



Policy on Discrimination and Harassment	
Responsible Official: University Counsel	Responsible Office: Office of University Compliance

### Policy Purpose

The purpose of this policy is to provide East Tennessee State University (ETSU) with a mechanism for discovering discrimination or harassment as early as possible and for effectively correcting problems by providing for prompt and equitable resolution of discrimination and harassment reports.

### Policy Statement

ETSU prohibits and seeks to eliminate all forms of discrimination and harassment based on a protected class in education programs and activities and employment. ETSU employees, students, and third parties can report discrimination or harassment without fear of adverse consequences and the university will be responsive to reports.

#### A. Scope and Applicability

1. This policy and procedure applies to the conduct of and protects:
  - a. ETSU students and applicants for admission
  - b. ETSU employees and applicants for employment
  - c. ETSU student organizations
  - d. ETSU contractors and third parties participating in a university education program or activity
2. Discrimination and harassment based on the following protected classes is prohibited:
  - a. Race, color, or ethnicity
  - b. National origin
  - c. Sex, sexual orientation, gender identity, or gender expression
  - d. Religion
  - e. Age

- f. Disability
  - g. Veteran's status
  - h. Genetic information
3. This policy and procedure applies to all discrimination or harassment reported to have occurred on or after the effective date of this policy.
    - a. If discrimination or harassment reportedly occurred prior to the effective date, the report will be evaluated using definitions contained in ETSU policies in effect at the time of the alleged discrimination. Procedures regarding the university's response to the report will be based on this policy and procedure.
    - b. If discrimination or harassment reportedly occurred in a time period spanning more than one year, the report will be evaluated using definitions contained in ETSU policies in effect at the time of the most recent alleged discrimination. Procedures regarding the university's response to the report will be based on this policy and procedure.
  4. This policy and procedure takes precedence over other university, college, or departmental policies and procedures concerning discrimination or harassment in the event of a conflict. The one exception to this is that ETSU's Policy against Sexual Misconduct applies to all sex-based discrimination reports.

#### B. Constitutional Rights Protected

1. All persons or organizations subject to this policy are entitled to all the rights and privileges guaranteed by the Constitution of the United States. The rights and requirements established under this policy and procedure are consistent with any guaranteed due process rights involved in an investigative proceeding.
2. In preventing or redressing prohibited discrimination or harassment, ETSU will formulate, interpret, and apply its rules so as to protect academic freedom and free speech rights.

#### C. Retaliation

1. Retaliation is prohibited against any individual who files a report, participates in a discrimination inquiry, investigation, hearing, or proceeding, or is regarded as filing a report or participating in a discrimination inquiry, investigation, hearing, or proceeding.
  - a. Individuals involved in investigations or disciplinary proceedings are encouraged to exercise discretion in sharing information to safeguard the integrity of the process and to avoid the appearance of retaliation.
  - b. While discretion regarding the process is important, reporting parties and responding parties are not restricted from discussing and sharing information with others who may support or assist them during the process.

2. Retaliation is also prohibited against any individual who advocates for others' protected class rights.
3. Retaliation is a violation of this policy regardless of whether the underlying allegation of a violation of this policy is ultimately found to have merit. Reports of retaliation will be treated separately from initial reports of alleged discriminatory conduct.

#### D. False Reports

1. A person who makes a report of discrimination or harassment or who provides false information to the university that is found to be intentionally false or made maliciously without regard for truth may be subject to disciplinary action.
2. This provision does not apply to reports made in good faith, even if an investigation does not find a policy violation.

