



## **Texas Christian University Policy**

**Policy Number:** 1.005

**Subject:** Discrimination and Harassment

**Effective Date:** December 1, 1994

**Revised:** February 6, 2007

### **I. Purpose**

The TCU mission is to educate individuals to think and act as ethical leaders and responsible citizens in the global community. Harassment and discrimination are incompatible with this mission, and can threaten the educational experience, careers, and well-being of members of the community. When certain conditions are met, harassment and discrimination violate law.

TCU is committed to providing a positive learning and working environment free from discrimination or harassment based on race, color, religion, sex, national origin, ethnic origin, disability, age, gender, sexual orientation, covered veteran status, or any basis protected by law. TCU's policy prohibiting such discrimination applies to employment, all the educational programs and activities which it operates, and admission to these programs and activities.

### **II. Eligibility**

This policy applies to all members of the TCU community, including TCU faculty and staff, students, trustees and volunteers. This policy shall apply without regard to gender and without regard to the sexual orientation of the participants. The prohibitions in this policy apply to conduct on and off TCU premises.

TCU is committed to prevent and correct promptly behavior in violation of this policy which is brought to its attention, through appropriate means including through discipline up to including termination.

### **III. Definitions**

#### **1. Violations**

It is a violation of policy to engage in unwelcome harassment based on race, color, religion, sex, national origin, disability, age, sexual orientation, covered veteran status, or any basis protected by law when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academics or participation in a TCU program or activity, (2) submission to or rejection of such conduct by an individual is used as the basis for a decision affecting such individual's employment, academics, or participation in a TCU program or activity, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive environment for work, academics, or other participation in a TCU program or activity.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when conditions (1), (2) or (3) are met.

Harassment can be verbal, visual, physical or communicated in writing or electronically. Harassment can occur under the guise of humor and even when one person does not have authority over the other.

Examples of harassment that violate this policy include but are not limited to the following:

- Making unwelcome verbal statements, slurs, epithets, jokes, derogatory or degrading comments, based on race, color, religion, national origin, ethnic origin, disability, age, gender, sexual orientation, covered veteran status, or any characteristic protected by law;
- Asking for dates, or making sexual advances where the overture is unwelcome; unwelcome physical conducts, such as unwanted touching, impeding or blocking another person's movements, brushing against, leering or sexual gestures;
- Threatening or engaging in reprisals or retaliation after such an overture is rejected;
- Implying or threatening that submission to sexual advances or conduct prohibited by this policy is a condition of employment, work status, salary increase or decrease, promotion, grades or recommendations;
- Making unwelcome sexual verbal statements, such as suggestive or off-color jokes, innuendo, comments about an individual's body or appearance, or sexual prowess;
- Issuing or displaying unwelcome writings, such as suggestive jokes, cartoons, off-color or obscene letters, notes or invitations transmitted by e-mail or otherwise; display or circulation of material that denigrates or shows hostility or aversion toward an individual or group based on a legally protected characteristic;
- Other unwelcome conduct which has the purpose or effect of unreasonably interfering with an individual's work or educational performance or creating an intimidating or hostile environment for work or learning. Such conduct may include intimidation, ridicule, or insults.

## **2. Consensual Relationships**

In the area of consensual relationships, TCU strongly discourages certain behaviors, and prohibits others. TCU strongly discourages consensual amorous or sexual relationships between a supervisor and any TCU employee, or between any faculty member and any TCU student. This is so even when both parties appear to have consented to the relationship.

TCU completely prohibits the following behaviors by faculty or staff (unless an exception is permitted under TCU's nepotism policy):

- A faculty or staff member initiating or acquiescing in an amorous or sexual relationship with a student or employee who is under the direct or indirect supervision of the faculty or staff member. Additionally this is a breach of professional ethics.
- An amorous or sexual relationship between a faculty member and a student enrolled in a course taught by the faculty member, or who is an advisee of the faculty member, or whose academic work is otherwise influenced by the faculty member.
- A faculty or staff member making or holding a position in which the employee would reasonably be expected to make an employment decision or recommendation, academic decision or recommendation, compensation decision or recommendation, promotion decision or recommendation, tenure decision or recommendation, or audit/investigatory decision or recommendation concerning the employee's relative, a person in the same household as the employee, or concerning a person with whom the employee has (or in the past had) a romantic or amorous relationship.

These prohibitions apply regardless of whether both parties appear to have consented to the relationship.

Sometime complaints alleging unwelcome sexual harassment grow out of situations where one or both of the parties felt their relationship was welcome or consensual. In the event of an allegation of sexual harassment, the University will be less sympathetic to a defense based upon consent or welcomeness when the facts establish that a professional power differential existed within the relationship, since these relationships may be subject to concerns about the validity of consent, welcomeness, conflicts of interest and unfair treatment of other students or employees. Further, such relationships can undermine the atmosphere of trust essential to the educational process and the employment process.

