

**Austin Peay State
University**

**Discrimination and Harassment Based on Protected
Categories other than Sex - Complaint and Investigation
Procedure**

POLICIES

Issued: September 17, 2018

Responsible Director of Equal Opportunity and Affirmative

Official: Action/Title VI Coordinator/ADA Coordinator

Responsible Office of Equal Opportunity and Affirmative Action
Office:

Policy Statement

It is the policy of Austin Peay State University that it will not tolerate discrimination or harassment on the basis of race, color, religion, ethnic or national origin, disability, age (as applicable), status as a protected veteran, genetic information, and/or any other legally protected class. Such discrimination and harassment are strictly prohibited by Austin Peay State University (APSU or University).

Purpose

This policy provides for the orderly resolution of complaints of discrimination or harassment on the basis of race, color, religion, ethnic or national origin, disability, age (as applicable), status as a protected veteran, genetic information, and/or any other legally protected class.

Complaints related to sexual misconduct, sexual discrimination, and sexual harassment (including claims based on pregnancy, sexual orientation, or gender identity/expression) should be addressed under the procedures set forth in APSU Policy 6:001 - Misconduct, Discrimination, and Harassment Based on Sex (Including Pregnancy, Sexual Orientation, and Gender Identity/Expression). This policy shall not apply to such complaints. Fair and prompt consideration shall be given to all complaints in accordance with the procedures set forth below.

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Related Form

- Discrimination/ Harassment Complaint Form

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- APSU Policy 6:001
- Office of Student Affairs
- Office of Equal Opportunity and Affirmative Action

Definitions

Discrimination

Discrimination may occur by:

1. Treating individuals less favorably because of their race, color, religion, creed, ethnic or national origin, disability, age as applicable, status as a protected veteran, genetic information or any other category protected by federal or state civil rights law; or,
2. Having a policy or practice that has a disproportionately adverse impact on protected class members.

Harassment

1. Harassment based on a protected class:

Harassment is conduct that is based on a person's race, color, religion, creed, ethnic or national origin, disability, age as applicable, status as a protected veteran, genetic information, or any other category protected by federal or state civil rights law, that

- Adversely affects a term or condition of an individual's employment, education, participation in university activities or living environment.
- Has the purpose or effect of unreasonably interfering with an individual's employment or academic performance or creating an intimidating, hostile,

offensive or abusive environment for the individual;
or

- Is used as a basis for or a factor in decisions that tangibly affect that individual’s employment, education, participation in the university’s activities or living environment.

Examples of such conduct include, but are not limited to verbal or physical conduct relating to an employee’s national origin, race, surname, skin color or accent, offensive or derogatory jokes based on a protected category, racial or ethnic slurs, unwelcome comments about a person’s religion or religious garments, offensive graffiti, cartoons or pictures, or offensive remarks about a person’s age.

Not every act that might be offensive to an individual or group will be considered harassment. Whether the alleged conduct constitutes harassment depends upon the record as a whole and the totality of the circumstances, such as the nature of the conduct 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.

Student-on-Student Conduct

Unwelcome conduct with regard to speech, expression or assembly, that is directed toward a person that is discriminatory on a basis prohibited by federal, state, or local law, and that is so severe, pervasive, and objectively offensive that it effectively bars the Complainant's access to an educational opportunity or benefit.

Procedures

Scope

These procedures shall be utilized by:

1. Any employee or student who believes that he or she has been subjected to discrimination or harassment on the basis of race, color, religion, creed, ethnic or national origin, disability, age as applicable, status as a protected veteran, genetic information, and any other category protected by federal or state civil rights law related to Austin Peay State University (APSU);
2. Any former employee or student who believes that he or she has been subjected to discrimination or

