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## **1. Non Discrimination, Sexual Harassment, and Sexual Misconduct Policy**

### **1.1 Statement of Policy**

The University of Texas of the Permian Basin is committed to the principle that the working and learning environment provides equal opportunity to all of the University's faculty, staff and students and should be free from discrimination and from illegal and inappropriate conduct of a sexual nature. In accordance with federal and state law, the University prohibits unlawful discrimination on the basis of race, color, religion, national origin, gender, age, disability, citizenship, and veteran status. In addition to compliance with all applicable federal and state laws and regulations, no person is to be subject to discrimination on the basis of sexual orientation regarding admissions; employment; or access to programs, facilities or services of The University of Texas Permian Basin. External users of University facilities should also be encouraged to adhere to principles of fair treatment and equal opportunity except as otherwise authorized by laws or governmental regulations. (UTS 105) Sexual harassment and sexual misconduct are unprofessional behaviors and individuals who engage in such conduct will be subject to disciplinary action up to and including termination.

Every supervisor, administrator, and University official should promptly report alleged incidents of discrimination, sexual harassment, or sexual misconduct that come to their attention to the Dean of Students in cases involving students, or to the Director, Office of Human Resources, for all other situations.

#### **1.11 Scope of Policy**

This policy applies to all faculty members, administrators, staff, students, and applicants for employment or admission of The University of Texas of the Permian Basin. It applies to discrimination and to unwelcome conduct that violates state and federal laws concerning sexual harassment and to inappropriate conduct of a sexual nature. It is also applicable regardless of the gender of the complainant or the alleged harasser. This policy is the principal prohibition of all forms of discrimination on campus, except as follows:

Complaints concerning wages, hours of work, working conditions, performance evaluations, merit raises, job assignments, reprimands, and the interpretation or application of a rule, regulation or policy that do not involve allegations of discrimination are governed by Handbook of Operating Procedures, Part III, Section 13, Grievance Policies and Procedures.

## **1.12 Options to Address Concerns or Complaints**

1.121 The University of Texas of the Permian Basin provides informal intervention and formal complaint procedures that individuals may use to address concerns or complaints. The informal process described in this policy may be used as a prelude to filing a formal complaint, or as an alternative. It is not necessary that the informal option be used. Anyone who believes that he or she has been subjected to discrimination or sexual harassment may immediately file a formal complaint by following the procedures outlined in this policy. Individuals may have a person of their choice assist them with the process.

1.122 Information is available in the Office of Human Resources to assist members of the University community:

1.1221 help the complainant understand the definition of discrimination and sexual harassment and determine if the alleged conduct, if true, would constitute discrimination or sexual harassment;

1.1222 explain the various informal and formal options available to the individual; and

1.1223 identify various support services available to the individual.

1.123 Counseling services are available through the Office of Human Resources and the Employee Assistance Program to employees who have complaints about discrimination, sexual harassment, or sexual misconduct.

1.124 Any investigation revealing that a claim of discrimination, sexual harassment, or sexual misconduct was based upon maliciously false information will result in disciplinary action up to and including termination for the individual making such false statements.

## **1.13 Retaliation Prohibited**

A faculty member, staff or student who retaliates in any way against an individual who has brought a complaint in good faith pursuant to this policy or an individual who has participated in good faith in an investigation of such a complaint is subject to disciplinary action up to and including termination.

## **1.14 Confidentiality**

The University of Texas of the Permian Basin will endeavor to maintain confidentiality to the extent permitted by law. Where the complainant's desire to maintain anonymity may constrain attempts to establish facts and eliminate the potential discrimination or harassment, the University will attempt to find the right balance between the complainant's desire for confidentiality with the responsibility of the University to provide an environment free of discrimination and harassment. However, the University may take more formal action to ensure an environment free of discrimination, sexual harassment or sexual misconduct.

## **1.2 Informal Intervention**

1.21 Requests for informal intervention should be directed to the Office of Human Resources Director or Dean of Students. An individual is provided assistance to attempt to resolve possible discrimination or harassment if he or she does not wish to file a formal complaint. Such assistance includes developing strategies for the individual to effectively inform the offending party that his or her behavior is inappropriate or unwelcome and should cease; action by an appropriate University official to stop the unwelcome conduct; or mediation. However, the University may take more formal action to ensure an environment free of discrimination, sexual harassment or sexual misconduct. This action may include an interview with the offending party or additional University-wide training. The University will document the existence and resolution of informal interventions. The Office of Human Resources Director or Dean of Students, as appropriate, shall review the status of requests for informal intervention that have not been resolved within 60 days and document the reason for delay of resolution. Such documentation will be retained by the Office of Human Resources Director or Dean of Students, as appropriate, and will be kept confidential to the extent permitted by law.

