EDU-116P-01: SEX DISCRIMINATION COMPLAINT AND RESOLUTION

Authorized by Policy EDU-116 Sex Discrimination – Sexual Misconduct, Harassment, and Violence

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ADMINISTRATIVE INFORMATION
Responsible Office: Dean’s Office
Executive Sponsor: Title IX Coordinator
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Contact: policyoffice@utsouthwestern.edu

PURPOSE OF PROCEDURE
The purpose of this procedure is to set forth a timely and equitable process for resolving complaints brought by students, residents, and applicants to any UT Southwestern school or training program involving sex discrimination, including sexual misconduct, sexual harassment, sexual violence, sexual assault, stalking, domestic violence, and dating violence, in violation of EDU-116 Sex Discrimination – Sexual Misconduct, Harassment, and Violence. This procedure constitutes the grievance procedure for alleging unlawful sex discrimination as required under Title IX of the Education Amendments of 1972; as used herein, “complaint” is synonymous with “grievance.”

This procedure is not applicable to complaints of sex discrimination brought by full-time, part-time, and temporary employees; individuals holding a faculty appointment; applicants for employment; and any individual participating in UT Southwestern services, programs, or activities, including but not limited to patients, visitors, volunteers, contractors, and vendors. All complaints about sex discrimination or sexual misconduct brought by individuals other than students, residents, or applicants to any UT Southwestern school or training program will be referred to the Office of Diversity & Inclusion and Equal Opportunity in accordance with the applicable UT Southwestern policy and procedure (see ETH-151 Equal Opportunity, ETH-154 Sexual Harassment and Sexual Misconduct, and ETH-151P Equal Opportunity Complaint, Investigation, and Resolution Procedure).

STEPS OF PROCEDURE
How to Submit a Complaint

1. Any student, resident, or applicant who believes that he or she has been subjected to conduct prohibited by EDU-116 is urged to immediately contact the Title IX Coordinator or a Deputy Title IX Coordinator for assistance with submitting a request to invoke the informal resolution process or to submit a formal complaint in accordance with this procedure.

2. Individuals wishing to remain anonymous can report incidents of known or suspected sex discrimination and file a complaint. However, electing to remain anonymous may greatly limit UT Southwestern’s ability to conduct a thorough investigation, collect evidence, stop the complained-of conduct, or take effective action against individuals accused of violating EDU-116.
3. Complaints should be submitted to the Title IX Coordinator or a Deputy Title IX Coordinator, preferably in writing, as soon as possible after the conduct giving rise to the complaint. Delay in making a complaint or report can greatly limit UT Southwestern’s ability to conduct an investigation, implement appropriate interim measures, or take effective action against the alleged offender. In no case will a complainant be required to make a complaint or report of sex discrimination to the person accused of the conduct giving rise to the complaint.

4. Upon receipt of an informal or formal complaint, the Title IX Coordinator or Deputy Title IX Coordinator will attempt to inform the complainant of available campus and off-campus resources for further information and assistance. In the appropriate case, the Title IX Coordinator or a Deputy Title IX Coordinator will also evaluate whether interim measures are appropriate (see EDU-116).

Resolution Options

1. Any student, resident, or applicant who believes that he or she has been subjected to sex discrimination in violation of EDU-116 may invoke the informal resolution process and, if not satisfied with that process, may proceed directly to initiating a formal complaint.

2. The informal resolution process is not a pre-condition for making a formal complaint. However, both processes cannot be used at the same time, and once an individual has made a formal complaint, the informal resolution process is no longer available.

Informal Resolution Process

This process may be used to seek resolution of possible sex discrimination when the complainant does not wish to bring a formal complaint or as a prelude to bringing a formal complaint. Individuals are not required to use this option and may elect to end the informal resolution process at any time and begin the formal complaint process. The informal resolution process is not available to individuals alleging complaints involving sexual violence.

1. A complainant wishing to utilize the informal resolution process should submit a written request to the Title IX Coordinator or a Deputy Title IX Coordinator. The written request to invoke the informal resolution process should describe in detail the nature of the conduct complained of and the desired outcome. A request to invoke the informal resolution process can be made verbally, but a written request is preferred.