- harassment on the basis of race, color, religion, creed, ethnic or national origin, disability, age as applicable, status as a protected veteran, genetic information, and any other category protected by federal or state civil rights law related to Austin Peay State University (APSU) if the conduct took place during the time of employment or enrollment at APSU;
3. Any employee or student who has knowledge of discrimination or harassment on the basis of race, color, religion, creed, ethnic or national origin, disability, age as applicable, status as a protected veteran, genetic information, and any other category protected by federal or state civil rights law related to Austin Peay State University (APSU) against another employee or student in order to report such offenses; and,
 4. All third parties with whom APSU has an educational or business relationship who believe that they have been subjected to discrimination or harassment on the basis of race, color, religion, creed, ethnic or national origin, disability, age as applicable, status as a protected veteran, genetic information, and any other category protected by federal or state civil rights law related to Austin Peay State University (APSU).

This policy is adopted to specifically address the offenses defined herein.

All employees and students are to be knowledgeable of policies concerning discrimination and harassment. All faculty members, students, and staff are subject to this Policy. Any faculty member, student, or staff found to have violated this Policy by engaging in behavior constituting discrimination or harassment will be subject to disciplinary action that may include dismissal, expulsion or termination, or other appropriate sanction.

In addition, contractors, vendors, and other third parties are subject to this policy and are expected to comply with the requirements set forth herein. Any contractor, vendor, or other third party who fails to comply with this policy is subject to all remedies available under any applicable contract.

The procedures set forth in this policy do not only apply to conduct that occurs on campus and/or on property controlled by APSU. If a complaint is filed under this policy, it may be investigated regardless of whether the conduct occurred off school grounds in order to determine whether the continuing

effects of the off-campus conduct are having adverse effects on APSU's educational environment.

Reporting, Cooperation and Training Using the procedures outlined below, all faculty and staff must promptly report, to the appropriate University contact, any complaint or conduct that might constitute discrimination or harassment as defined by this policy, whether the information concerning a complaint is received formally or informally. Failure to do so may result in disciplinary action up to and including termination.

All faculty and staff members are required to cooperate with investigations of alleged discrimination or harassment. Failure to cooperate may result in disciplinary action up to and including termination. Students are also required to cooperate with these investigations and failure to do so may result in disciplinary action up to and including expulsion.

Because the courts have imposed strict obligations on employers with regard to discrimination and harassment, APSU is required to take measures to periodically educate and train employees and students regarding conduct that could violate this Policy. All employees and students, are expected to participate in such education and training. Further, all faculty members, students and staff are responsible for taking reasonable and necessary action to prevent and discourage all types of discrimination and harassment.

False Reports

A person who makes a report of Prohibited Conduct to the University that is later found to have been intentionally false or maliciously without regard for truth may be subjected to University disciplinary action. This provision does not apply to reports made in good faith, even if an investigation of the incident does not find a Policy violation. Similarly, a person who intentionally provides false information to the University during an investigation or disciplinary proceeding action may be subject to disciplinary action.

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 discrimination or 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. APSU'S Office of Legal Affairs shall always be consulted prior to investigation. Hereinafter, references to "Legal Affairs" shall mean APSU'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. Students may be placed on interim suspension under the appropriate circumstances pending the outcome of the investigation. Legal Affairs shall be contacted before any immediate action is taken.

B. Filing Complaints

1. Any current or former student, applicant for employment, current or former employee, contractor or third party who believes he or she has been subjected to discrimination or harassment covered by this policy or who believes that he/she has observed discrimination or harassment taking place shall present the complaint to one of the offices designated below that shall conduct the investigation:

Complaints against students: (except complaints filed under Title VI – discrimination on the basis of race, color, and national origin):

Office of Student Affairs/Dean of Students
Morgan University Center, Room 206
(931) 221-7341

Complaints against faculty, staff, contractors, or third parties:

Office of Equal Opportunity and Affirmative Action
Browning Building, Room 7CA
(931) 221-7160

Complaints filed under Title VI (against faculty, staff, students, contractors or third parties):

Title VI Coordinator (or his/her designee)
Office of Equal Opportunity and Affirmative Action
Browning Building
(931) 221-7178

2. Complaints under Title VI of the Civil Rights Act of 1964, as amended, (i.e., prohibits discrimination and harassment on the basis of race, color or national origin) must be brought within 180 days of the last incident of discrimination or harassment. All other 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 Affairs.