## **1.3 Formal Complaint Procedures**

The following are the steps that an individual must follow in the formal complaint procedure.

### **1.31 Filing a Formal Complaint**

(This complaint procedure also constitutes the grievance procedure for complaints alleging unlawful sex discrimination required under Title IX of the Education Amendments of 1972.)

As used herein, "complaint" is synonymous with "grievance."

A written complaint must be filed within thirty (30) calendar days of the occurrence of the alleged violation. In the case of a currently enrolled student, if the last day for filing a complaint falls prior to the end of the academic semester in which the alleged violation occurred, then the complaint may be filed within fifteen (15) calendar days after the end of the semester.

When the accused individual is a student, the complaint must be made to the Dean of Students. All other complaints must be submitted to the Office of Human Resources Director. In no case will a complainant be required to report such behavior to the person accused of the misconduct. If a supervisor receives a complaint, he or she will immediately notify the Office of Human Resources Director. The Office of Human Resources Director or the Dean of Students will advise the complainant of the procedures for filing a formal complaint,

To initiate the investigation process, the complainant should submit a written statement setting out the details of the conduct that are the subject of the complaint including the complainant's name, signature, and contact information; the name of the person directly responsible for the alleged violation; a detailed description of the conduct or event that is the basis of the alleged violation; the date(s) and locations of the occurrence(s); the names of any witnesses to the occurrence(s); the resolution sought; and any document or information that is relevant to the complaint. While an investigation may begin on the basis of an oral complaint, the complainant is strongly encouraged to file a written complaint. When a supervisor or the Dean of Students receives a written complaint, he or she will immediately notify the Office of Human Resources Director.

### **1.32 Complaint Investigation**

The Dean of Students or the Office of Human Resources Director, as appropriate, will investigate all complaints. If the complaint is not made in writing, the investigator will prepare a statement of what he or she understands the complaint to be and seek to obtain verification of the statement from the complainant. A failure to investigate and take appropriate action is a violation of this policy.

As part of the investigation process, the accused individual shall be provided with a copy of the complaint and allowed a reasonable time to respond in writing.

Any persons thought to have information relevant to the complaint shall be interviewed and such interviews shall be appropriately documented. Other acceptable methods for gathering information include but are not limited to visual inspection of material alleged to be offensive and follow-up interviews as necessary.

The investigation of a complaint will be concluded as soon as possible after receipt of the written complaint. The appropriate administrator overseeing the Office of Human Resources Director or Dean of Students, when a student is the subject of a complaint, shall review investigations exceeding 60 days. Justification for a prolonged investigation will be documented. The complainant, accused individual, and supervisor will be provided an update on the progress of the investigation after the review.

### **1.33 Report of Findings of Investigation and Recommendations for Action**

Upon completion of the investigation, a written report will be submitted to the appropriate administrative head or appropriate vice president. The report shall include findings of the investigation and a recommendation as to whether disciplinary action should or should not be pursued against the accused individual. A disciplinary penalty will be proposed if disciplinary action is recommended. Findings will be based on the totality of circumstances surrounding the conduct complained of, including, but not limited to: the context of that conduct, its severity, frequency, whether it was physically threatening, humiliating, or was simply offensive in nature. Subject to the Family Educational Rights and Privacy Act, a copy of the report will also be provided to the complainant and the accused who may submit comments regarding the report to the designated administrative head or vice president ten (10) working days from the date the report is mailed.

Within forty (40) working days from the date the report is mailed to the parties, the designated administrative head or vice president shall take one of the following actions: 1) request further investigation into the complaint; 2) dismiss the complaint if the results of the completed investigations are inconclusive or there is sufficient reasonable, credible evidence to support the allegation(s); or 3) find that this policy was violated. The complainant and the respondent shall be informed in writing of the administrative official's decision subject to the Family Educational Rights and Privacy Act, where applicable.

Recommendations for disciplinary action will be handled in accordance with the University's policy and procedures for discipline and discharge for faculty and staff. The Dean of Students will proceed with the investigation and disposition of a complaint against a student in accordance with the University's student disciplinary procedures.

~~Documentation will be kept for twenty four (24) months after the file is closed.~~

### **1.4 Policy Distribution and Training**

The policy will be made available to all faculty, staff and students. Periodic notices will be sent to students, employees and faculty about the University's Non Discrimination, Sexual Harassment and Sexual Misconduct Policy. The policy will include information about complaint procedures and will refer individuals to designated offices or officials for additional information. New employees will receive training within 30 days of their employment and all employees will receive additional training at least every two years.

## **1.5 Definitions**

1.51 **Discrimination:** Discrimination is conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment or education because of their race, color, religion, national origin, gender, age, disability, citizenship, veteran status, or sexual orientation.