### **3. Employment Discrimination**

TCU's policy prohibiting employment discrimination applies to all employment decisions, including but not limited to recruitment, interviewing, hiring, transfer, promotion, training, demotion, pay, termination and other terms and conditions of employment. TCU is an equal opportunity employer. TCU is also committed to the principles of affirmative action in employment and it has an affirmative action policy and plans.

### **4. Disability Discrimination**

TCU complies with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, as amended. No otherwise qualified individual shall be denied access to or participation in the services, programs and activities of TCU solely on the basis of a disability. The University shall provide reasonable accommodation to each eligible person who (a) has a physical or mental

impairment that substantially limits a major life activity, (b) has a record or history of such impairment, or (c) is regarded as having such impairment.

TCU will reasonably accommodate a qualified individual with a disability except where an undue hardship would result or where a modification would result in a fundamental alteration of a program.

A qualified individual with a disability who desires assistance within the University to seek an accommodation may contact:

- Students – The University Coordinator for Students with Disabilities
- Job Applicants or Employee Issues – Director of Employee Relations

Each eligible student seeking accommodation due to a disability is responsible for presenting relevant, verifiable, professional documentation and/or assessment reports to the Coordinator for Students with Disabilities. Information concerning a student's disability is treated in a confidential manner in accordance with University policies as well as applicable federal and state laws. Documentation presented to the Coordinator may be reviewed by appropriate University professionals to verify the existence of a disability. Further documentation may be required from the student to substantiate the claim of a disability or to assist the University in determining appropriate accommodations.

Students who wish to appeal a decision regarding appropriate accommodations and /or disability due to disability shall do so in writing to the Affirmative Action Officer. The process of informal and/or formal resolution will be followed as detailed in Section III. The Affirmative Action Officer's decision may be appealed within 7 calendar days in writing to the Provost, whose decision may be appealed in writing within 7 calendar days to the Chancellor. At any step during such an appeal, the person deciding the appeal may confidentially consult with appropriate professionals/advisor within or outside the University.

## **5. Retaliation**

It is a violation of policy for a member of the TCU community to retaliate against an individual because that person in good faith reports a violation or opposes harassment or discrimination of the type prohibited by this policy. Any individual who retaliates will be subject to disciplinary action, up to and including discharge or expulsion. Any individual who is retaliated against should promptly report this to a Compliance Officer.

## **6. Reasonable Person Standard**

A "reasonable person standard" will be used in considering complaint allegations. This means that in addition to assessing whether the complainant subjectively felt harassed or discriminated against, there is also an assessment of whether a

reasonable person in the complainant's protected class would have felt harassed, discriminated or retaliated against.

### **7. Confidentiality**

TCU endeavors to keep a complaint and information disclosed during an investigation confidential; however, the University cannot guarantee complete confidentiality, for example, where it would conflict with the University's obligation to investigate meaningfully, take corrective action, or comply with the intent of this policy or legal obligations.

### **8. Good Faith**

Allegations must be made in good faith and not out of malice. It is a violation of TCU policy to knowingly make a false, malicious, or frivolous accusation of harassment or discrimination or retaliation. However, mere failure to prove a complaint is not equivalent to a false, malicious, or frivolous accusation.

An individual falsely charged with harassment or discrimination or retaliation may file a grievance to the extent permitted by the student handbook, the faculty/staff handbook or as otherwise permitted by TCU policy or procedure.

## **IV. Internal Procedure for Seeking Advice or Making a Complaint**

A complaint may be filed formally or informally. However, whether or not a person files a formal or informal complaint, if the University becomes aware of conduct which may violate this policy, the University may commence its own investigation and/or remedial actions.

### **1. Informal Resolution**

Some people may wish to informally confront the conduct instead of or before making a formal complaint. If a person tries informally to confront the conduct and later desires to complain formally, the person may do so.

The Compliance Officers, listed below can provide information about University policy on discrimination, harassment, retaliation, confidentiality, informal actions that might resolve the situation, or how to make a formal internal complaint. They are available to consult with all parties involved in an allegation of harassment, discrimination or retaliation. Merely making an inquiry or having a discussion with a Compliance Office does not commit one to making a formal internal complaint.

- [Affirmative Action Office/Title IX Officer](#)
- [University Harassment Officer/ Associate Vice Chancellor of Student Affairs](#)
- [Associate Vice Chancellor for Human Resources and Risk Management](#)
- [Director of Employee Relations](#)
- [Coordinator for Students with Disabilities](#)

For immediate assistance contact TCU Police, 817-257-7777, who have access to the appropriate TCU administrator twenty-four hours a day, seven days per week.

