

JP 8 Austin College Discrimination, Harassment, and Retaliation Policy

Approved by SLT: 4/6/2021

JP8 - Policy on Discrimination, Harassment, and Retaliation

Purpose

It is the policy of Austin College to create an educational and working environment that provides all members of the Austin College community equal access to College activities and programs. In accordance with federal and state law, Austin College prohibits unlawful discrimination, harassment, and retaliation on the basis of age, race, color, religion, sex, sexual orientation, gender, gender identity, national origin, ethnic origin, disability, predisposing genetic information, covered veteran status, and any other basis protected by law.

This policy provides information regarding Austin College's prohibition on non-sexual misconduct: discrimination, harassment, and retaliation. This policy explains how the College will respond once it receives a Report or receives a Formal Complaint of prohibited conduct. The processes described herein are tailored to address unacceptable behavior in a manner consistent with the College's values and status as a private institution of higher education, while meeting the legal obligations of Title VI, Title VII, and other applicable Federal and State laws and regulations. Basic fairness and reasonable expectations are strictly defined by the processes described in this policy. To make a request for a reasonable accommodation, students and employees must contact the Chief Human Resource Officer.

This policy does not create a contract with students, employees, or any other party.

Jurisdiction

This policy applies to applicants for admission or employment and the following members of the Austin College community: currently enrolled students and current employees; trustees; third-party consultants, vendors, and contractors when they are doing business with Austin College; individuals who perform services for Austin College such as volunteers; and visitors, guests, and other third parties under circumstances within Austin College's control.

This policy applies to conduct that takes place:

- on the campus or Austin College premises;
- in the context of any Austin College sponsored program, activity, or event, regardless of location;
- through the use of Austin College owned or provided technology resources; or
- off-campus and/or online when the conduct, as determined by the College, is likely to have an adverse effect on Austin College and/or the pursuit of its objectives, members of the Austin College community, or is likely to create, continue, or contribute to a hostile environment as determined by Austin College.

In determining if the conduct is likely to have an adverse effect, Austin College may consider whether:

- the reported action constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- it appears that the respondent may present a danger or threat to the health or safety of self or others as determined by the College;
- the conduct significantly impinges upon, as determined by the College, the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder;
- the conduct is detrimental to the educational interests of Austin College, as determined by the College;
- any other relevant factor(s) as determined by Austin College.

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Prohibited Conduct

Discrimination

The unlawful differential and adverse treatment of an individual or group based on an individual's or group's age, race, color, religion, sex, sexual orientation, gender, gender identity, national origin, ethnic origin, disability, predisposing genetic information, covered veteran status, and any other basis protected by law that is objectively offensive and unreasonably interferes with or limits an individual's or group's ability to participate in or to realize the intended benefits of an institutional activity, employment, receipt of reasonable accommodations, or other resources. Examples may be when the conduct interferes with:

- A student's or applicant for admission's ability to participate in, access, or benefit from educational programs, services or activities (e.g., admission, academic standing, assignment, campus housing);
- An employee's or applicant for employment's access to employment or conditions and benefits of employment (e.g., hiring, advancement, assignment, training opportunities);
- An authorized volunteer's ability to participate in a volunteer activity; or
- A guest's or visitor's ability to participate in, access, or benefit from Austin College's programs.

Harassment

Unwelcome conduct based on an individual's or group's age, race, color, religion, sex, sexual orientation, gender, gender identity, national origin, ethnic origin, disability, predisposing genetic information, covered veteran status, and any other basis protected by law, that is objectively offensive and when:

- Submitting to or enduring such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any Austin College program, activity, or benefit;
- Submission to or rejection of such conduct is used, implicitly or explicitly, as the basis for decisions affecting an individual's education (e.g., admission, academic standing, grades, assignment); employment (e.g., hiring, advancement, assignment); or participation in an Austin College program, activity or benefit;
- In the employment context, such conduct is sufficiently severe or pervasive that it unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment, or;
- In the education context, such conduct is sufficiently severe, persistent, or pervasive that the conduct interferes with the student's ability to participate in or benefit from educational programs or activities at Austin College.