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.

In the event that a Complainant decides that he/she does not want to pursue the complaint or makes the complaint anonymously, the investigator will, in consultation with the Office of Legal Affairs, determine whether to continue to pursue the complaint to the extent that it can. A request for confidentiality and/or an anonymous complaint will be evaluated in the context of APSU's responsibility to provide a safe and nondiscriminatory environment for all students, faculty, and staff.

4. The investigator shall notify the Complainant of resources available to him/her, such as counseling, health services, and his/her right to file a complaint with appropriate outside agencies.
5. 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 Affairs. 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 Affairs and the Office of Equal Opportunity and Affirmative Action 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 Affairs. All investigatory notes and documents shall be attorney work product. The Investigator shall notify the President that an investigation is being initiated. If the complaint is filed under Title VI, the Investigator shall report the commencement of an investigation to the Commission within ten (10) days. (THRC Title VI Rule 1500-01-03-06 – Investigations)
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. When the allegation of discrimination or harassment is against the President, the EEO/AA officer shall notify the Board of Trustees who will assign an investigator who will make his/her report to the Board.
3. For each report of protected class discrimination or harassment to be investigated, the University may select an investigator of its choosing, provided that the investigator has the appropriate training. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest. The

investigator may be a University employee or an external investigator engaged to assist the University in its fact gathering. Investigations of reports of protected class discrimination or harassment are usually performed by the Office of Equal Opportunity and Affirmative Action (if the Respondent is an employee or other non-student) or the Office of Student Affairs (if the Respondent is a student).

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 Affairs, the Investigator shall conduct an investigation of the complaint. The investigation shall include interviews with both the Complainant and the Respondent, unless either declines an in-person interview. The investigation shall also include interviews with relevant witnesses named by the Complainant and Respondent. The purpose of the investigation is to establish whether there has been a violation of the policy. It is the responsibility of the Investigator to weigh the credibility of all individuals interviewed and to determine the weight to be given information received during the course of 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, the Respondent and all individuals shall be informed that APSU 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.

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 ensure greater confidentiality.

7. 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 Policy.
8. The Investigator shall notify in writing the Respondent within five (5) working days of receipt of the complaint, and the Respondent shall receive a redacted version of the complaint. The Respondent shall respond in writing to the complaint within five (5) working days following the date of receipt of the investigator's notification.
9. 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.
10. The Complainant, the Respondent and all individuals interviewed shall be notified 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.
11. 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. Either party has the right to end informal processes at any time. If

informal resolution is successful in resolving the complaint, a report of such, having first been reviewed and approved by Legal Affairs, shall be submitted to the President or Board of Trustees (if the allegation is against the President).

12. If informal resolution is unsuccessful, the Investigator shall draft a report summarizing the investigation that shall be sent to Legal Affairs and the Office of Equal Opportunity and Affirmative Action 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 Policy, and recommendations regarding disposition of the complaint.

After review by Legal Affairs, and review and approval by the Director of Equal Opportunity and Affirmative Action, the report shall be submitted to the President or Board of Trustees within sixty (60) calendar days following receipt of the complaint absent cause for extending the investigation timeline. No working papers, statements, etc., generated in the investigation should be attached to the report to the President or Board of Trustees. In situations where more time is needed to complete the investigation, for reasons such as difficulty in locating a necessary witness or complexity of the complaint, additional time may be taken, but only following notice to Legal Affairs and written notice to both the Complainant and the Respondent.

13. 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 discrimination/harassment 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 to the President as set forth in this

procedure. It should also be noted that conduct that does not rise to the level of actionable discrimination or harassment may, nevertheless, provide a basis for disciplinary action through the supervisory chain against the Respondent.