## **2. Formal Resolution**

When a Compliance Officer receives a discrimination or harassment complaint, the Compliance Officer will take prompt and appropriate action consistent with University policy, applicable law and regulations. The Title IX Officer will be responsible for coordinating the University's responsive efforts to Title IX complaints.

Depending on the situation, the University has several policies and procedures which can help resolve a complaint and the Compliance Officers may resolve an issue through one of these. When a student, applicant or employee pursues a complaint under one of the University's policies or procedures, except where expressly provided elsewhere, the person has selected his/her policy or procedure and may not pursue the same complaint under a separate University policy or procedure.

To make a formal internal complaint about harassment, discrimination or retaliation, the complainant should submit a signed, written complaint to a Compliance Officer promptly after the incident. It is the responsibility of every member of the TCU community to promptly report any concerns about discrimination or harassment to a University Compliance Officer.

When a formal internal complaint primarily alleges discrimination, harassment or retaliation, a determination will be made about the most appropriate method for resolution and whether an investigation is warranted. When the Compliance Officer determines an investigation of a complaint is warranted, the Compliance Officer may personally investigate and/or appoint a panel of impartial faculty and/or staff to investigate and to make findings and recommendations to the Compliance Officer. Upon receipt of such findings and recommendations, the Compliance Officer will then make a recommendation to the appropriate dean/unit head and vice chancellor or other relevant University official.

Compliance Officers may confer when appropriate to ensure internal procedures are followed.

## **3. Investigation Procedures**

When a formal investigation occurs, the complainant and the accused may each consult with a collegial or professional support person/advisor (Advisor). If either party selects an attorney as the Advisor, the party should provide the Compliance Officer at least one week's notice before any meeting or interview which the Advisor would attend. The complainant's Advisor may attend the complainant's interview(s) and the accused's Advisor may attend the accused's interview(s). The Advisor does not participate directly or make any type of representation.

When a formal investigation occurs, TCU will endeavor to interview both the accuser and the accused. An appropriate resolution of the complaint does not always involve the person accused facing the complainant. Subject to limits stated elsewhere in this policy, advisors/support persons are permitted to be present during the investigatory interview(s) of the person they are supporting/advising.

As part of a formal investigation of an alleged violation, the Compliance Officer may convene a team of two impartial investigators from a pool of trained full time employees. In sexual harassment cases, the panel will include one male and one female. Where the Compliance Officer is aware of additional information about the person accused which may be pertinent to a complaint investigation, this information will be made available to the investigating team. Members of the TCU community are to cooperate during the investigation.

The investigating team will present a written report of fact finding and recommendations to the Compliance Officer pertaining to whether TCU policy has been violated. If disciplinary or other appropriate further action is warranted, the Compliance Officer will make a recommendation to the appropriate dean/unit head and vice chancellor, or other relevant University official who will then take disciplinary or other appropriate action.

**a.) Sanctions**

Possible sanctions for a person found to be in violation of this policy include but are not limited to the following:

- Oral or written reprimand
- Required attendance at a harassment/discrimination sensitivity program
- Oral or written warning
- Loss of salary or benefit or demotion
- Transfer or change of job, class or residential assignment or location, including removing the person from being in a position to retaliate or further harass the complainant
- Suspension, probation, termination, dismissal or expulsion
- Other action TCU deems appropriate under the circumstance

While counseling is not considered a sanction, it may be offered or required in combination with sanctions. Where alcohol is involved in the violation, such counseling may include an alcohol abuse program.

If a student or student groups are found to be in violation of this policy, any of the sanctions set forth in the TCU Student Code of Conduct may also be involved.

**b.) Record Retention**

Confidential records of complaints will be maintained by the Compliance Officer for at least three years or any longer period required by law. Complaints that do not result in disciplinary action will be kept apart from personnel files

and will not affect personnel decisions. If further complaints are made against the same person, the records will be kept until the later of the following: resolution of those complaints, another three year period elapses, or any additional period required by law.

**c.) Outcome**

At an appropriate time following a formal harassment investigation, the complainant and the accused will be notified of the outcome.

**d.)Appeal**

The complainant or the person the complaint is brought against may appeal in writing directly to the Provost. The appeal must be submitted in writing within 7 calendar days after receiving the written outcome and should state specifically the rationale for the appeal.

**V. Policy Communication**

This policy is available on the TCU Web Site and through the listed Compliance Officers. Any individual, department or University organization that would like to schedule an additional training session or view training videos should contact the Campus Life Office, Human Resource Office or any other Compliance Officer.