To determine whether an educational or work environment was objectively offensive, the person appointed by the College will consider the totality of the circumstances, including (1) the frequency of the discriminatory / harassing conduct; (2) its severity; (3) whether it is physically threatening or humiliating, or merely an offensive utterance; and (4) whether it interferes with an employee's work performance or a student's ability to participate in or benefit from the educational programs or activities at Austin College. No single factor is determinative. The required level of severity or seriousness may vary inversely with the pervasiveness or frequency of the conduct. A single incident of harassment, if sufficiently severe, or a continuous pattern of less severe incidents of harassment could give rise to a viable formal complaint. A regular pattern of frequent verbal ridicule or insults sustained over time can constitute severe or pervasive harassment sufficient to violate this policy.

Austin College encourages individuals to report any incidents of discrimination and harassment to ensure they receive appropriate supportive measures, as determined by Austin College, and maintain access to their employment and/or education.

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Retaliation

Austin College forbids retaliation against an individual as a result of filing a complaint of discrimination or harassment or participating in an investigation of a complaint of discrimination or harassment. No hardship, loss, benefit, or penalty may be imposed on an employee, student, or third party in response to:

- Filing or responding to a bona fide complaint of discrimination or harassment.
- Appearing as a witness in the investigation of a complaint.
- Serving as an investigator of a complaint.

Any person who is found to have violated this aspect of the policy by the person appointed by the College may be subject to immediate emergency removal or administrative leave and disciplinary action up to and including suspension, expulsion, termination of employment, or any other action deemed appropriate by the person appointed by the College to resolve retaliation.

Reports and Formal Complaints

Reports are communications to Austin College that behavior potentially violating a policy has occurred. A report is not a request for an investigation or adjudication into these behaviors. Investigations and adjudications are triggered by the filing of a Formal Complaint (see Formal Complaints below)

Reports of discrimination, harassment, or retaliation must be made to the Chief Human Resource Officer:

- Melanie Oelfke, 900 N. Grand Ave., Suite 6I Sherman, TX 75090.
- Phone: 903.813.2433 and Email: moelfke@austincollege.edu
- Reports may also be submitted to the Chief Human Resource Officer through the Campus Conduct Hotline (CCH) (866-943-5787), or the Online Campus Conduct Reporting tool, both of which are linked at the bottom of every Austin College webpage via "Campus Conduct Hotline."
- If a report is made to anyone else, the reporter risks the possibility that it will not come to the attention of the appropriate College authorities and may, therefore, not be acted upon officially by an Austin College employee with authority to redress the allegations (Chief of HR).

Any person may make a report of discrimination, harassment, or retaliation to the Chief Human Resource Officer. Austin College will likely be limited in its response when reports are made by, or against, individuals that are not under Austin College's control. All persons have the right to contact law enforcement or other resources outside of Austin College's process.

Once reported to the Chief Human Resource Officer, the College may take any appropriate immediate action, as determined by the College, including Administrative Leave, Emergency Removal, and Supportive Measures. Supportive measures are immediate non-disciplinary efforts that should prohibit any further discriminatory or harassing action and may redress the alleged actions without having to go through the Formal Complaint Process. Supportive Measures are available as appropriate with or without the filing of a Formal Complaint.

Supportive Measures may be: Counseling; Extensions of deadlines or other course-related adjustments; Modifications of work or class schedules; Campus escort services; Mutual restrictions on contact between the parties; Changes in work or housing locations; Leaves of absence; Honoring an order of protection or a no-contact order entered by a State civil or criminal court; Increased security and monitoring of certain areas of the campus; taking corrective action; Other measures determined by the College to be appropriate.

Individuals receiving a No Contact Order are not entitled to an explanation of the alleged conduct, unless and until there is a Formal Complaint allowed to proceed by the person appointed by the College to make that determination.

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Formal Complaints of discrimination or harassment are official requests that Austin College conduct an investigation into the alleged misconduct, make determinations regarding responsibility for an alleged policy violation, and implement appropriate sanctions against the respondent(s) if found responsible using a preponderance of the evidence standard. Formal Complaints must be filed with the Chief Human Resource Officer. (contact information above) The Formal Complaint should contain all known details about the allegations of misconduct including: date and time, location, parties, what happened, witnesses, and any other information relevant to the complaint. The Chief Human Resource Officer or their designee may ask for additional details after receiving the initial Formal Complaint.