1.52 **Sexual Misconduct:** Sexual misconduct includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual.

1.53 **Sexual Harassment:** Sexual harassment includes unwelcome sexual advances, requests for sexual favors, verbal or physical conduct of a sexual nature when:

1.531 submission to such conduct is made either explicitly or implicitly a term or condition of employment or student status;

1.532 submission to or rejection of such conduct is used as a basis for evaluation in making personnel or academic decisions affecting an individual; and/or

1.533 such conduct has the purpose or effect of unreasonably interfering with an individual's performance as a faculty member, staff member or student or creating an intimidating, hostile or offensive environment.

1.54 Examples of deliberate behavior that could be considered sexual misconduct or sexual harassment include but are not limited to:

1.541 physical contact of a sexual nature including touching, patting, hugging, or brushing up against a person's body;

1.542 explicit or implicit propositions or offers to engage in sexual activity;

1.543 comments of a sexual nature including sexually explicit statements, questions, jokes or anecdotes;

1.544 remarks of a sexual nature about a person's clothing or body; remarks about sexual activity;

1.545 speculations about sexual preference;

1.546 exposure to sexually oriented graffiti, pictures, posters, or materials; and/or,

1.547 physical interference with or restriction of an individual's movements.

## **1.6 Consensual Relationships Policy**

Romantic or sexual relationships between a faculty member and a student or between a supervisor and a person under his or her supervision create situations that may lead to sexual harassment, conflicts of interest, favoritism, and low morale. Therefore, the University strongly discourages consensual relationships between supervisors and subordinates, faculty and students and advisors and students. Failure to report such consensual relationships and to cooperate in making alternative arrangements may result in disciplinary action up to and including termination. This policy is not intended to discourage the interaction of faculty and students, and supervisors and employees where it is appropriate and ethical.

If a romantic or sexual relationship exists between a faculty member and a student who is enrolled in the faculty member's course, the faculty member has the obligation to disclose the relationship's existence to an immediate supervisor and cooperate in making alternative arrangements for the supervision, teaching, grading or advising of the student and/or student employee.

Supervisors have an obligation to disclose a romantic or sexual relationship that exists or develops between the supervisor and an employee under his or her supervision to an immediate supervisor and to cooperate in making alternative arrangements for the supervision of the employee.

The supervisor or employee or faculty member and student involved must understand appropriate behavior for the classroom and/or workplace. In the event that a complaint of sexual harassment or sexual misconduct is brought by the subordinate party regarding the relationship, there will be no presumption by the University that the relationship was consensual in nature.

Human Resources  
Non Discrimination, Sexual Harassment, and Sexual Misconduct Policy  
Approved November 15, 1995  
Revised May 27, 2005

Inappropriate behaviors that include displays of affection in the work environment are prohibited and may result in disciplinary action. A display of affection includes, but is not limited to, kissing, handholding, unwarranted comments of a sexual nature, and any deliberate physical contact that might cause humiliation or intimidation to other students, faculty or staff members.

## **2. Drug-Free Workplace Policies**

### **2.1 Drug-Free Workplace Policy Statement**

The University of Texas of the Permian Basin is required by the Drug-Free Workplace Act of 1988 (41 U.S.C.A. 701-707), to notify all employees that the unlawful manufacture, sale, distribution, possession or use of a controlled substance in or on any premises or property owned or controlled by The University is prohibited. A controlled substance is any substance so defined by federal or state statute or regulation.

Any employee who is found guilty (including a plea of no contest) or has a sentence, fine or other penalty imposed by a court of competent jurisdiction under a criminal statute for an offense involving a controlled substance that occurred in or on premises or property owned or controlled by The University shall report such action to the Office of Human Resources within five (5) days.

An employee who unlawfully manufactures, sells, distributes, possesses or uses a controlled substance in or on premises or property owned or controlled by The University, regardless of whether such activity results in the imposition of a penalty under a criminal statute, will be subject to appropriate disciplinary action, including termination, or will be required to participate satisfactorily in an approved drug assistance or rehabilitation program or both.

### **2.2 Purpose**

The purpose of this statement is to establish policy for employees of The University of Texas of the Permian Basin concerning manufacture, sale, possession, distribution, or use of alcohol or illegal drugs.

- 2.211 during working hours;
- 2.212 in a manner while off duty that impairs on-duty work performance or
- 2.213 in a manner while in attendance at an official University function or at an authorized University site that adversely affects the performance of the employee or may adversely affect the health or safety of any other person.

### **2.3 Enforcement**

- 2.311 An employee who violates the following policy may be subject to disciplinary action, including termination.

