

## OACT Discrimination Complaint Procedures

### Section 1

The University of Tennessee at Martin values differences among individuals and cultural groups and is committed to creating and maintaining a safe and non-discriminatory learning, living and working environment. Any UTM student, employee, or applicant for admission, or otherwise participant in a UTM program or activity, who believes he or she has been discriminated against on the basis of race, color, sex (including sexual harassment), sexual orientation, gender identity, pregnancy, marital status, religion, national origin, age, disability or protected veteran status is encouraged to use the outlined OACT procedure to address and resolve his or her complaint.

Complaints of discrimination should be directed to the Office of Access, Compliance, and Title IX (OACT), 212 University Center, 11 Wayne Fisher Drive, Martin, Tennessee, 38238. **Telephone:** 731-881-3505. **Complaints must be in writing using the [appropriate complaint form](#) and filed within 300 days of the alleged discriminatory action.** In certain circumstances, at the discretion of OACT, complaints filed outside of the referenced time limits or that are not put in writing are investigated.

University policy prohibits retaliation against any person who in good faith opposes a practice which he or she believes to be discriminatory or who participates in an investigation of a complaint.

#### 1.1 Scope

OACT investigates reports of violations of [HR0220 \(Equal Employment Opportunity\)](#), [HR0280 \(Sexual Harassment & Other Discriminatory Conduct\)](#), the [Policy on Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking](#), [HR0585 \(Mandatory Reporting\)](#), [UTM Faculty Handbook \(concerning relationships with students\)](#), and other university rules, policies, or procedures in consultation with the Director of Human Resources. All listed policies are known collectively as “Covered Policy”.

### Section 2

#### Process and Resolution

##### 2.1 Making a Complaint or Report

###### ***2.1.1. How to Make a Complaint or Report***

Any person may make a Complaint or Report to OACT in person, by telephone, by mail, by electronic mail, or through the OACT [online reporting form](#).

###### ***2.1.2 When to Make a Complaint or Report***

A person must file a Complaint or Report within 300 calendar days of the most recent act alleged to have violated a Covered Policy. OACT may exceed the 300-day filing deadline, including situations which the most recent alleged act may have a continuing impact or effect on the university’s education programs, activities, and/or employment settings.

### **2.1.3 Acknowledgement**

Notification to OACT is documented as the date OACT received the Complaint or Report. A complainant may choose to pursue an Informal Complaint, in which OACT will not make a formal determination as to whether the respondent(s) has violated University policy but will assist in finding a mutually acceptable resolution. Resolution of complaints through the administrative structure of the employment unit or academic department is voluntary. The appropriate administrator(s) will be notified and OACT will provide assistance to the complainant, employment unit or academic department to resolve the complaint.

### **2.2 Complaint Overview**

A complainant may choose to file a Formal Complaint and OACT will make a formal determination as to whether the respondent(s) has violated University policy. The complaint must be submitted to OACT through the appropriate complaint form. The party with whom the complaint has been lodged (respondent) and the appropriate administrator with supervisory responsibility will be notified of the complaint.

As a reiterative point, the Informal complaint process and the Formal complaint process are not mutually exclusive. An individual may attempt to first resolve his or her concerns through an Informal complaint.

#### **2.2.1 Formal Complaint**

If, however, the parties are unable to reach a mutually acceptable resolution of an Informal complaint, a complainant may then file a Formal Complaint.

1. OACT will conduct an Intake Interview to 1.) assess whether the complaint or report describes, in sufficient detail, alleged conduct, that if proven by a Preponderance of Evidence<sup>1</sup> would violate a covered Policy; and 2.) determine the process through which a complaint or report should be resolved. Following the Intake Interview, OACT may do one of the following:
  - a. **Close the complaint or report.** OACT may close the complaint or report when: (i) the allegations, if proven, would not constitute a violation of a Covered Policy; (ii) the allegations lack sufficient detail upon which to base a decision about how to resolve the complaint/report; (iii) the Respondent is not affiliated with the university or subject to a Covered Policy; (iv) the Complainant is unknown or unresponsive; (v) a Title IX Formal Complaint is dismissed; (vi) the allegations fall outside of the 300-day filing window; (vii) OACT concludes that the complaint or report is completely resolved by Referral to another university unit; or otherwise deemed appropriate by the Director of Access, Compliance, and Title IX; (viii) if the allegations were the subject of a previous informal resolution or investigation and no new information has been presented to OACT.
  - b. **Refer the Complaint or Report.** OACT may refer the complaint or report (or any portion thereof) to another university unit when the complaint or report: (i) does not involve an allegation of misconduct that fall under a Covered Policy but the allegations may warrant investigation, consideration, or action by another university unit; or (ii) alleges

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<sup>1</sup> "Preponderance of Evidence" is defined as evidence demonstrating that is more likely than not that a violation of a Covered Policy occurred.

misconduct by a person who is a university student (in which case the complaint or report will be referred to the Office of Student Conduct).