Formal Complaints of Faculty behavior will be forwarded to the Vice President for Academic Affairs and will proceed under the process articulated in JP4 Judicial Guidelines and Procedures for the Faculty. Formal Complaints of Student behavior will be forwarded to the Vice President for Student Affairs or their designee and will proceed under this policy. All other Formal Complaints will be handled by the Chief Human Resource Officer and will proceed under this policy. A Formal Complaint may be filed by the Chief Human Resource Officer on behalf of another, when determined appropriate by the College. A person who reports allegations of discrimination or harassment but declines to file a Formal Complaint will have limited participation in College initiated resolution process. In this instance, the reporter will not be entitled to knowledge of the outcome or ability to appeal the dismissal of a formal complaint or the determination regarding responsibility.

Formal Complaint Process - After the person appointed by the College determines that the Formal Complaint may proceed (explained below) all parties are entitled to: notice of the allegations, an opportunity to present evidence and witnesses to an investigator, and an opportunity to be heard by the decision maker before a final decision is made. After an investigator completes the investigative report, it will be forwarded to the Decision Maker. The Decision Maker may then schedule separate meetings with the parties or witnesses and ask follow-up questions of both parties and witnesses, including those that challenge credibility. The Decision Maker may schedule additional meetings with parties or witnesses as determined appropriate by the Decision Maker. There will be no cross examination conducted by parties or their advisors. Both parties are allowed to have a Party Advisor who may be an attorney. However, Party Advisors may not advocate on behalf of the person they are advising during meetings, investigations, or hearings, nor may they interfere with the process, as determined by Austin College. The Decision Maker may be the Chief Human Resource Officer, the Vice President for Student Affairs, the Vice President for Academic Affairs, or their assigned designee(s). Individuals are assumed not responsible unless and until they are found responsible using the preponderance of the evidence standard (more likely than not) under this policy. Sanctions may only be implemented after a respondent is found responsible for a policy violation using the procedure listed above.

Sanctions may be: Expulsion, Suspension, Probation, Educational Sanctions, Revocation or withholding of admission or degree pending completion of other sanctions, No Contact Orders, Time and place restrictions or bans, Housing restrictions, Extension of requirements used as supportive measures, Community Service, Loss of Privileges, Notation in permanent record, Sanctions withheld, such as additional sanctions if deadlines for sanctions are not met, Restorative justice requirement, Specific sanctions that must be met before resuming status at Austin College, Referrals for assessment, such as counseling or medical assessment, Written warning or reprimand, Oral warning or reprimand, Termination of employment, Other sanctions deemed appropriate by the person(s) appointed by the College.

Formal Complaint Requirements - A Formal Complaint may only be submitted by: 1) the individual who is alleged to be the victim of conduct that could constitute discrimination or harassment, or 2) the Chief Human Resource Officer when they determine it is appropriate to do so. The Formal Complaint should contain all known details about the allegations of misconduct including: date and time, location, parties, what happened, witnesses, and any other information relevant to the complaint. At the time of filing a formal complaint, the complainant must be a current student or current employee. A formal complaint may not be filed by a student or employee on behalf of another person who is alleged to be a victim of

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discrimination or harassment, nor may a Formal Complaint be filed anonymously. The complainant cannot remain anonymous or prevent the complainant's identity from being disclosed to the respondent via the written notice of allegation.

The Chief Human Resource Officer or their designee must dismiss the Formal Complaint if the conduct alleged in the Formal Complaint: 1) would not constitute Prohibited Conduct (as defined in this policy) even if proved, 2) did not occur under the jurisdiction requirements listed in this policy. The Formal Complaint must also be dismissed if the complaint: 3) was not filed by a named student or employee, or 4) the respondent is no longer enrolled at or employed by Austin College, or under the College's jurisdiction.

