



Disability-Based Discrimination and Grievance Procedure	
Responsible Official: University Counsel	Responsible Office: Office of University Compliance

Policy Purpose

The purpose of this policy is to ensure thorough and fair investigations and prompt and equitable resolution of reports alleging any conduct prohibited by Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, both as amended.

Policy Statement

East Tennessee State University (ETSU) prohibits and seeks to eliminate all forms of disability-based discrimination in education programs, housing, and employment. ETSU has a responsibility to respond promptly and effectively to disability-based discrimination about which ETSU knows or reasonably should know. ETSU employees, students, and applicants for admission or enrollment can report disability-based discrimination 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
 - b. ETSU employees
 - c. Applicants for admission at ETSU
 - d. Applicants for employment at ETSU
2. Issues that are grievable include but are not limited to:
 - a. A denial of a requested accommodation;
 - b. Inaccessibility of a university program or activity due to disability;
 - c. Harassment or discrimination on the basis of disability; or
 - d. Any other alleged university violation of the Americans with Disabilities Act or the Rehabilitation Act.

3. A student or employee who has been denied a requested accommodation or otherwise disagrees with an accessibility services accommodation decision is encouraged – but not required – to discuss their concern with the ADA/504 Coordinator.
4. This policy and procedure applies to all disability-based discrimination reported to have occurred on or after the effective date of this policy.
 - a. If disability-based discrimination 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 disability-based discrimination 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.
5. This policy and procedure takes precedence over other university, college, or departmental policies and procedures concerning disability-based discrimination in the event of a conflict.
6. The university encourages students and employees to use the procedures in this policy before pursuing remedies outside the university, but the availability and use of this policy and procedure does not prevent a person from pursuing other remedies:
 - a. Students may file complaints of discrimination or retaliation on the basis of disability with the [Office for Civil Rights](#) in the United States Department of Education or the [Department of Justice](#).
 - b. Employees may file complaints of discrimination or retaliation on the basis of disability with the [Equal Employment Opportunity Commission](#), the [Office for Civil Rights](#) in the United States Department of Education, or [Tennessee Human Rights Commission](#).

B. 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' disability-based discrimination 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.

C. False Reports

1. A person who makes a report of disability-based discrimination 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.

D. ETSU Responsibilities

1. Once ETSU has notice of possible disability-based discrimination, 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.
2. 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 take action, or identifies the harassment as a form of discrimination.

E. Family Educational Rights and Privacy Act (FERPA)

1. 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 disability-based discrimination.
2. 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:
 - a. The student gives consent;
 - b. The university must respond to a lawfully issued subpoena or court order; or
 - c. The university is otherwise required by law to disclose.

F. Conflicts of Interest

1. 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.

2. 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.
 - a. 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.
 - b. 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.

G. Accommodations as part of Grievance Process

1. ETSU will make appropriate arrangements to ensure that disabled persons are provided reasonable accommodations, if needed, to participate in the grievance process. Such arrangements may include:
 - a. Allowing additional time to review reports
 - b. Providing reports in accessible formats
 - c. Permitting the presence of emotional support animals at interviews
 - d. Allowing ASL interpreters, communications support, or other assistive technologies
 - e. Assuring a barrier-free location for the proceedings.
2. The Director of Disability Services will be responsible for such arrangements.
3. To maintain due process, ETSU will inform all parties of the accommodations provided and provide the option of the same or similar accommodations to all parties.

Definitions

Disability	A physical or mental impairment that substantially limits one or more major life activities, having a history or record of such an impairment, or being regarded as having such an impairment.
Discrimination	For purposes of this policy, discrimination means treating someone differently based on an individual's disability when such treatment adversely affects a term, condition, or privilege of employment or participation in a university program, activity, or living environment, or having a policy or practice that has a disproportionate adverse impact on individuals with disabilities.

Harassment:	A form of discrimination. Unwelcome conduct based on an individual's actual or perceived disability that has the purpose or effect of creating a hostile environment.
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 one's employment or a university educational 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 disability-based discrimination 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 disability-based discrimination. 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 disability-based discrimination or assisting a person who opposes or reports disability-based discrimination to the university, the police, or a state or federal agency. Protected activity also includes participation in a disability-based discrimination inquiry, including an investigation, proceeding, or hearing.
Reasonable accommodations	Modifications in policies, practices, or procedures that are necessary to afford service to students or employees with disabilities unless the accommodations would fundamentally alter the nature of the service or create an undue hardship.
Report	Information provided to the Director of Disability Services or Compliance Officer regarding an incident of disability-based discrimination, whether provided by a reporting party, a responding party, a witness, or third party.
Reporting party	A person(s) who may have been subject to disability-based discrimination regardless of whether that person(s) makes a report or seeks action under this policy.
Responding party	A person(s) who is accused of committing disability-based discrimination.
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.