If OACT determines that a complaint or report should be Closed or Referred, OACT will send a memorandum to the Complainant and Respondent (if interviewed during the Intake Review and/or otherwise notified by OACT) that includes a concise summary of both the Relevant Evidence<sup>2</sup> and the rationale for OACT's determination. Complaints and reports closed prior to investigation may be reopened if additional information is later available and the matter still falls within the 300 calendar day limitations period.

### **2.2.2 Appeal of OACT's Determination Following the Intake Review**

If OACT determines that it will Close or Refer the Complaint or Report (in whole or in part), a Party may appeal such Closure or Referral to the Vice Chancellor of Access and Engagement (VCAE) within five (5) business days of OACT's issuance of the notice of its determination. Any appeal must be in writing and describe in sufficient detail the grounds for the appeal. Grounds for appealing an OACT determination include only: (i) procedural irregularity that affected the outcome; (ii) new Relevant Evidence not available at the time of the Intake Review; and/or (iii) evidence of conflict of interest or bias by a member of the OACT staff.

Appeals must be submitted in writing to the Vice Chancellor of Access and Engagement. The VCAE will respond within ten (10) business days but, for good cause explained in writing, may extend the time for deciding the appeal. If the VCAE upholds OACT's determination, then the decision is final, and there is no further appeal. If the Vice Chancellor of Access and Engagement overturns OACT's determination, then the VCAE will refer the Complaint or Report back to OACT with appropriate instruction.

- c. **Investigate** the complaint or report. OACT may initiate an investigation with notice to the Complainant and Respondent when the complaint or report alleges conduct that, if established by a Preponderance of Evidence, would violate a Covered Policy. OACT may initiate an Investigation, with or without a participating Complainant, when an investigation is required by law or university policy or is necessary based on the university's commitment to fostering a safe and non-discriminatory living, learning, and working environment.
2. If OACT determines an investigation of the complaint or report is required, the following will occur:
    - a. Interviews of complainant, respondent, and witnesses.

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<sup>2</sup> "Evidence" means an item or information offered to provide that a fact is more or less probable than it would be without its existence. Evidence includes oral or written statements, documents, photographs, videos, audio or voice recordings, records, and other tangible objects." "Relevant Evidence" means Evidence that has (i) any tendency to make a fact more or less probable than it would be without its existence, and (ii) the fact is of consequence in determining if a violation of a Covered Policy occurred. In most cases, evidence of a person's character or a character trait is not relevant for purposes of determining whether a violation of a Covered Policy occurred.

- b. Review of documents provided by complainant, respondent, and witnesses, submitting questions to or taking statements from parties or witnesses, and review documents.
3. OACT will make findings, together with a statement outlining the basis for them to be transmitted to the appropriate administrator<sup>3</sup>. A copy will also be sent to the complainant and respondent.

### **2.2.3 Alternative Resolution**

At any time during the Intake Review, OACT may propose an Alternative Resolution (see Section 2.4).

### **2.2.4 Interim Measures**

The Director of OACT may implement interim measures at any time after OACT's receipt of a Complaint or Report. Interim measures are non-disciplinary actions designed to: (i) restore or preserve access to a non-discriminatory living, learning, and working environment; (ii) promote safety; and/or (iii) deter violations of university policy. Examples of interim measures include, but are not limited to, issuing no contact directives, coordinating changes to an employee's work assignment or schedule, and/or assisting a student in requesting changes to an academic schedule or campus employment assignment.

## **2.3 Investigations**

### **2.3.1 Purpose of an Investigation**

The purpose of an Investigation is to determine whether a Respondent engaged in conduct prohibited by a Covered Policy. OACT will use the Preponderance of the Evidence standard to determine whether a Respondent engaged in conduct prohibited by a Covered Policy.

### **2.3.2 Notice of Investigation**

OACT initiates an Investigation by sending a written Notice of Investigation (NOI) to the Complainant and the Respondent.

The NOI will include, at a minimum:

1. A short description of the allegation(s) OACT will be investigating;
2. A statement advising the Parties that Retaliation is prohibited and that engaging in Retaliation will result in appropriate disciplinary action;
3. Information regarding resources available to the Parties;
4. An invitation to submit to OACT the name(s) and contact information for possible Witnesses (along with a summary of the information each Witness can provide regarding the allegations) and copies of any supporting documentation (e.g., emails, text messages);
5. Contact information for the OACT investigator assigned as the lead investigator.