2. The Title IX Coordinator or a Deputy Title IX Coordinator will work with the complainant to seek a resolution informally. Strategies for informal resolution may include providing the complainant with guidance on communicating to the respondent that his or her behavior is unwelcome, directing a UT Southwestern official to notify the respondent that his or her behavior is unwelcome and should cease, other action by an appropriate UT Southwestern official to address the conduct, or mediation. However, UT Southwestern may take more formal action, including disciplinary action, to ensure an environment free from sexual misconduct or harassment.

3. The informal resolution process should be completed within fourteen (14) working days from receipt of a request for informal resolution. The Title IX Coordinator or Deputy Title IX Coordinator shall appropriately document the informal resolution process and the outcome.

4. If the complainant is not satisfied with the outcome of the informal resolution process, the complainant can bring a formal complaint in the manner outlined below.

Formal Complaint Process

This process may be used to seek resolution of possible sex discrimination when the complainant wishes to file a formal complaint.

1. To initiate a formal complaint, the complainant should submit to the Title IX Coordinator or a Deputy Title IX Coordinator a signed, written statement setting out the details of the conduct that is the subject of the complaint,
including the complainant’s name, signature, and contact information; the name of the person(s) directly responsible for the alleged conduct; a detailed description of the conduct or event that is the basis of the complaint; all date(s) and location(s) of the occurrence(s); the names of any witnesses to the occurrence(s); the resolution sought; and any documents or other information relevant to the complaint.

2. While an investigation may begin on the basis of an oral complaint, the complainant is strongly encouraged to submit a written complaint. If the complaint is not in writing, the Title IX Coordinator or a Deputy Title IX Coordinator should prepare a written statement of what he or she understands the complaint to be and seek to obtain verification from the complainant.

3. The Title IX Coordinator or a Deputy Title IX Coordinator will conduct an initial assessment of all formal complaints received. Based on the initial assessment, the Title IX Coordinator or a Deputy Title IX Coordinator may recommend an informal resolution. The complainant may accept the recommended informal resolution or elect to proceed with the formal complaint process.

4. After completion of the initial assessment, the Title IX Coordinator or a Deputy Title IX Coordinator may either dismiss the complaint or initiate an investigation. A complaint may be dismissed without investigation if: the facts alleged in the complaint, even if taken as true, do not constitute sex discrimination; the complaint fails to allege any facts that suggest sex discrimination occurred; or the appropriate resolution or remedy has already been achieved, or has been offered and rejected.

5. If it is determined that a complaint will not be investigated, the Title IX Coordinator or a Deputy Title IX Coordinator will send the complainant a notification letter within ten (10) working days explaining the decision. The complainant may, within ten (10) working days of the notification, appeal the decision not to proceed with an investigation to the Associate Dean. The written appeal must explain why the decision not to investigate the complaint was in error. The Associate Dean will respond within twenty (20) working days of receipt of the appeal. If the decision is overturned, the complaint will be sent back to the Title IX Coordinator or a Deputy Title IX Coordinator for investigation in accordance with the procedures outlined below. The Associate Dean’s decision is final.

6. If it is determined that a complaint will be investigated, the respondent shall be provided with a copy of the complaint and allowed the opportunity to respond verbally and/or in writing within a reasonable time. If the response is not in writing, the Title IX Coordinator or a Deputy Title IX Coordinator should prepare a written statement of what he or she understands the response to be and seek to obtain verification from the respondent.

7. The complainant and the respondent will have an equal opportunity to present any documents or other information that is believed to be relevant to the investigation of the complaint.

8. Persons reasonably thought to have relevant information will be interviewed and such interviews will be appropriately documented. Both the complainant and the respondent may recommend witnesses for interview and suggest questions that should be asked. However, neither the complainant nor the respondent may participate in interviews of witnesses.

9. The investigation should be concluded as soon as possible after receipt of the written complaint. In investigations exceeding sixty (60) calendar days, an explanation for the delay will be provided to the complainant and the respondent. The complainant and respondent should be provided with regular updates on the progress of the investigation.

10. Within five (5) working days after completion of the investigation, the Title IX Coordinator or a Deputy Title IX Coordinator will send a written report to the Associate Dean. The report shall include a recommendation as to whether
a violation of EDU-116 occurred, an analysis of the facts discovered during the investigation, recommended disciplinary action if any, and any other recommended remedial action. Factual conclusions shall be based upon a “preponderance of the evidence” standard, i.e., it is more likely than not that a fact the complainant or respondent seeks to prove is true.