2.312 At the discretion of The University, the employee may be referred to an assistance program and/or may be required to participate in and satisfactorily complete a chemical abuse rehabilitation program as a condition of continued employment.

## 2.4 Policy

2.411 Unauthorized purchase, manufacture, distribution, possession, sale, storage or use of an illegal drug or controlled substance while on duty, while in or on premises or property owned or controlled by The University, or while in vehicles used for University business are prohibited.

2.412 The unauthorized use or possession of alcohol while on duty or while in vehicles used for University business is prohibited.

2.413 Use of alcohol or an illegal drug or controlled substance while not on duty which adversely affects job performance or may adversely affect the health or safety of other employees, students, visitors, or patient, is prohibited.

2.414 Use of alcohol at an authorized University function, in the course of official University business, or at an authorized University site which adversely affects job performance or may adversely affect the health or safety of any other person is prohibited.

2.415 Warnings about prescribed or over-the-counter medication and its impact on work performance or on individual or job safety must be heeded by the employee. A supervisor's advice and assistance may be necessary when job adjustments are required to ensure an employee's ability to perform assigned work in a safe manner because of use of such medications.

2.416 Distribution to others of a drug or controlled substance obtained pursuant to a prescription, except by duly licensed and certified persons, while on duty or while in or on premises or property controlled by The University is prohibited.

- 2.417 Employees who use illegal drugs or abuse controlled substances or alcohol are encouraged to seek help from available resources.

**2.5 Drug and Alcohol Testing Policy for Positions Requiring Commercial Drivers' Licenses**

This policy applies only to those persons who are applicants for or who are employed in positions that require a commercial drivers' license, otherwise referred to herein as safety-sensitive functions. A "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle:

**2.51 Commercial Vehicle**

- 2.511 has a gross combination weight rating in excess of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- 2.512 has a gross vehicle weight rating of 26,001 or more pounds;
- 2.513 is designed to transport 16 or more passengers, including the driver; or
- 2.514 is transporting hazardous materials and is required to be placarded in accordance with 49 CFR, Part 172, Subpart F. (Texas Traffic Laws, VCS Art.6687b-2,Sec.3 (6).)

The provisions of this drug and alcohol testing policy do not relieve an employee from requirements pursuant to other University policies on drugs and alcohol.

**2.52 Applicants for Employment:**

All applicants who have been conditionally accepted for employment in positions that require a commercial drivers' license will be required to provide a urine sample for testing for the presence of illegal drugs in accordance with the provisions of Section 2.57. A verified negative test result will be required on this controlled substance test. Additionally, they will be required to undergo alcohol testing in accordance with Section 2.57.

- 2.521 All published or posted notices of vacancies in positions covered by this Policy shall state that all applicants selected for hire will be required to consent to a urinalysis for the purpose of testing for the presence of illegal drugs.

- 2.522 Applicants selected for hire who refuse to consent to a urinalysis or who test positive for the presence of illegal drugs in prohibited concentrations will not be considered for employment in a position covered by this Policy and may not reapply for such employment for a period of six months.
- 2.523 Prior to signing the consent form for testing, applicants selected for hire will be informed of the testing procedures either orally or in writing.

### **2.53 Prohibited Employee Conduct**

#### 2.531 Alcohol Use

- 2.5311 use or possession of alcohol while on duty requiring the performance of safety-sensitive functions
- 2.5312 use of alcohol during four hours before being on duty requiring the performance of a safety-sensitive functions
- 2.5313 having prohibited concentrations of alcohol (.04 or greater) in system while on duty requiring the performance of safety-sensitive functions
- 2.5314 use during the 8 hours following an accident requiring a post-accident test (see 2.54 below) or until the employee undergoes a post-accident alcohol test, whichever occurs first

#### 2.532 Drug Use

- 2.5321 use or possession of controlled substances while holding a position requiring the performance of safety-sensitive functions, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial vehicle
- 2.5322 testing positive for controlled substances while holding a position requiring the performance of a safety-sensitive function

#### 2.533 Refusal to submit to required testing

- 2.534 Permitting a subordinate employee to perform or continue to perform safety-sensitive functions when the supervising employee has actual knowledge that a driver has engaged in conduct prohibited by 2.531-2.533 above.