#### E. ETSU Responsibilities

1. ETSU promotes equal opportunity in recruitment, selection, advancement, and terms and privileges associated with employment and education for all persons without regard to race, color, ethnicity, national origin, sex, sexual orientation, gender identity, gender expression, religion, age, disability, veteran's status, genetic information, or any other protected class.
2. ETSU affirmatively states it does not discriminate on the basis of race, color, ethnicity, national origin, sex, sexual orientation, gender identity, gender expression, religion, age, disability, veteran's status, genetic information, or any other protected class in its education programs and activities, and this policy extends to employment by the university.
  - a. The Compliance Officer oversees the creation and implementation of ETSU's annual affirmative action plan, which is designed to ensure equal employment opportunity.
  - b. The Compliance Officer is responsible for the development and execution of educational efforts regarding all types of discrimination and harassment, affirmative action, and equal opportunity.
3. Once ETSU has notice of possible discrimination or harassment, ETSU will take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any discrimination, eliminate any hostile environment and its effects, and prevent discrimination from recurring.
4. These steps are ETSU's responsibility even if the misconduct is covered by a separate ETSU policy and regardless of whether the individual harassed makes a report, asks ETSU to act, or identifies the harassment as a form of discrimination.
5. FERPA

- a. A student's personally identifiable information found in the student's education records will be shared only with university employees who need to know to assist with the university's response to discrimination.
  - b. A student's personally identifiable information found in the student's education records will not be disclosed to third parties unaffiliated with the university unless:
    - i. The student gives consent;
    - ii. The university must respond to a lawfully issued subpoena or court order; or
    - iii. The university is otherwise required by law to disclose.
6. Tennessee Public Records Act
- a. Investigative reports prepared by university officials that do not contain personally identifiable student information are generally considered public records, which means the university is obligated by law to make them available to any Tennessee citizen upon request.
7. Preservation of materials
- a. The Office of University Compliance will maintain records obtained or created by the Office of University Compliance during resolution of alleged violations of this policy for seven years.
8. Conflicts of Interest
- a. All ETSU employees involved in the investigative and resolution process described in this policy and procedure are prohibited from real or perceived conflicts of interest.
  - b. A reporting party or responding party may raise bias or a conflict of interest regarding ETSU employees involved in the investigative and resolution process at any time prior to an investigative report being issued.
    - i. Reports of bias or conflict of interest of investigators should be made to the Compliance Officer, who will make a final determination as to whether bias or a conflict of interest exists.
    - ii. Reports of bias or conflict of interest of the Compliance Officer should be made to ETSU's Compliance Counsel, who will make a final determination as to whether bias or a conflict of interest exists.

Authority: Executive Order 11246, as amended; The Rehabilitation Act of 1973, as amended; The Americans with Disabilities Act, as amended; The Age Discrimination in Employment Act of 1967; The Age Discrimination Act of 1975; The Older Workers Benefit Protection Act; The Pregnancy Discrimination Act; Title VI and Title VII of the Civil Rights Act of 1964, as amended; The Equal Pay Act of 1963, as amended; The Immigration Reform and Control Act; The Uniformed Services Employment and Reemployment Rights Act; The Genetic Information Nondiscrimination Act of

2008; The Tennessee Human Rights Act; the Family Educational Rights and Privacy Act; the Tennessee Public Records Act; and all other applicable state and federal laws and regulations.

## Definitions

Compliance Officer	The university's compliance officer is also the university's Title IX Coordinator and Title VI Coordinator.
Discrimination	Treating a person less favorably because of their protected class or having a policy or practice that has a disproportionate adverse impact on protected class members.
Education program or activity	All of the university's operations and services, including academic, educational, extra-curricular, athletic, and other programs of the school, regardless of location.
Harassment	Conduct based on a protected class that adversely affects a term or condition of a person's employment or education program or activity; has the purpose or effect of unreasonably interfering with a person's employment or education program or activity or creating a hostile environment; or is used as a basis for or a factor in decisions that tangibly affect a person's employment or participation in an education program or activity.
Hostile environment	Unwelcome conduct that is so severe, pervasive, and objectively offensive that it denies or limits an individual's ability to participate in or benefit from their employment or a university education program or activity. Conduct is considered from a subjective and an objective perspective based on the totality of the circumstances. Creating a hostile environment is a form of harassment.
Informal resolution	A resolution that is reached regarding a claim of discrimination or harassment without a formal investigation finding. Informal resolution may include mediation, facilitated dialogue, conflict coaching, restorative justice, or other models of alternative dispute resolution.
Preponderance of the evidence	Whether it is more likely than not that the responding party violated this policy and procedure by engaging in discrimination, harassment, or retaliation. In a university disciplinary proceeding, the university has the burden of proving violations of university policy by a preponderance of the evidence.
Protected activity	A person's good faith opposition to or report of discrimination or harassment, or assisting a person who opposes or reports discrimination or harassment to the university, the police, or a state or federal agency. Protected activity also includes participation in a discrimination inquiry, including an investigation, proceeding, or hearing.