At any point during the process the Chief Human Resource Officer or their designee may dismiss the complaint if: When a formal complaint contains allegations that are precisely the same as allegations the College is, or has already investigated and adjudicated; When the length of time elapsed between an incident of alleged discrimination or harassment, and the filing of a formal complaint, prevent Austin College from collecting enough evidence to reach a determination as determined by Austin College; and When the complainant has stopped participating in the investigation.

Determinations Regarding Responsibility - After all relevant evidence has been collected, reviewed, and responded to by the parties, the Decision Maker will review the evidence and meet with the parties/witnesses individually as needed to ask relevant follow up questions, including those that question credibility as appropriate. The determination regarding responsibility will then be made using the preponderance of the evidence standard (more likely than not). The Decision Maker appointed by the College will issue a written determination regarding responsibility with the following sections:

- (A) Identification of the allegations;
- (B) Findings of fact supporting the determination;
- (C) Conclusions regarding the application of Austin College's policy to the facts;
- (D) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility and any disciplinary sanctions Austin College imposes on the respondent.

Appeals - Once written notification of the dismissal of a Formal Complaint or any allegations therein has been issued, both parties have the right to submit an appeal to the Chief Human Resource Officer.

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Appeals may only be submitted by a party to the action and solely upon the following four grounds:

- 1) Procedural irregularity that affected the outcome of the matter; 2) New material evidence that was not reasonably available at the time the Investigative Report was published or dismissal of allegations was made, that could affect the outcome of the matter; 3) Conflict of interest/bias - The investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. 4) Sanction is disproportionate to the violation.

Appeals must be submitted in writing to the Chief Human Resource Officer within 72 hours of receiving the notice of dismissal or decision regarding responsibility. If the appeal is accepted, any information that is submitted will be made available to the other party for review. The other participant may submit a rebuttal of the appeal in writing to the Chief Human Resource Officer within 7 days of receiving the appeal information. Upon receiving an appeal and rebuttal, if one is submitted, the Chief Human Resource Officer will refer it to the appropriate appeal agent for review and final decision making.

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- Appeals addressing procedural Irregularities in the investigation and resolution process in a way that substantially altered the outcomes of the case shall be referred to an alternate investigator(s) and or decision maker(s) for review and decision making.
- Appeals providing substantive new evidence, which is information that was not reasonably available before or? during the investigation or dismissal was made and that could affect the outcome of the matter shall be referred to the investigator(s) and or decision maker(s) for consideration and determination of a finding based on the new information.
- Appeals alleging a Conflict of Interest/Bias by the Decision Maker for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome of the matter shall be referred to an alternate investigator(s) and or Decision Maker(s) for review and decision making.
- Appeals alleging that the sanction is disproportionate to the violation shall be assigned to the following appellate agents for review and decision making:
 - a) The Vice President for Business Affairs or designee if the responding participant is a staff member,
 - b) The Vice President for Student Affairs or designee if the responding participant is a student.

Austin College will seek to complete the appeals process in a reasonable amount of time as determined by the College unless Austin College determines in its discretion that more time is required. Austin College will provide periodic updates as it deems appropriate. The appropriate appeals agent will issue a written decision describing the result of the appeal and the rationale for the result. The Chief Human Resource Officer or designee will notify the participants simultaneously, to the extent possible, in writing of the appeal agent's decision. Finding and sanction decisions made by the appeal agent are final.

Informal Resolution - When determined appropriate by the Chief Human Resource Officer, the informal resolution process may be used to resolve allegations by taking immediate and corrective action to stop the conduct, address its effects, and prevent recurrence without implementing a formal resolution process. An informal resolution process may also include a remedies-based process (mediation), which allows both participants to come to a mutual agreement regarding the resolution of the complaint. Informal resolutions may reach agreements between the parties, facilitated by the Chief Human Resource Officer or their designee, that include continued supportive measures but that also could include disciplinary measures, while providing finality for both parties in terms of resolving allegations raised in a formal complaint of discrimination, harassment, or retaliation.

The informal resolution process may include the range of supportive measures described above, as well as targeted or broad-based training and educational programming for relevant individuals and groups or any other remedy that will achieve the goals of the College's policy. For example, both participants may agree that the permanent application of supportive measures (e.g. no-contact order) may be sufficient to resolve the complaint. This option is available if the College determines that such a process would be appropriate, and all participants agree to participate.