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<sup>3</sup> Appropriate administrator as it pertains to faculty includes the respondent's departmental chair, dean, and/or Vice Chancellor for Academic Affairs; or departmental unit supervisor, and/or appropriate Vice Chancellor as it pertains to staff.

### **2.3.3 Notice of Meetings**

OACT will notify Parties and Witnesses of the date, time, location, and purpose of any meeting.

### **2.3.4 Interviews**

OACT may interview the Complainant, the Respondent, and any possible Witnesses that OACT believes are reasonably likely to have Relevant Evidence related to the Complaint or Report.

### **2.3.5 Other Evidence**

OACT may request that the Complainant, the Respondent, other persons, a university unit, and non-university entities provide Evidence in their care, custody, or control.

### **2.3.6 Review of Statements and Other Evidence**

Complainants and Respondents will be provided an opportunity to review their own statement and other Relevant Evidence in which they were the original participant (e.g., email and text communications, audio or video recordings). After reviewing their own statement and other Relevant Evidence, a Participant may provide a written statement regarding the Relevant Evidence prior to the issuance of the Investigation Report. This written statement may include clarifications, other potentially Relevant Evidence not yet submitted to OACT for review, or new information recently obtained. Any written statement must be submitted in writing to OACT within five (5) business days of the day OACT provided the Relevant Evidence for review. OACT will consider all written responses submitted in compliance with this Section prior to issuing the Investigative Report.

### **2.3.7 Investigation Report and Referral**

At the completion of the Investigation process, OACT will prepare an Investigation Report. The Investigation Report will include a summary of the allegations, OACT's findings, an analysis of the Relevant Evidence supporting OACT's findings, and guidance regarding appeal rights.

OACT will follow the following steps in preparing and issuing the Investigation Report:

1. OACT will provide a draft of the Investigation Report and access to Relevant Evidence to the appropriate administrator (i.e., supervisor, vice chancellor or dean). OACT will offer the appropriate administrator an opportunity to consult with OACT before the Investigation Report is finalized regarding the investigation process, Evidence collected, and the rationale for OACT's determination of whether a violation of a Covered Policy occurred.
2. OACT will provide the final Investigation Report and access to the Relevant Evidence to: (i) the Parties; (ii) the appropriate vice chancellor or dean; and (iii) the Provost/Vice Chancellor for Academic Affairs (for cases in which the Respondent is a faculty member) or appropriate administrator (for cases in which the Respondent is a staff member).

### **2.3.8 Appeal of the Investigation Finding**

Parties may appeal the finding(s) of an Investigation to the Vice Chancellor of Access and Engagement (VCAE) within ten (10) business days of OACT transmitting the Investigation Report to the Parties. The appeal must be in writing and describe in sufficient detail the grounds for the appeal. Grounds for appealing an investigative finding include only: (i) procedural irregularity that affected OACT's finding(s);

(ii) new Relevant Evidence not available prior to the issuance of the Investigation Report; and/or (iii) conflict of interest or bias by a member of the OACT staff.

Appeals must be submitted in writing to the Vice Chancellor of Access and Engagement. The VCAE will respond within ten (10) business days but, for good cause explained in writing, may extend the time for deciding the appeal. If the Vice Chancellor of Access and Engagement upholds OACT's determination, then the decision is final, and there is no further appeal. If the VCAE overturns OACT's determination, then the VCAE will refer the Complaint or Report back to OACT with appropriate instruction.

### ***2.3.9 Disciplinary Action***

Disciplinary actions relating to violations of a Covered Policy are determined by the appropriate administrator. The appropriate administrator must inform the Respondent and OACT in writing of the disciplinary actions that will be imposed in response to the findings of OACT. Disciplinary actions will be implemented in accordance with relevant university rules, policies, or procedures (e.g., Faculty Handbook, HR 0525).

### ***2.3.10 Conflicts of Interest***

The Investigation process will be carried out in a manner that is free from conflicts of interest or bias. A Complaint or Report will be assigned to another member of OACT staff when: (1) the OACT staff member or their relative is a Complainant, Respondent, or a Witness; or (2) the OACT staff member determines, for any reason (e.g., personal prejudice or bias) that they cannot be fair or impartial. The Vice Chancellor of Access and Engagement will address conflicts of interest in the Investigation process in consultation with the Office of the General Counsel.