Report	Information provided to the Compliance Officer regarding an incident of discrimination or harassment, whether provided by a reporting party, a responding party, a witness, or third party.
Reporting party	A person(s) or student organization who may have been subject to discrimination or harassment regardless of whether that person(s) or student organization makes a report or seeks action under this policy.
Request for limited action	A reporting party's request to the university to limit the university's involvement in a report.
Responding party	A person(s) or organization who is accused of committing discrimination or harassment.
Retaliation	An adverse action taken because of a person's participation in a protected activity that would discourage a reasonable person from engaging in the protected activity.

#### Policy History

Effective Date: 1/16/2020  
Revision Date:

#### Procedure(s)

##### I. Reporting Options

##### A. Compliance Officer

1. The university's Compliance Officer oversees compliance with all aspects of the university's policy against discrimination and harassment. The Compliance Officer reports to ETSU's Compliance Counsel and is housed in the Office of University Compliance.
2. Reports or complaints of discrimination or harassment may be filed with ETSU's Compliance Officer, Garrison Burton.
  - a. The Compliance Officer's office is located in 201 Nell Dossett Hall on ETSU's Main Campus in Johnson City, Tennessee.
  - b. The phone number is 423-439-8545 and the email is [compliance@etsu.edu](mailto:compliance@etsu.edu).
3. Individuals may also report discrimination or harassment to ETSU's Assistant Compliance Officers:

- a. Jean Rushing – Assistant Equity Compliance Officer/Deputy Title IX Coordinator/Deputy Title VI Coordinator
  - b. Michelle Edwards – Assistant Equity Compliance Officer/Deputy Title IX Coordinator/Deputy Title VI Coordinator
4. Anonymous reports can be made using the online reporting form posted at: <https://www.etsu.edu/universitycounsel/compliance/documents/discrimination-harassment-retaliation.pdf>.
5. Inquiries or complaints regarding discrimination or harassment may also be made to:
- a. The United States Department of Education, Office for Civil Rights, 61 Forsyth Street, S.W., Suite 19T10, Atlanta, GA 30303.
  - b. The United States Department of Justice, Civil Rights Division, 950 Pennsylvania Avenue, N.W., Educational Opportunities Section, PHB, Washington, D.C. 20530.
  - c. The Equal Employment Opportunity Commission, 220 Athens Way, Suite 350, Nashville, TN 37228.
  - d. The United States Department of Labor – OFCCP, 1321 Murfreesboro Rd., Ste. 301, Nashville, TN 37217.
  - e. The Tennessee Human Rights Commission, 312 Rosa L. Parks Ave., 23<sup>rd</sup> Floor, Nashville, TN 37243.
  - f. External agencies have deadlines to file complaints. It is an individual's responsibility to know those deadlines.

## B. Confidentiality

1. Individuals who desire to communicate with someone who by law can keep information confidential should contact:
  - a. [ETSU's Counseling Center](#)
  - b. A personal attorney
  - c. A clergy member
  - d. A physician or licensed mental health professional
2. Information communicated to the Compliance Officer or Assistant Compliance Officers will not be confidential, but will be kept private, which means information will initially be shared only with university employees who need to be involved in responding to a report.

