Counsel to determine if a formal investigation is appropriate. If a formal investigation is warranted, the gathering of information from additional witnesses begins by the EEO Office.
- The alleged victim and alleged offender (after receiving notification) are kept abreast of the stage of the investigation.
- The alleged offender is given an opportunity to respond both orally and in writing to the allegations and evidence against the alleged offender prior to any determination of culpability.
- The alleged offender's response to the allegations and evidence must be made to the EEO Office within ten (10) working days of notification by the EEO Office.
- The EEO Office prepares a written report setting out the findings of the investigation.

Responsible Party: Senior Administrative Officer and EEO Office

3. Procedures for Pursuing and Resolving a Complaint of Discrimination When the Alleged Offender is a Visitor to the Health Science Center or a Person Doing Business with the Health Science Center.

i. Stage One: Alternatives to an Investigation

- The alleged victim may seek information and informal advice from anyone with whom he/she feels comfortable including but not limited to, administrators and/or staff. The seeking of advice will not constitute filing of a formal complaint. However the person receiving the information may be required to report the incident in accordance with state or federal law or health science center policy.
- The alleged victim may also seek mediation in accordance with the procedures found in the Voluntary Alternative Dispute Resolution Policy (05.902).

ii. Stage Two: Investigation of a Formal Complaint (See Section G. Time Period for Investigation of a Complaint.)

- The alleged victim may file a formal complaint with the Equal Employment Office (EEO).
- The EEO Office meets first with the alleged victim to determine if a formal investigation is needed or if the Alternative Dispute Resolution process (05.902) or another solution to the complaint is available.
- Should the EEO Office determine that there are insufficient grounds to pursue the complaint; the EEO Office will notify the alleged offender of the nature of the complaint and the decision not to pursue the complaint. Neither alleged victim's name nor information that would reveal the alleged victim's name will be included, except as required by law.
- Prior to involving third parties as witness, the EEO Office notifies the alleged offender of the

complaint and determines if the Alternative Dispute Resolution process (05.902) or another solution to the complaint is available.

- The EEO Office notifies Human Resources of the complaint and if the Alternative Dispute Resolution process (09.02), another solution, or an investigation is in progress.
- A decision not to immediately notify the alleged offender is made by the EEO Office in consultation with the Office of the Vice Chancellor and General Counsel and justified in writing. The justification is included with the documentation provided to the alleged offender following the gathering of information.
- The EEO Office consults with the Office of the Vice Chancellor and General Counsel to determine if a formal investigation is appropriate. If a formal investigation is warranted, the gathering of information from additional witnesses begins by the EEO Office.
- The alleged victim and alleged offender (after receiving notification) are kept abreast of the stage of the investigation.
- The alleged offender is given an opportunity to respond both orally and in writing to the allegations and evidence against the alleged offender prior to any determination of culpability.
- The alleged offender's response to the allegations and evidence must be made to the EEO Office within ten (10) working days of notification by the EEO Office.
- The EEO Office prepares a written report setting out the findings of the investigation

Responsible Party: EEO Office

4. Resolution of the Complaint:

Upon completion of the investigation, the findings will be forwarded to the department head/director and the next highest administrative level who should consult with the Office of the Vice Chancellor and General Counsel prior to determining appropriate actions and/or sanctions. In cases involving university employees other than faculty (e.g. staff or administrators), Human Resources must be consulted.

If the department head/director is the alleged offender the findings will be forwarded to the next highest administrative level. In cases involving visitors or persons doing business with the university, the findings will be forwarded to the Office of the Vice Chancellor and General Counsel for determination of appropriate action and/or sanctions.

In cases of findings against an accused, or in cases of a determination that an accuser has made claims falsely and maliciously, sanctions may be imposed.

In all instances, the sanctions imposed must be reported to the EEO Office for inclusion in the official record of the investigation.

Sanctions are disciplinary actions imposed on an individual, which may include punishment or other corrective actions. Sanctions for health science center employees may include, but are not specifically limited to reprimand, remediation, reassignment, and ineligibility for pay raises, suspension and dismissal. In some instances the employee may be placed on leave of absence until final action is taken. Sanctions imposed on students will follow the *Student Code of Conduct*.

a.) Health Science Center Imposed: Health science center sanctions for violations of the health science center policy on discrimination (including sexual harassment) may include any disciplinary action, up to and including termination of employment for faculty, staff, and student employees or the dismissal of students. These activities may not be a violation of state or federal law, but such activities may be viewed as constituting moral

turpitude or gross neglect of academic responsibilities under Appendix B-1 of the *Faculty Handbook* and a major work rule violation under the *Performance Counseling and Discipline Policy*.

b.) Civil: Discrimination is illegal under federal and state law. Official governmental investigations by the Equal Employment Opportunity Commission, the Texas Commission on Human Rights, and/or the Office of Civil Rights of the Department of Education may result in civil liability against the health science center and any person found to have committed illegal discrimination.

c.) Criminal: Sexual harassment by a public servant is a criminal offense under 39.02 of the *Texas Penal Code*. Depending on the severity of the acts, sexual harassment may also specifically include indecent exposure, public lewdness, assault, or sexual assault under Chapter 21 and 22 of the *Texas Penal Code*.

d.) False Charges: False charges may result in disciplinary action against the complainant by the health science center or civil action against the complainant by the accused. An unsubstantiated charge is not considered "false" unless it is made with the knowledge that it is false.

Responsible Party: EEO Office, Department Official, Human Resource Services, Office of the Vice Chancellor and General Counsel

5. Appeal of Findings and/or Sanctions:

Note: The Equal Employment Office will provide a summary of the investigation, the findings, the decision, and sanctions for the appeals process.

1. **Faculty:** Faculty may appeal findings and/or sanctions to the Health Science Center Faculty Grievance Committee or in cases of tenure revocation to the Health Science Center Promotion and Tenure Committee. The Committee may recommend acceptance, modification or rejection of the findings and/or sanctions. Appeals to the Faculty Grievance Committee are governed by policies found in the Faculty Handbook. Appeals to the Health Science Center Promotion and Tenure Committee are governed by the Faculty Handbook.
2. **Staff, Administrators, Teaching Fellow and Teaching Assistants:** Staff, administrators and Teaching Fellows and Teaching Assistants may appeal findings and/or sanctions under the Complaint and Grievance Procedures. The appeal will begin at Step Four.
3. **Students:** Students may appeal findings and/or sanctions under the procedures in the Student Code of Conduct.
4. **Visitors and Persons Doing Business with the Health Science Center:** Visitors and persons doing business with the health science center may appeal findings and sanctions to the President

Responsible Party: EEO Office/Faculty Grievance Committee, HSC Promotion and Tenure Committee

6. Record Retention:

Unless otherwise required by state law or the Health Science Center's Records Retention Policy, records of complaints and investigations will be confidentially maintained by the Health Science Center Archivist and discarded after 10 years unless other incidents occur within the 10 years. In all cases, access to complaint and investigation records is strictly limited to those health science center officials directly investigating or adjudicating a complaint or implementing a complaint resolution, unless otherwise compelled by law.

Responsible Party: HSC Archivist

References and Cross-references.

05.201 Nondiscrimination-Equal Opportunity and Affirmative Action

05.205 Sexual Harassment

05.902 Performance Counseling

07.126 Student Code of Conduct and Discipline

05.901 Performance Counseling and Discipline Policy

Faculty Handbook

Equal Opportunity Commission, the Texas Commission on Human Rights

Office of Civil Rights of the Department of Education

Texas Penal Code

Forms and Tools. (optional)

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