11. Written notification of the outcome of the investigation and a summary of the findings will be sent to the complainant and the respondent within ten (10) working days of the Associate Dean’s receipt of the report. The complainant and the respondent have seven (7) working days from the date of the notification letter to submit written comments to the Associate Dean regarding the investigation and outcome. However, if the complaint is against a student, the contents of the notification letter will be in accordance with the Family Education Rights and Privacy Act’s (FERPA) and Texas Education Code § 51.971 restrictions on disclosure of educational records, and neither the complainant nor the respondent will be permitted to provide comments to the Associate Dean.

12. Within twenty (20) working days after the deadline for receipt of comments from the complainant or respondent, the Associate Dean will take one of the following actions: (1) request that the Title IX Coordinator or a Deputy Title IX Coordinator conduct further investigation into the complaint; (2) dismiss the complaint if the results of the completed investigation are inconclusive or there is not a preponderance of the evidence to support the complaint; or (3) find that EDU-116 was violated. A decision that EDU-116 was violated shall be made upon the record provided by the investigation, any comments submitted by the complainant or respondent, and the totality of the evidence and circumstances surrounding the conduct complained of, including but not limited to the context of the conduct, its severity, its frequency, and whether it was physically threatening, humiliating, or simply offensive in nature. Factual conclusions shall be based upon a “preponderance of the evidence” standard, i.e., it is more likely than not that a fact the complainant or respondent seeks to prove is true.

13. The complainant and the respondent will be informed concurrently in writing of the Associate Dean’s decision. However, if the complaint is against a student, then the contents of the decision letter will be in accordance with the Family Educational Rights and Privacy Act (FERPA) and Texas Education Code § 51.971. The Associate Dean’s decision is final.

14. If the Associate Dean determines that EDU-116 was violated, he or she will refer the matter for further disciplinary action in accordance with the applicable disciplinary policy and procedures based on the status of the respondent (e.g., student, resident, or employee). Possible disciplinary sanctions for employees may include, but are not limited to, a verbal warning, a documented counseling, a written warning, suspension, demotion, reassignment, dismissal, or nonrenewal of appointment. Possible disciplinary sanctions for students or residents may include, but are not limited to, probation, suspension, or dismissal.

Provisions Applicable to the Informal Resolution and Formal Complaint Processes

1. The complainant and respondent may be assisted by a person of his or her choice, who may be an attorney; however, the assistant may not examine witnesses or otherwise actively participate in the investigation, including any meeting or interview. The Title IX Coordinator, Deputy Title IX Coordinator, and Associate Dean may be assisted by an attorney from the UT Southwestern Office of the Vice President for Legal Affairs, who also will not examine witnesses or otherwise actively participate in the investigation, including any meeting or interview.

2. Time limitations in these procedures may be modified at the discretion of the Title IX Coordinator, Deputy Title IX Coordinator, or the Associate Dean for good cause shown by the complainant, the respondent, or UT Southwestern.

3. Criminal or civil proceedings may continue concurrently with the informal resolution and formal complaint processes outlined herein. Criminal or civil justice investigations, proceedings, findings, or outcomes are not determinative of either the procedures described herein or any UT Southwestern disciplinary procedures. UT Southwestern will not wait
for police investigations or criminal or civil justice proceedings to be completed before taking action under this procedure, as UT Southwestern has an independent duty to respond to complaints of sex discrimination. At the request of law enforcement, UT Southwestern may delay its investigation until after the initial stages of a criminal investigation are completed. In that event, UT Southwestern will keep the complainant informed regarding the status and implementation of appropriate interim measures.

4. In both the informal resolution and formal complaint processes, UT Southwestern will take steps to prevent recurrence of any sex discrimination and to correct its effects on the complainant and others, as appropriate.

5. UT Southwestern shall document the informal resolution and formal complaint processes and their outcomes and retain copies of all materials in accord with federal and state law and UT Southwestern policy. The Title IX Coordinator shall retain such documentation separately from complainants’ and respondents’ official UT Southwestern files and will release such documentation only as permitted by law.

6. Any person who knowingly and intentionally files a false complaint or interferes with or provides false information in the course of an investigation under this procedure will be subject to disciplinary action, up to and including dismissal or non-renewal of appointment.

7. The filing of a complaint under this procedure will not stop or delay any action unrelated to the complaint, including actions related to an individual’s failure to meet academic performance standards or standards of behavior or conduct.