- a. Individuals are free to limit the details they share while they decide whether to report an incident of discrimination or harassment to the university.
- b. ETSU will take all reasonable steps to investigate and respond to a report consistent with a request for confidentiality as long as doing so does not prevent the university from responding effectively to discrimination and harassment and preventing discrimination of other individuals.

### 3. Anonymous Reporting

- a. If ETSU learns of discrimination or harassment through an anonymous report, different factors will affect ETSU's response. These factors are:
  - i. the source and nature of the information;
  - ii. the seriousness of the alleged incident;
  - iii. the specificity of the information;
  - iv. the objectivity and credibility of the source of the report;
  - v. whether any individuals can be identified who were subjected to the alleged discrimination; and
  - vi. whether those individuals want to pursue the matter.
- b. If it is reasonable for ETSU to investigate and the university can confirm the allegations, ETSU will take appropriate responsive action.

## II. Grievance Procedure

### A. Scope

1. Use of this grievance procedure applies to reports alleging discrimination or harassment carried out by employees, students, student organizations, or third parties.
2. All reports of discrimination and harassment are taken seriously. At the same time, those accused of discrimination or harassment are presumed innocent throughout this grievance procedure.

### B. Initial University Response and Assessment

1. After receiving a report of discrimination or harassment, the Compliance Officer takes immediate and appropriate steps to:
  - a. Communicate with the individual who reported the alleged discriminatory conduct;
  - b. Provide the individual with a copy of this policy and procedure; and
  - c. Determine whether the alleged conduct, as described by the reporting party, falls within the scope of this policy and if so, initiate the investigation and resolution procedures outlined below.

2. The Compliance Officer has discretion to administratively close a report of discrimination or harassment if after an initial assessment:
  - a. The allegations as stated do not constitute a violation of this policy and procedure; or
  - b. A request for limited action is granted.
  - c. The Compliance Officer notifies the reporting party if the allegations as stated do not constitute a violation of this policy and procedure and directs the individual to the appropriate university office or department to resolve the report.
  
3. Request for Limited Action
  - a. When an incident of discrimination or harassment is reported to the Compliance Officer, the reporting party has a right to:
    - i. Request the report or the reporting party's contact with the Compliance Officer not be disclosed to the responding party;
    - ii. Decline to personally identify the responding party;
    - iii. Decline to respond to communications from the Compliance Officer; and
    - iv. Request the university not investigate or stop an ongoing investigation that is not substantially complete.
  
  - b. The Compliance Officer evaluates a request for limited action in the context of the university's responsibility to provide a safe and nondiscriminatory environment for all individuals. The Compliance Officer considers these factors in the evaluation:
    - i. The seriousness of the alleged discriminatory conduct;
    - ii. The age of the individuals involved;
    - iii. Whether there have been other reports of discrimination or harassment against the accused individual(s);
    - iv. The risk the accused individual(s) will commit additional discrimination, harassment, or retaliation; and
    - v. The rights of the accused individual(s) to receive information about the accuser(s) and the allegations if a formal proceeding with sanctions may result.
  
  - c. If the Compliance Officer honors the request for limited action, the university mitigates the effects of alleged discrimination or harassment and prevents its recurrence, but remedial or disciplinary actions against individuals may be limited.
  
  - d. If the Compliance Officer does not grant a request for limited action, the Compliance Officer informs the reporting party of the decision prior to starting or continuing an investigation.
    - i. If the university must disclose the reporting party's identity to the responding party, the Compliance Officer notifies the reporting party of that determination prior to the disclosure.

- ii. The university will honor a request by the reporting party that the university inform the responding party the reporting party asked the university not to investigate or seek discipline.
- 4. Because the university is under a continuing obligation to address the issues of discrimination and harassment campus-wide, reports of discrimination may prompt the university to consider broader remedial action, such as increased monitoring, increased education and prevention efforts, additional climate surveys, and revisiting policies and practices.