## **2.54 Employee Testing**

Employees in positions that require a commercial drivers' license may be required to submit to testing to determine the presence of illegal drugs or alcohol under the following circumstances:

- 2.541 when performing safety sensitive functions and 1) involved in an on-the-job driving accident that results in the death of a person or that 2) results in a citation to the employee under state or local law for a moving traffic violation arising out of the accident and any vehicle requires towing from the accident scene or any involved person requires treatment away from the accident scene. An employee in such an accident is required to report it as soon as possible to a supervisor;
- 2.542 when observed using alcohol or illegal drugs while on duty requiring the performance of safety-sensitive functions;
- 2.543 when a supervisor who has participated in a program that provides training in the recognition of the physical appearance and behavior of persons under the influence of alcohol or illegal drugs observes an employee exhibiting such appearance and behavior during, just preceding or just after the period of the work day that the employee is performing in the safety-sensitive functions;
- 2.544 when selected pursuant to a scientifically valid random process determined by The University;
- 2.545 if allowed to return to duty in a position described in Section 2.5 after a violation of drug or alcohol rules;
- 2.546 if allowed to return to duty for a position described in Section 2.5 and has been identified by a substance abuse professional as needing assistance in resolving problems with drug or alcohol abuse. Such employees will be subject to a minimum of six unannounced follow up drug or alcohol tests over the first 12 months following his or her return to duty.

## **2.55 Refusal to Submit to Test**

By continuing employment with The University, employees have consented to The University's adoption of this Drug and Alcohol Testing program.

The University will secure a consent form signed by the employee to be tested. An employee holding a position that requires a commercial drivers' license who refuses to consent and submit to a test when requested under any of the circumstances provided for in Section 2.53 will be subject to disciplinary action including termination pursuant to The University's Procedures for Discipline and Dismissal of Employees. Refusal to submit includes failure to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this policy, failure to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, engaging in conduct that clearly obstructs the testing process, and or leaving the scene of an on-the-job accident.

#### **2.56 Positive Test**

Employees holding a commercial drivers' license who are tested and receive a positive test result will be immediately removed from safety-sensitive functions. The supervisor and the Director of Human Resources will meet with each employee who tests positive and inform the employee of the test result. Based upon the information available after the meeting with the employee, the supervisor and Director shall determine whether:

- 2.561 to proceed to impose appropriate disciplinary action (keeping in mind any minimum penalties as may be required by federal or state law) pursuant to The University's Procedures for Discipline and Dismissal of Employees; and/or
- 2.562 to offer the employee the opportunity to participate in and satisfactorily complete at the employee's expense an appropriate employee assistance program or rehabilitation program for alcohol and/or drug abusers as a condition of continued employment. An employee who chooses to participate in such a program must be informed that The University will pursue appropriate disciplinary action if the employee does not satisfactorily complete the prescribed program.
- 2.563 to allow the employee who has tested below 0.04 for alcohol, with no concurrently positive drug test, to return to work after at least a 24-hour period.

#### **2.57 Urinalysis Procedure**

In order to assure individual privacy without compromising the integrity of the test result, The University will utilize Department of Health & Human Services approved labs and the mandatory Guidelines for Federal Workplace Drug Testing Programs and the Procedures for Transportation Workplace Drug Testing for tests pursuant to this Policy. Those Guidelines are published in 49 CFR 40; 49 CFR 382 (See also Volume 53 of the Federal Register, pages 11979-11989 and Volume 59 of the Federal Register, page 7505.)

The Guidelines generally provide for specimen collection procedures, chain of custody procedures, testing procedures and documentation procedures. Copies of the Guidelines may be obtained from the Office of Human Resources. Any testing requested by an employee will be done at the employee's expense.

### **2.58 Alcohol Testing**

Alcohol testing will be conducted either on University premises or at a specimen collection site. The University will utilize the procedures for transportation workplace drug and alcohol testing programs for alcohol tests pursuant to this Policy. Those procedures are published in 49 CFR 40. (See also Volume 59 of the Federal Register, pages 7340-7376.)

The Guidelines generally provide for specimen collection procedures, chain of custody procedures, testing procedures and documentation procedures. Copies of the Guidelines may be obtained from the Office of Human Resources. Any testing requested by an employee will be done at the employee's expense.

### **2.59 Records**

- 2.591 Confidentiality. Subject to the applicable provisions of the Texas Public Information Act, all information from an applicant's or an employee's drug and alcohol tests is confidential to the extent required by law. Records will be maintained in a secure manner, so that disclosure of information to unauthorized persons does not occur.
- 2.592 Maintenance. University Record Retention Schedules will be reviewed to ensure that at a minimum, records are maintained in accordance with the following schedule:
  - 2.5921 verified positive controlled substance test results and alcohol test results indicating an alcohol concentration of 0.02 or greater; documentation of refusals to take required tests; calibration documentation; evaluations and referrals - 5 years;
  - 2.5922 collection and training records - 2 years;

2.5923 negative or cancelled tests - 1 year.

2.5924 alcohol test results indicating concentration less than 0.02 - 1 year.

**2.510 Reporting**

The University will submit reports in accordance with Federal Regulations regarding this alcohol and drug misuse prevention program.

