


AUSTIN PEAY STATE UNIVERSITY  
POLICIES AND PROCEDURES MANUAL

Policy Number: 5:003	Supersedes Policy Number: 5:003
Date: February 1, 1993	Dated: September 18, 1989
Subject: Harassment - Sexual, Racial, and Other	
Initiating Authority: Vice President for Finance and Administration	TBR Policy/Guideline Reference: P-080
Approved:  President	

I. Purpose

The purpose of this policy is to provide a procedure for the orderly resolution of charges of sexual, racial, or other forms of harassment at the University. Fair and prompt consideration will be given to all charges of such harassment in accordance with the procedures set forth below. These procedures may be utilized by any employee, applicant for employment or student who believes he or she has been subjected to sexual, racial or other forms of harassment.

II. General Statement

Sexual harassment and racial harassment have been held to constitute a form of discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended, and Title IX of the Educational Amendments of 1972. Other types of harassment are prohibited by applicable law. The University may be held liable pursuant to Title VII and/or lose federal funds pursuant to Title IX for failure properly to investigate and remedy claims of sexual or racial harassment.

A. Generally, sexual harassment may be defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when one of the following criteria is met:

1. submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment or of the individual's status in a program, course, or activity;

2. submission to or rejection of such conduct by an individual is used as a basis for employment decisions, a criterion for evaluation, or a basis for academic or other decisions affecting such individual; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or educational experience or creating an intimidating, hostile or offensive work or educational environment.

Sexual harassment can take many forms, but most sexual harassment falls into three categories: verbal, visual, and physical.

Some examples of behavior that may constitute sexual harassment are:

- Refusing to hire, promote, or granting or denying certain privileges because of acceptance or rejection of sexual advances.
- Promising a work-related benefit or a grade in return for sexual favors.
- Suggestive or inappropriate communications, notes, letters, or other written materials displaying objects or pictures which are sexual in nature that would create hostile or offensive work or living environments
- Sexual innuendoes, comments, and remarks about a person's clothing, body or activities
- Suggestive or insulting sounds
- Whistling in a suggestive manner
- Humor and jokes about sex that denigrate men or women
- Sexual propositions, invitations, or pressure for sexual activity.
- Implied or overt sexual threats
- Suggestive or obscene gestures
- Patting, pinching, and other inappropriate touching

- Unnecessary touching or brushing against the body
- Attempted or actual kissing or fondling
- Coerced sexual intercourse
- Sexual assault

The examples listed above are not exclusive, but simply represent types of conduct that may constitute sexual harassment.

Whether the alleged conduct constitutes sexual harassment depends upon the record as a whole and the totality of the circumstances, such as the nature of sexual advances in the context within which the alleged incident occurs. Please note that sexual assaults may be criminal acts and as such, investigation and processing by the criminal justice system, local police, campus security and crisis intervention centers may supersede the process developed under this policy.

- B. Generally, racial harassment is defined as any person's conduct which unreasonably interferes with an employee's or student's status or performance by creating an intimidating, hostile, or offensive working or educational environment. Harassment on the basis of race, color, or national origin includes offensive or demeaning treatment of an individual, where such treatment is based typically on prejudiced stereotypes of a group to which that individual may belong. It includes, but is not limited to, objectionable epithets, threatened or actual physical harm or abuse, or other intimidating or insulting conduct directed against the individual because of his/her race, color, or national origin. Title VII requires employers to take prompt action to prevent bigots from expressing their opinions in a way which abuses or offends their coworkers.
- C. Generally, harassment on the basis of religion, handicap, or other protected status includes any conduct which has the purpose or the reasonably foreseeable effect of interfering with an individual's academic efforts, employment, or participation in institutionally sponsored activities. Such harassment also includes any activity which creates an intimidating, hostile or demeaning environment.

### III. Procedures

The following procedures are intended to protect the rights of the aggrieved party as well as the party against whom an allegation of harassment is lodged, as required by state and federal laws. Each charge must be investigated properly and, when warranted, appropriate disciplinary action must be taken against the individual charged. The office of the General Counsel, TBR, will be consulted prior to investigation.