#### C. Informal Resolution

1. Any party may request the university facilitate an informal resolution to a discrimination or harassment report at any time after the university's initial assessment of a report. The Compliance Officer, at their discretion, may suggest an informal resolution to the parties at any time after the university's initial assessment of a report, too.
  - a. Upon a request for informal resolution, the Compliance Officer determines whether informal resolution is appropriate based on the facts and circumstances of the case. The Compliance Officer ensures that any proposed informal resolution is consistent with the university's obligations to prevent and redress discrimination and harassment.
  - b. Sexual assault reports are not eligible for informal resolution.
2. Informal resolution is voluntary.
  - a. The reporting party and the responding party must provide written consent for informal resolution to take place.
  - b. Any party has a right to end the informal process at any time and begin the formal process.
3. Informal resolution concludes the matter only when all parties have signed a written agreement that confirms resolution of discrimination allegations.
  - a. The resolution agreement must include a waiver of the responding party's right, if any, to have a formal hearing on the allegations.
  - b. Neither the reporting party nor the responding party may revoke or appeal a resolution agreement.
4. If a resolution agreement is not reached, the university will proceed with a formal investigation.

#### D. Formal Investigation

1. The goal of a formal investigation is to reach a determination as to whether a responding party has violated one or more university policies prohibiting discrimination and unlawful harassment and if so, remedy the effects of a violation.
  - a. The Compliance Officer determines the nature and scope of investigations on a case-by-case basis. The Compliance Officer may include possible violations of other university policies that contributed to, arose from, or are otherwise related to alleged violations of this policy and procedure in the scope of an investigation.
  - b. The Compliance Officer designates two investigators to investigate and give written notice to the reporting party and responding party of the investigation, providing sufficient details to allow the parties to prepare for initial interviews.
  - c. A responding party may respond in writing to the notice of investigation within five business days following the date of receipt of the notice of investigation.
2. Parties to an investigation can expect a prompt, thorough, and equitable investigation of reports, including the opportunity for parties to ask questions, present witnesses, and provide information regarding the allegations.
  - a. Students are not required to participate in an investigation.
    - i. If a student chooses not to participate in an investigation, the university's ability to respond fully or discipline individuals may be limited.
    - ii. Failure to respond or participate in an investigation will not prevent the completion of the investigation. The investigators will make determinations based on the totality of the evidence available.
  - b. Employees are required to participate in an investigation. Failure or refusal to cooperate with, or interference with, investigative proceedings may result in disciplinary action, up to and including termination.
3. The standard of proof used in investigations is preponderance of the evidence. It is the university's responsibility to establish the standard of proof and gather evidence during investigations.
4. The university aims to bring all investigations to a resolution within sixty (60) business days from the date the Compliance Officer determines an investigation will commence.
  - a. Extensions of timeframe for good cause are allowed, so long as written notice and the reason for the delay is provided to the parties. Good cause includes:
    - i. The complexity and/or number of the allegations;
    - ii. The severity and extent of the alleged misconduct;
    - iii. The number of parties, witnesses, and other types of evidence involved;
    - iv. The availability of the parties, witnesses, and evidence;
    - v. A request by a party to delay an investigation;
    - vi. The effect of a concurrent criminal investigation or proceeding;