To enter into the Informal Resolution process, both parties must provide voluntary written consent to the College after receiving and reviewing the notice of allegation and the rules regarding the Informal Resolution process. At any time prior to the final Informal Resolution agreement either party may withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

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Additional Provisions

Academic Freedom - Austin College is committed to upholding the tradition of academic freedom. This policy is not intended to restrict teaching methods or freedom of expression, nor will it be permitted to do so. The proper exercise of academic freedom does not include harassment or discrimination as defined by this policy.

Administrative Leave - The Process by which Austin College places a non-student employee respondent on administrative leave during the pendency of a grievance process. This process may be used when determined appropriate by the Chief Human Resource Officer.

Emergency Removal - The Process by which Austin College may remove a respondent from the College's education program or activity on an emergency basis, provided that the Chief Human Resource Officer or their designee undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student, employee, or other individual arising from the allegations of discrimination, harassment, or retaliation justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. Austin College retains discretion on a case-by-case basis in determining if and when it is appropriate to contact a student's parents when the emergency removal tool is used.

Parental Notification – Austin College retains discretion on a case-by-case basis in determining if, and when, it will be appropriate to contact a student's parent(s) or guardian(s). Students are encouraged to inform their parent(s) or guardian(s) if they are involved in a disciplinary action and should refer them to the Chief Human Resource Officer or their designee and this policy for questions.

Relevant Evidence - The Formal Resolution Complaint? Process will provide an objective evaluation of all relevant evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness. Relevant Evidence is defined as evidence:

- Tending logically to prove or disprove a fact of consequence or to make the fact more or less probable and thereby aiding the trier of fact in making a decision. What does this mean?
- Having a significant and demonstrable bearing on the matter at hand.

Extensions of Time - Any party who wishes to request a temporary delay in the grievance procedure or the limited extension of time frames must submit a written request to the Chief Human Resource Officer or their designee that details why that party is requesting the delay/extension. The party filing the request must demonstrate good cause for the delay/extension to be granted. The Chief Human Resource Officer or their designee will make a determination regarding the request for delay/extension. If the request is denied, the requesting party will receive notice of the decision and the reasons why the request was denied. If the request is granted, both parties will receive written notice of the delay/extension and the reasons for it. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. Delays caused solely by administrative needs would be insufficient to satisfy this standard.

Even where good cause exists, Austin College may only delay the grievance process on a temporary basis for a limited time. A respondent (or other party, advisor, or witness) would not be able to indefinitely delay a proceeding by refusing to cooperate. The grievance process can proceed to conclusion even in the absence of a party or witness.

Responsibility to Cooperate - Process Participants under Austin College's control must cooperate in good faith with Austin College investigations. Refusal to cooperate in good faith with an investigation may

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result in disciplinary action. An employee's or student's refusal to cooperate with processes described in this policy will be reported to the Chief Human Resource Officer or their designee who may implement disciplinary action against those unwilling to cooperate.

Responsible Employees - A college employee who has the authority to redress misconduct under this policy. Designated Responsible Employees under this policy are the Chief Human Resource Officer. A responsible employee is not a person who has, or appears to have, the obligation to report instances of discrimination, harassment, or retaliation.

Austin College employees are not designated mandatory reporters under this policy. While employees may forward learned of allegations of discrimination or harassment to the Chief Human Resource Officer under their own discretion, they are not under any legal or college mandated obligation to do so (Unless required by any federal or state law or regulations). Individuals seeking supportive measures or an official response by the College must report to the Chief Human Resource Officer.

Party Advisors - Advisors who step outside their role, as determined by the College, may be dismissed from the process by the applicable Decision Maker. Advisors may be required to sign paperwork acknowledging their role and agreement to the policies of Austin College before they participate in a process.

Parties must give Austin College notice of their party advisor before any meeting, interview, hearing or other occasion where the party advisor will be present.

Nature of Policy - Austin College reserves the right to modify this policy at any time without notice.