14. The President or Board of Trustees shall review the Investigator's report and make a written determination within a reasonable time as to whether a violation has occurred and what the appropriate resolution should be. After the President or Board of Trustees has made this determination, the Investigator shall, absent unusual circumstances and after consultation with Legal Affairs, provide the Complainant, the Respondent, and the Director of Equal Opportunity and Affirmative Action, with a copy of the determination along with a copy of the Investigator's report.
15. If the investigation reveals evidence that a violation of the policy has occurred, the President or Board of Trustees must take immediate and appropriate corrective action. Such action may include meeting with the Respondent and/or the Complainant and attempting to resolve the problem by agreement. Appropriate steps must be taken to ensure that the discrimination or harassment will not reoccur.
16. After completion of the investigation and any subsequent disciplinary proceedings, all documentation shall be forwarded to Legal Affairs. However, copies of the President or Board of Trustees's determination, the Investigator's report, the complaint, 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 or Board of Trustees. If disciplinary action was taken, copies of documentation establishing such 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 discrimination or harassment 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 will not be releasable. If a Public Records request is received, Legal Affairs must be consulted prior to the release of any documents.

17. The disciplinary action(s) taken and/or the sanction(s) imposed shall be communicated to the Director of Equal Opportunity and Affirmative Action.

D. Appeal of Decision

Because APSU is committed to a high quality resolution of every case, APSU affords the Complainant and Respondent an opportunity to appeal the President's decision concerning the Respondent's responsibility for the alleged conduct. The appeal process shall consist of an opportunity for the parties to provide information to APSU's attention that would change the decision. The appeal process will not be a *de novo* review of the decision, and the parties will not be allowed to present their appeals in person to the President unless the President determines, in his/her sole discretion, to allow an in-person appeal.

1. APSU shall provide written notice of the appeal process to the parties at the time that the parties are advised of the outcome of the investigation.
2. Either party may send a written appeal to the President within ten (10) working days, absent good cause, of receipt of the President's determination. The appealing party(ies) must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, *and* how this would change the determination in the case. Failure to do so may result in a denial of the appeal.
3. The President will issue a written response to the appeal as promptly as possible. This decision will constitute APSU's final decision with respect to the President's determination.

If the President's decision includes disciplinary action, the procedures for implementing the decision shall be

determined by the applicable policies relating to discipline (e.g., employee grievance/complaint procedure, student disciplinary policies, and/or academic affairs policies).

In matters where the complaint is decided by the Board of Trustees, a decision of the Board shall be final and not subject to appeal.

The disciplinary action(s) taken and/or the sanction(s) imposed shall be communicated to the Director of Equal Opportunity and Affirmative Action.

Other Applicable Procedures

An aggrieved individual may also have the ability to file complaints with external agencies such as the Equal Employment Opportunity Commission (EEOC), the Tennessee Human Rights Commission (THRC), the Office of Civil Rights (OCR), and the courts.

Please note that the deadline for filing with external agencies or courts may be shorter than the deadline established for filing a complaint under this Policy.

Related Forms

**Discrimination/
Harassment Complaint
Form**

[Complaint Form](#)

Links

APSU Policy 6:001

http://www.apsu.edu/policy/6s_nondiscrimination_harassment_and_sexual_misconduct_policies/6001-sexual-violence-and-stalking.php

Office of Student Affairs

<http://www.apsu.edu/student-affairs/student-affairs-departments>

**Office of Equal
Opportunity and
Affirmative Action**

<http://www.apsu.edu/affirmative-action>

Revision Dates

APSU Policy 6:004 – Rev.: September 17, 2018
APSU Policy 6:004 – Rev.: February 27, 2018
APSU Policy 6:004 (previously 5:003) – Rev.: March 25, 2017
APSU Policy 6:004 – Rev.: September 11, 2012
APSU Policy 6:004 – Issued: November 13, 2009

Subject Areas:

Academic	Finance	General	Human Resources	Information Technology	Student Affairs
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Approved

President: signature on file