- vii. Intervening holidays, university breaks, or other closures;
  - viii. Good faith efforts to reach a resolution; or
  - ix. Other unforeseen circumstances.
- b. Investigations typically include interviews with the reporting party, the responding party, and any witnesses, and the objective evaluation of any physical, documentary, or other evidence as appropriate and available. The university gives the reporting party and the responding party written notice of any interview, meeting, or hearing at which a party is invited or expected to participate.
- c. The Compliance Officer informs the reporting party and responding party at regular intervals of the status of the investigation.
- d. The university may suspend a student, employee, or student organization pending the completion of an investigation and resolution, particularly when in the judgment of the Compliance Officer, the safety or well-being of any member(s) of the campus community may be jeopardized by the on-campus presence of the accused individual or organization.
- i. In all cases in which an interim suspension is imposed, the student, employee, or student organization are given the opportunity to meet with the Compliance Officer or their designee prior to such suspension to show cause why the suspension should not be implemented.
  - ii. The Compliance Officer, after consulting with appropriate university officials, has sole discretion to implement or stay an interim suspension and to determine its conditions and duration.
  - iii. Violation of an interim suspension under this policy is grounds for expulsion or termination.
5. Interviews conducted as part of an investigation under this policy and procedure may be recorded by the university. Recordings not authorized by the university are prohibited.
6. The reporting party and the responding party have the right to be accompanied by an advisor of their choosing during all stages of an investigation.
- a. A party may elect to change advisors during the process.
  - b. All advisors are subject to the same rules:
    - i. The advisor's role is limited to providing advice, guidance, and support to the reporting party or responding party. An advisor is not permitted to act as a participant or advocate during the investigative process.
    - ii. Advisors may not address campus officials in a meeting, interview, or hearing unless invited to.
    - iii. Advisors are expected to maintain the privacy of the records shared with them.
    - iv. Advisors are expected to refrain from interfering with investigations.
    - v. Any advisor who steps out of their role during an investigation process are warned once. If the advisor continues to disrupt or otherwise fails to respect the limits of

the advisor role, the advisor will be asked to leave. The Compliance Officer determines whether the advisor may return or should be replaced by a different advisor.

7. Prior to making a final determination, investigators prepare a preliminary report containing the statements of the parties and witnesses and relevant evidence.
  - a. The reporting party and the responding party receive a copy of the preliminary report simultaneously. The reporting party and the responding party are given equal access to evidence to the extent possible based on the circumstances of the investigation.
  - b. The reporting party and the responding party may submit written comments on the preliminary report within ten business days after receipt of the preliminary report.
    - i. Any comments must be submitted to the investigators via email, mail, or hand delivery by 5:00pm eastern standard time on the date comments are due.
    - ii. Comments may not exceed 10 double-spaced pages on 8.5x11 paper with one-inch margins and 12-point font.
  - c. The investigators consider any comments received from the parties and conduct any further investigation necessary or appropriate.
8. Following an investigation, investigators prepare a final report that includes findings and recommendations as to whether a responding party should be found in violation of university policy.
  - a. The final report includes:
    - i. A summary of the allegations;
    - ii. A summary of the response;
    - iii. A summary of the investigative steps taken to verify the allegations and response;
    - iv. A determination of whether the evidence supports a finding that a violation of university policy occurred;
    - v. The facts and evidence on which such determination is based; and
    - vi. Any recommendations regarding disposition.
  - b. The reporting party and the responding party receive simultaneous notice of the investigators' final report.
  - c. Appropriate ETSU administrator(s) receive the final report and the parties' comments to the preliminary report, and are responsible for imposing disciplinary sanctions, if appropriate.
9. The university's actions to correct and prevent the recurrence of any policy violations may include taking disciplinary action, up to and including termination or expulsion from the university. ETSU policies and procedures applicable to disciplinary processes include due process protections and may be found here:

- a. Student disciplinary policies:
  - i. ETSU Undergraduate Catalog
  - ii. ETSU Graduate Catalog
  - iii. Conduct Process Flowchart
  - iv. Pre-Hearing Information
  - v. Post-Hearing and Appeals Information
  
- b. Faculty:
  - i. Faculty Progressive Discipline Guidelines
  - ii. [Tenure](#)
  
- c. Staff:
  - i. [Progressive Disciplinary Procedures](#)
  
- d. Reporting parties and responding parties are afforded similar and timely access to any documents and information used in a university disciplinary action, including any investigative report.

Procedure History

Effective Date: 1/16/2020

Revision Date:

Related Form(s)