Inquiries Inquiries related to this policy may be directed to the Chief Business Officer.

### **3. Smoke-Free Policy**

In compliance with Regents Rule 80111, smoking is prohibited in all indoor locations, including buildings, lecture halls, hallways, offices, and lavatories, all University vehicles, and within 20 feet of any outside entrance to any building.

Those who wish to smoke may do so outside a 20 foot radius of any University building and discard smoking materials in receptacles that have been provided for such purposes.

The Office of Human Resources will provide, on request, information for educational, counseling, and cessation programs that may be made available on campus. Smokers seeking assistance may contact the Office of Human Resources for program information.

This new smoke-free policy relies on the thoughtfulness, consideration, and cooperation of smokers and non-smokers for its success. It will be the responsibility of all members of the campus community to observe this policy.

## 4. AIDS, HIV and HEPATITIS B POLICY

### 4.1 General

The University of Texas of the Permian Basin recognizes Human Immunodeficiency Virus (HIV) and Hepatitis B Virus (HBV) as serious public health threats and is committed to encouraging an informed and educated response to issues and questions concerning these infections.

### 4.2 Purpose, Scope, and Definitions

#### 4.21 Purpose

The purpose of this policy is to provide guidance for The University of Texas of the Permian Basin in complying with statutes concerning acquired immune deficiency syndrome, human immunodeficiency virus, and hepatitis B virus. In addition, the medical, educational, legal, administrative, and ethical issues related to specific situations involving persons with HIV or HBV infections in the following areas are addressed:

4.211 Administrative policies;

4.212 Residence life;

4.213 Health education;

4.214 Testing for HIV or HBV infection;

4.215 Confidentiality of information related to persons with AIDS, HIV or HBV infection; and

4.216 Patient care.

#### 4.22 Scope

This policy is applicable to students, faculty, and employees of The University of Texas of the Permian Basin and shall be made available to students, faculty, and staff members by its inclusion in the student, faculty and personnel guides if practicable, or by any other method. All catalogs should state that the educational pamphlet is available to students.

#### 4.23 Definitions

**Institutional Committee:** A task force or institution-wide committee to oversee the development and implementation of educational programs related to HIV and HBV, and to advise the administration on policies regarding HIV and HBV. It is suggested that the

Committee include, as a minimum, representation from the faculty, the student body, and administrative areas such as housing services, health services, counseling services, and food services.

### **4.3 General Policies**

#### **4.31 Admissions to Schools**

The existence of HIV or HBV infection should not be considered in admissions decisions unless current scientific information indicates required academic activities will likely expose others to a risk of transmission.

#### **4.32 Residential Housing**

Residential housing staff will not exclude HIV-infected or HBV-infected students from University housing and will not inform other students that a person with HIV or HBV infection lives in University housing.

#### **4.33 Employment**

The existence of HIV or HBV infection will not be used to determine suitability for employment by The University unless the position requires performance of exposure-prone procedures.

#### **4.34 Class Attendance**

A student with HIV or HBV infection should be allowed to attend all classes without restrictions, as long as the student is physically and mentally able to participate, perform assigned work, and poses no health risk to others.

#### **4.35 Access to Facilities**

A person with HIV or HBV infection should not be denied access to The University because of HIV or HBV infection.

#### **4.36 Testing for HIV and HBV Infection**

##### **4.361 Mandatory Testing:**

No programs for mandatory HIV or HBV testing of employees, students, or patients will be undertaken without their consent unless authorized or required by law or court.

#### 4.362 Informed Consent for HIV Testing:

Unless otherwise authorized or required by law, no HIV test should be performed without informed consent of the person to be tested.

Consent will be written on a separate form, or the medical record will document that the test has been explained and consent has been obtained. The consent form will state that post-test counseling will be offered or the medical record will note that the patient has been informed that post-test counseling will be offered.

#### 4.363 Reporting of Test Results

HIV and HBV test results will be reported in compliance with all applicable statutory requirements, including the Communicable Disease Prevention and Control Act, Texas Health and Safety Code, 81.001.

#### 4.364 Qualifying for Workers' Compensation Benefits

State law requires that an employee who bases a workers' compensation claim on a work related exposure to HIV must provide a written statement of the date and circumstances of the exposure and document that within ten (10) days after the exposure, the employee had a test result that indicated absence of HIV infection. An employee who may have been exposed to HIV while performing duties of employment may not be required to be tested, but refusal to be tested may jeopardize Workers' Compensation benefits.