Confidentiality

UT Southwestern has an obligation to maintain an environment free from sex discrimination. Thus, Responsible Employees, as defined herein, are required to report known or suspected incidents of sex discrimination that come to their attention and may not be able to honor an individual’s request for complete confidentiality.

UT Southwestern will attempt to find the right balance between the complainant’s desire for privacy and confidentiality and the responsibility to provide an environment free from sex discrimination. If the complainant requests that his or her name or other identifiable information not be revealed, UT Southwestern will evaluate that request in the context of UT Southwestern’s responsibility to provide a safe and nondiscriminatory environment. UT Southwestern may weigh the complainant’s request for confidentiality against multiple factors, including but not limited to: the seriousness of the alleged misconduct; whether there have been other complaints about the same individual; and the respondent’s right to receive information about the allegations, in accordance with federal and state law. Individuals who wish to remain entirely anonymous may report sex discrimination using the Compliance Hotline. In the course of investigating a complaint, UT Southwestern will share information only as necessary with authorized people who need to know in order to fulfill the purpose of EDU-116 and this procedure, such as investigators, witnesses, and the respondent. UT Southwestern will take reasonable steps to ensure that there is no retaliation against a complainant or an individual who participates in an investigation or complaint proceeding. UT Southwestern will comply with the Family Education Rights and Privacy Act (FERPA), Texas Education Code § 51.971, and all other applicable confidentiality laws in the course of investigating and resolving complaints.

Non-disciplinary Remedial Actions

In addition to sanctions that may be imposed pursuant to the appropriate disciplinary policy, UT Southwestern will take appropriate remedial action(s), including but not limited to those below, to resolve complaints of sexual misconduct, prevent any recurrence, and, as appropriate, remedy any effects:

1. Imposing non-disciplinary sanctions against the respondent, including attending additional training, assignment of a mentor, a period of monitoring, etc.;
2. Ensuring that the complainant and respondent do not share classes, training environments, or extracurricular activities;
3. Making modifications to the on-campus living arrangements of the respondent or complainant (if the complainant requests to be moved);
4. Providing comprehensive victim services including medical, counseling, and academic support services, such as tutoring;
5. Providing other appropriate academic support, such as extra time to complete assignments or withdraw from a class without penalty;
6. Designating an individual trained in providing comprehensive services to assist victims of sexual violence;
7. Conducting an assessment of the overall learning and training environment to identify potential systemic misconduct;
8. Providing targeted training for a group of students if, for example, the sexual misconduct created a hostile environment in a particular course, rotation, training program, academic college, clinical environment, laboratory, etc. Bystander intervention and sexual misconduct prevention programs may be appropriate.

These potential remedies are separate from, and in addition to, any interim measures that may have been provided during the pendency of an investigation. If the complainant did not take advantage of a specific service (e.g., counseling) when offered as an interim measure, the complainant should still be offered, and is still entitled to, appropriate final remedies that may include services the complainant declined as an interim measure.

REFERENCES
- Title VII of the Civil Rights Act of 1972, and its implementing regulations, 29 C.F.R. §1604
- Clery Act, 20 U.S. C. 1092(f) and its implementing regulations, 34 C.F.R. Part 668
- ETH-151 Equal Opportunity
- ETH-151P-01 Equal Opportunity Complaint Investigation and Resolution Procedure
- EDU-116 Sex Discrimination – Sexual Misconduct, Harassment, and Violence
- EDU-116P-01 Sex Discrimination Complaint and Resolution
- SEC-156 Violence on Campus
- Texas Labor Code Chapter 21
- Texas Family Code, Sections 71.0021, 71.004
- Texas Family Code Section 71.004
- Texas Penal Code, Section 42.072
- Regents Rule 30105 Sexual Harassment, Sexual Misconduct, Consensual Sexual Relationships

Definitions

**Dating Violence** – violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined by the victim with consideration of the following factors: (a) the length of the relationship; (b) the type of relationship; and (c) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. It does not include domestic violence.

**Domestic (Family) Violence** – includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Texas, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the state of Texas.

**Hostile Environment** – sex-based harassment that is sufficiently severe or pervasive to deny educational opportunities or limit an individual’s ability to participate in UT Southwestern programs or activities. A hostile environment can be created by anyone
involved in a UT Southwestern program or activity (e.g., administrators, faculty members, employees, students, vendors, patients, and visitors).