In situations that require immediate action, because of safety or other concerns, the University can take any disciplinary action which is appropriate, e.g., suspension with pay, pending the initiation of the investigation by the Affirmative Action Director. The office of the General Counsel will be contacted before any immediate action is taken.

#### A. Preliminary Investigation

1. Any student, applicant for employment or employee who believes he or she has been subjected to harassment at the University will present the charge to the Affirmative Action Director, 133 Browning Building, 648-7178. Where the charge of harassment is against the Affirmative Action Director, the President will identify an individual who has been trained in investigating such claims, such as a member of the Student Affairs staff or an Affirmative Action Officer from another institution, to investigate the claim and carry out the responsibilities assigned to the Affirmative Action Director pursuant to this policy. Where the charge of harassment is by one student against another student, the Student Affairs Office will investigate and resolve the complaint in accordance with student disciplinary procedures.
2. The Affirmative Action Director will make every attempt to get the aggrieved party to provide the charge in writing. The charge will include the circumstances giving rise to the allegations and the dates of the alleged occurrences. The charge will be signed by the aggrieved individual. However, where the aggrieved individual refuses to sign a written charge, the Affirmative Action Director will still investigate the allegations and take appropriate action. Based on the findings of this investigation, the Director may take appropriate action which may or may not be the steps outlined in the remaining paragraphs of this policy.

3. The Affirmative Action Director will notify in writing the charged party within five (5) working days of receipt of the charge. The charged party will respond in writing to the charge within five (5) working days of notification.
4. The Affirmative Action Director will meet with both parties for the purpose of resolving the charge informally.
5. The Affirmative Action Director will conduct an investigation of the charge and submit a report to the President, the system-wide EEO/AA Officer, and the parties within twenty (20) working days following receipt of the charge. The report will outline the basis of the charge, including the dates of the alleged occurrences, the response of the charged party, the findings of the Affirmative Action Director, all attempts to resolve the charge informally, and recommendations regarding disposition of the charge. If following an investigation, the Affirmative Action Director finds there is no substantial evidence to support the charge, the parties will be so advised in writing.
6. If the investigation reveals that there is evidence to support the charge, the President may meet with the charged party and/or the charging party and attempt to resolve the problem by agreement. In addition, the charged party will be advised of his/her right to a hearing pursuant to the procedures set forth below. A charged party may request a hearing within ten (10) working days following receipt of the report.

#### B. Hearing

1. If the charged party requests a hearing, he or she will be advised of hearing procedures available under the Tennessee Uniform Administrative Procedures Act (TUAPA), (TBR Policy 1:06:00:05), and of the University's grievance procedure (APSU Policy 5:027) which is available for resolution of the matter in question. The party requesting a hearing will be given the opportunity to elect the procedures pursuant to which the matter will be heard.
2. When an individual elects to proceed under the University's grievance procedure, the election will

be in writing and signed by the individual making the election and will expressly waive the procedures available under the TUAPA as to the matter in question. When a party elects to proceed pursuant to the University's grievance procedure, this procedure must include:

- a. Notice of the charge to the party or parties.
- b. The right of the party or parties to present his or her case.
- c. The right to be accompanied by an advisor.
- d. The right to call witnesses in his or her behalf.
- e. The right to confront witnesses against him or her.

In addition, in any case where the President makes a decision which is adverse to the charge or claim of either party, the President will advise the person of any right of appeal provided by TBR policy.

3. Individuals electing to proceed under the TUAPA will be referred to the University official responsible for commencement of actions under the TUAPA.
4. When a charge involves a tenured faculty member, the same informal and formal procedures set out above will be utilized. Tenured faculty members will have the same right to elect hearing procedures as set out in Sections A - C. Where the selected hearing procedure results in a finding that harassment exists and the President determines that the harassment constitutes adequate cause for termination, then the matter will proceed under APSU Policy No. 5:010.