#### 4.365 Testing Following Potential Exposure to HIV or HBV

The University will develop guidelines and protocols for employees and students who have been exposed to material that has a potential for transmitting HIV or HBV as a result of employment or educational assignments. Testing of employees or students exposed to such material should be done within ten (10) days after exposure and should be repeated after one (1) month. Testing for HIV also should be done after three (3) and six (6) months. These guidelines should follow TDH, U.S. Public Health Service, and CDC guidelines.

In cases of exposure of an employee or student to another individual's ("Individual" in this paragraph) blood or body fluid, The University, at the institution's expense, may test that Individual for HIV and HBV infection with or without the Individual's consent, provided that the test is performed under approved institutional guidelines and procedures that provide criteria for testing and that respect the rights of the person being tested. This includes

post-test counseling. If the test is done without the Individual's consent, the guidelines must ensure that any identifying information concerning the Individual's test will be destroyed as soon as the testing is complete and the person who may have been exposed is notified of the result. Test results will be reported in compliance with all applicable statutory requirements.

#### 4.37 Confidentiality of Records

Except where release is required or authorized by law, information concerning the HIV status of students, employees or patients and any portion of a medical record will be kept confidential and will not be released without written consent. HIV status in personnel files and Workers' Compensation files is to remain confidential and have the confidentiality status of medical records.

#### 4.38 Education

##### 4.381 General Employee Educational Pamphlet

The University will provide each employee an educational pamphlet about methods of transmission and prevention of HIV infection. The pamphlet will be the TDH educational pamphlet or a pamphlet based on the model developed by the TDH. The pamphlet will be provided to new employees on the first day of employment and to all employees annually.

##### 4.382 Information On Prevention Provided to Students

4.3821 The University will routinely offer students programs based on the model HIV education and prevention program developed by the TDH and tailored to the students' cultural, educational, language, and developmental needs.

4.3822 Each student health center should provide information on prevention of HIV infection including:

- the value of abstinence and long-term mutual monogamy,
- information on the efficacy and use of condoms, and
- state laws relating to the transmission of HIV and to conduct that may result in such transmission.

4.3823 The employee educational pamphlet will be available to students on request.

4.3824 Guidelines For Laboratory Courses

Laboratory courses requiring exposure to material that has potential for transmitting HIV or HBV will adopt safety guidelines for handling such material and distribute these guidelines to students and staff prior to their coming in contact with such material.

4.39 Unemployment Compensation Benefits

The University will inform employees via employee and faculty guides or other appropriate methods that state law provides that an individual will be disqualified for unemployment compensation benefits:

- if the Texas Workforce Commission (TWC) finds that the employee left work voluntarily rather than provide services included within the course and scope of employment to an individual infected with a communicable disease, including HIV. This disqualification applies if the employer provided facilities, equipment, training, and supplies necessary to take reasonable precautions against infection; or
- if the TWC finds that the employee has been discharged from employment based on a refusal to provide services included within the course and scope of employment to an individual infected with a communicable disease, including HIV. This disqualification applies if the employer provided facilities, equipment, training and supplies necessary to take reasonable precautions against infection.

4.310 Health Benefits

No student or employee will be denied benefits or provided reduced benefits under a health plan offered through The University of Texas of the Permian Basin on the basis of a positive HIV test result.

**5. Student Right-to-Know and Campus Security Act**

Refer to Part V (Student Life and Activities), Section 3 of the Handbook of Operating Procedures.

## **6. Sick Leave Pool Policy**

### **6.1 Policy**

Employees of The University of Texas of the Permian Basin are eligible to use time in the sick leave pool if, because of a catastrophic injury or illness, the employee has exhausted all the sick leave and vacation leave that the employee is otherwise entitled

### **6.2 Purpose**

To provide for the alleviation of the hardship caused to an employee and the employee's family if a catastrophic illness or injury forces the employee to exhaust all leave time earned by that employee and to lose compensation from The University.

### **6.3 Definitions**

6.31 A "catastrophic illness or injury" is a severe condition or combination of conditions affecting the mental or physical health of the employee or the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and that requires the employee to exhaust all leave time and compensation time from The University for the employee.

6.32 "Employee" means a regular employee of one of the UT System institutions who is employed to work at least 20 hours per week for at least four and one-half months.

6.33 "Immediate family" is defined as those individuals related by kinship, adoption, marriage or foster children who are so certified by the Texas Department of Human Services who are living in the same household or if not in the same household are totally dependent upon the employee for personal care services on a continuing basis.

6.34 "Licensed practitioner" means a practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of his/her license.

6.35 "Pool Administrator" is the Director of the Office of Human Resources.

6.36 "Sick leave pool" or "pool" means the accumulated sick leave donated by employees for utilization in accordance with this Policy.

## **6.4 Eligibility**

(Edited 2/5/98)

6.41 All employees eligible to accrue sick leave may apply to use sick leave from the sick leave pool subject to the other provisions of this policy.