Authority: TCA § 49-8-203 et seq., Section 504 of the Rehabilitation Act of 1973 (amended); the Americans with Disabilities Act of 1990 (amended)

Policy History

Effective Date

Initial: 1/16/2020

Revised:

Procedure (s)

I. Reporting Options

A. Office of University Compliance

1. The university's Office of University Compliance oversees compliance with all aspects of the university's policy against disability-based discrimination.
2. Reports or complaints of disability-based discrimination may be filed with ETSU's Compliance Officer by contacting 423-439-8545 or compliance@etsu.edu. The Compliance Officer is also accessible for consultation and assistance about reporting options.
3. Individuals may also report disability-based discrimination to ETSU's Director of Disability Services.
4. Reports should be filed as soon as possible, but in no event later than 360 calendar days of the last incident of discrimination or violation of policy.
 - a. Reports brought after that time period will not be pursued absent extraordinary circumstances.
 - b. The Compliance Officer will determine whether a report was timely or whether extraordinary circumstances exist in conjunction with ETSU Compliance Counsel.

B. Confidentiality

1. Information communicated to the Compliance Officer or Director of Disability Services 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 disability-based discrimination 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 disability-based discrimination and preventing discrimination of other individuals.

I. Grievance Procedure

A. Scope

1. Use of this grievance procedure applies to reports alleging disability-based discrimination carried out by employees, students, or third parties.
2. All reports of disability-based discrimination are taken seriously. At the same time, those accused of disability-based discrimination are presumed innocent throughout this grievance procedure.
3. After receiving a report of disability-based discrimination, 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 individual reporting the conduct, falls within the scope of this policy and if so, initiate the investigation and resolution procedures outlined below.
4. The Compliance Officer has discretion to administratively close a report of disability-based discrimination if after an initial assessment:
 - a. The allegations as stated do not constitute a violation of this policy and procedure; or
 - b. The report is untimely and extraordinary circumstances do not exist.
5. If the allegations as stated do not constitute a violation of this policy, the Compliance Officer notifies the reporting party and directs them to the appropriate university office or department to resolve the report.

B. Denial of Requests for Accommodation

1. Students, employees, or applicants for admission or employment who disagree with a decision regarding a request for accommodation may seek informal review of such decision by contacting the Director of Disability Services.
2. Requests for review of an accommodation decision should be made promptly, and in any event within 30 days of the decision being made, unless the student, employee, or applicant for admission or employment can show good cause for the delay.
3. The Director of Disability Services conducts a thorough review of the request. If a request for review of an accommodation decision is resolved through an informal process, the matter will be closed.

4. If the Director of Disability Service's informal review is unsuccessful, the Director of Disability Services informs the person of their efforts and the person's right to make a report of a denial of a request for accommodation with the Office of University Compliance.
 - a. The Compliance Officer reviews a denial of a request for accommodation within 7 business days of receiving a report of a denial of a request for accommodation.
 - b. The Compliance Officer's decision on the matter is final.

C. Requests for Informal Resolution

1. Requests for informal resolution of reports of discrimination may be made to the Compliance Officer in the Office of University Compliance.
2. Informal resolution is voluntary and may be ended by any party at any time before its completion. If an informal resolution process is ended by any party, information obtained may be used in a subsequent formal resolution process.
3. Informal resolution concludes the matter only when all parties have signed a written agreement that confirms resolution of disability-based discrimination allegations.
 - a. The resolution agreement includes 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 allegations against the responding party proceed with a formal investigation.

II. Formal Investigations

A. General

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 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 gives written notice to the reporting party and responding party of the investigation, providing sufficient details to allow the parties to prepare for initial interviews, and designate two investigators to investigate.

- c. A responding party may respond in writing to a 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. Failing or refusing to cooperate or interfering 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.

B. Investigation

1. 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 an agreed-upon 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.
 - i. 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 its investigation.
 2. 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.
 3. 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 interference with investigations.
 - v. Any advisor who steps out of their role during an investigation process will be 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.
 4. 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 will conduct any further investigation necessary or appropriate.
 5. 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 will receive simultaneous notice of the investigators' final report.
 - c. Appropriate ETSU administrator(s) receive the final report and are responsible for deciding whether the responding party violated one or more university policies.
6. 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 Policy](#)
 - ii. [Tenure](#)
 - c. Staff:
 - i. [Progressive Disciplinary Procedures](#)

Procedure History

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Related Form(s)