In determining whether a hostile environment exists, UT Southwestern considers the conduct in question from both a subjective and objective perspective. To conclude that conduct created or contributed to a hostile environment, the conduct must be unwelcome to the complainant and a reasonable person in the individual’s position would have perceived the conduct as undesirable or offensive.

To ultimately determine whether a hostile environment exists, UT Southwestern considers a variety of factors related to the severity, persistence, or pervasiveness of the sex-based harassment, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of the persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and (5) the degree to which the conduct affected an individual’s education. A single instance, if sufficiently severe, may be sufficient to create a hostile environment (e.g., sexual assault). Likewise, a series of incidents may be sufficient even if the sex-based harassment is not particularly severe.

Resident – for the purposes of this policy, any physician in any Graduate Medical Education program at UT Southwestern, including interns, residents, fellows, and subspecialty residents.

Responsible Employees – UT Southwestern employees who must report known or suspected incidents of sexual misconduct involving students, residents, or applicants to the Title IX Coordinator or Deputy Coordinators, including officials, administrators, faculty, supervisors, mentors, and academic advisors. Responsible Employees do not include individuals who are prohibited by confidentiality laws from reporting or identifying a victim without consent, including physical or mental health care professionals (Student Wellness and Counseling or other physician or counselor), pastoral or religious counselors, rape crisis centers, etc.

Retaliation – any action adversely impacting the education or institutional status of an individual, or in any other manner harassing or discriminating against an individual, because he or she opposed sex discrimination; filed a complaint of sex discrimination; or testified for, assisted with, or participated in an investigation or other proceeding relating to sex discrimination.

Sexual Assault – a form of sexual violence that includes any offense that meets the definition of rape, fondling, incest, or statutory rape:

1. **Rape**: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

2. **Fondling**: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental incapacity.

3. **Incest**: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

4. **Statutory Rape**: Sexual intercourse with a person who is under the statutory age of consent.

Sexual Harassment – unwelcome conduct of a sexual nature including but not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of a person's education or participation in UT Southwestern activities; (2) such conduct is sufficiently severe or pervasive that it interferes with an individual's education or participation in UT Southwestern activities, or creates an objectively hostile environment; or (3) such conduct is intentionally directed towards a specific individual and has
the effect of unreasonably interfering with that individual’s education or participation in UT Southwestern activities, or creating a hostile environment. Sexual harassment is a form of prohibited sex discrimination that includes:

1. Physical conduct, depending on the totality of the circumstances present, including frequency and severity, including but not limited to:
   a. unwelcome intentional touching; or
   b. deliberate physical interference with or restriction of movement;

2. Verbal conduct including but not limited to:
   a. explicit or implicit propositions to engage in sexual activity;
   b. gratuitous comments, jokes, questions, anecdotes, or remarks of a sexual nature about clothing or bodies;
   c. gratuitous remarks about sexual activities or speculation about sexual experiences;
   d. persistent, unwanted sexual or romantic attention;
   e. subtle or overt pressure for sexual favors;

3. Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars, or other materials; or deliberate, repeated humiliation or intimidation based upon sex.

**Sexual Misconduct** – a broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes, but is not limited to, sexual harassment, sexual violence, sexual assault, sexual exploitation, sexual intimidation, domestic violence, dating violence, and stalking. The term also includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature that does not rise to the level of sexual harassment but is unprofessional and inappropriate for the education and training environment. Sexual misconduct is a form of prohibited sex discrimination. Sexual misconduct can be committed by men or women, strangers or acquaintances. Sexual misconduct can occur between or among people of the same or opposite sex, and even between or among consenting individuals if conduct is of a sexual nature and is unprofessional or inappropriate for the education and training environment.

**Sexual Violence** – physical sexual acts perpetrated against a person’s will or where a person is incapacitated or otherwise incapable of giving consent. The term includes, but is not limited to, rape, sexual assault, sexual battery, sexual coercion, sexual abuse, indecency with a child, and/or aggravated sexual assault.

**Stalking** – engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress. For the purposes of this definition:

1. **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.

2. **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.

3. **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
**Student** – for the purposes of this policy, an individual who is enrolled and in attendance at the UT Southwestern Medical School, School of Health Professions, or Graduate School of Biomedical Sciences, including postdoctoral scholars appointed to academic training positions.

**CONTACT / FOR FURTHER INFORMATION**

Title IX Coordinator and Deputy Coordinators