## **2.4 Alternative Resolution**

At any time during the Investigation, OACT may propose an Alternative Resolution

### ***2.4.1 Application***

An Alternative Resolution resolves a Complaint or Report through means other than Closure, Referral, or Investigation. Before or during an Investigation, and with or without the initiation of the Complainant or the Respondent, OACT may determine at its discretion whether an Alternative Resolution may be appropriate given the content or context of the Report or Complaint or other facts or circumstances. Before proposing an Alternative Resolution, OACT staff will consult with the Director of OACT to determine whether an Alternative Resolution would be appropriate based on the facts and circumstances of the case, and, if so, what type(s) of Alternative Resolution to consider. OACT may impose a stay of Investigation, including all deadlines, as OACT and/or the Parties consider or pursue the Alternative Resolution process.

### ***2.4.2 Examples of Alternative Resolution***

Processes that may be proposed by OACT to reach an Alternative Resolution include but are not limited to educational meeting(s), mediation, administrative actions, facilitated dialogue, conflict coaching, and restorative practices. The university will document any Alternative Resolution, and OACT will retain the documentation.

### **2.4.3 Voluntary**

The process of trying to reach an Alternative Resolution is voluntary (i.e., neither the Respondent nor a Complainant is required to participate). At any time during an Alternative Resolution process, either the Complainant or the Respondent may request that the process end and that OACT resolve the Complaint or Report through one of the other resolution methods outlined in these procedures.

### **2.4.4 Alternative Resolution Agreement**

An Alternative Resolution Agreement shall in all cases be signed by the Director of OACT and the Respondent, and shall include a waiver of the Respondent's right, if any, to resolve the allegations through an Investigation, informal or formal hearing process, or other grievance process provided under university policy.

Prior to the execution of an Alternative Resolution Agreement, if a Complainant has not participated with OACT in the discussion of an Alternative Resolution, then OACT will provide the Complainant with an opportunity to provide a timely objection to the proposed Alternative Resolution.

In appropriate cases, OACT may request that the Complainant sign an Alternative Resolution Agreement and determine that the Alternative Resolution Agreement is not effective without the Complainant's signature. Neither the Respondent nor the Complainant may revoke or appeal an Alternative Resolution Agreement. If an Alternative Resolution Agreement is not reached, then the Complaint or Report will be resolved through one of the other resolution methods outlined in these procedures.

## **Section 3**

### **ADDITIONAL AND RELATED INFORMATION**

#### **3.1 Effect on Other University Processes**

If a Party is participating in a concurrent university process during an Intake Review or Investigation, including (without limitation) a tenure and promotion process, a grade appeal process, a student conduct disciplinary process, or an employee disciplinary process, OACT's Executive Director will consult with the Vice Chancellor for Faculty Affairs/Provost (for cases involving a faculty member or academic-related appeal), the Chief Human Resources Office (for cases involving a staff member), or the Director of Student Conduct & Care (for disciplinary cases involving a student) to determine the appropriate order or timing of such processes. OACT may stay the OACT processes outlined above, if appropriate, until the conclusion of a separate university process.

#### **3.2 Relationship of Complaint Process to Outside Agency Time Limits**

The filing of a Complaint does not excuse a Party from meeting deadlines set by the university, law, or an outside administrative agency.

#### **3.3 Modification of Procedures**

OACT may extend the time frames referenced in these procedures at its discretion. Additionally, the Vice Chancellor for Access and Engagement may suspend or modify the processes outlined above, when, in the VCAE's judgment, an emergency or other unforeseen condition requires such modification to ensure the orderly functioning of the university and/or to safeguard the basic rights of the Parties. OACT will

provide written notice of any such modifications to the Parties, including the bases for the modifications, should they occur.

### ***3.4 Documentation***

OACT will maintain documents related to Complaints and Reports as required by law or policy.

### **3.5 Distinction between Privacy and Confidentiality**

For clarity, OACT privacy should be distinguished from confidentiality.

#### ***3.5.1 Confidentiality***

OACT is not a “confidential resource” as defined in university policy. If a Complainant or Reporter desires to communicate with someone who, by law or by university policy, can keep information confidential, then the Complainant should access the list of confidential resources outlined at [here](#).

#### ***3.5.2 Privacy***

Information communicated to OACT will be kept as private as possible as OACT completes the Intake Review process. This means that the information will be shared only with the university employees whom OACT determines need to be involved in responding to the information unless disclosure is otherwise permitted or required by law. OACT will keep Complaints and Reports, and all subsequent documentation, correspondence, interview notes, and other information obtained during the Intake Review, Investigation, or Alternative Resolution processes private to the extent possible while resolving the Complaint or Report. OACT may, at its discretion, and in order to protect the integrity of an Investigation or other OACT process, instruct Parties and Witnesses not to disclose private information learned through engagement with OACT.