6.42 An employee may apply only once per fiscal year unless the maximum of 90 days was not received.

6.43 An employee does not have to contribute to the pool in order to apply to use leave from the pool, and no payback is required by employees granted pool sick leave.

## **6.5 Sick Leave Pool**

6.51 An employee must submit a transfer form to the Pool Administrator to contribute time to the sick leave pool.

6.52 Employees may transfer to the sick leave pool, in eight hour day increments, as many days of sick leave from their accrued sick leave time earned as they wish.

6.53 Employees may not designate a specific person to receive their contribution.

6.54 Applications approved by the Pool Administrator will be credited to the sick leave pool and the corresponding amount will be deducted from the employee's accrued sick leave.

6.55 Employees will be encouraged to contribute to the sick leave pool at termination.

## **6.6 Withdrawal of Sick Leave**

6.61 Employees may apply to the Pool Administrator for permission to draw time from the sick leave pool by using the form prescribed by the administrator. The application must be accompanied by a statement from the licensed practitioner who treated the illness or injury.

6.62 Applications to use pool leave will be processed on a first-come, first-serve basis.

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6.63 An eligible employee may not draw time from the sick leave pool in an amount that exceeds the lesser of one-third of the total amount of time in the pool or 90 days.

6.64 An employee is eligible to withdraw from the sick leave pool if the Pool Administrator finds that the employee has exhausted all accrued leave because of a catastrophic illness or injury. The Pool Administrator shall determine the exact amount of time that an employee may draw. The Pool Administrator's decision is final.

6.65 The employee may use sick leave assigned from the pool in the same manner as sick leave accrued pursuant to Article V of the General Appropriations Act and shall be treated in the same manner and shall be entitled to accrue the same benefits as an employee who uses such sick leave.

6.66 When an employee using sick leave pool hours returns to duty, any unused hours revert back to the pool.

6.67 The estate of a deceased employee is not entitled to payment for unused sick leave acquired by that employee from the pool.

## **7. Employment of Noncitizens**

### **7.1 General**

Faculty appointments are based on qualifications and performance. Alien status per se constitutes neither an advantage nor a deterrent to such appointments. However, prior to employment with The University Texas of the Permian Basin, it will be necessary for alien faculty to provide the Office of Human Resources with the documentation required by the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 to verify eligibility and provide evidence of employment authorization. The purpose of this policy is to preclude the unlawful hiring of aliens who are not authorized to work in the USA. Appointment is conditioned upon meeting the requirements of the Act.

Various laws and regulations, enforced by several federal agencies govern the employment of aliens. The process to certify an alien for employment in the United States is complex and may require legal assistance.

### **7.2 Federal Law**

The United States Government prohibits the employment of aliens unless:

7.21 There are not sufficient United States workers who are able, willing, qualified, and available to work; and,

7.22 the employment of such aliens will not adversely affect the wages and working conditions of similarly employed US citizens and permanent residents.

### **7.3 Conversion of Visa Status**

The University of Texas of the Permian Basin does not provide individual legal advice to employees or prospective employees. Immigration issues require specialized legal advice as well as preparation of legal documents which is the responsibility of the employee.

The University's participation will be limited to the issuance of a letter of intent to hire to the applicant's attorney.

### **7.4 Offers of Employment**

Offers made by the College or Schools or departments contrary to this Statement of Policy will not be honored by The University of Texas of the Permian Basin. Colleges, Schools and departments are also cautioned no to make statements concerning the likelihood of obtaining Exchange Visitor or Permanent Resident status.

**8. Equal Opportunity Employment and Affirmative Action**

As an Equal Opportunity and Affirmative Action, , The University of Texas of the Permian Basin acknowledges its obligation and stresses its commitment to a policy of recruitment of faculty and staff without regard to race, national origin, gender, age, disability, veterans status, religious affiliation, or sexual orientation.

**9. Appointment of Relatives**

See Rule 30106 of The University of Texas System Board of Regents' Rules and Regulations.

## **10. Outside Employment**

### **10.1 General**

Members of The University of Texas of the Permian Basin faculty and staff will be encouraged to accept appointments of a consultative or advisory capacity with governmental agencies, industry, or other educational institutions. Advantages accrue to both the individual and The University. However, members of the faculty and staff will be discouraged from accepting regular employment with units outside The University because this would tend to be a disadvantage to The University. Campus policy requires the completion of the prescribed form, issued by the President's office, with all required signatures in approval. This form must be completed annually, and must be approved prior to the beginning of any such outside employment. Final approval for all outside employment is given by the President. (See Regents Rule 30103.)

### **10.2 Guidelines Pertaining to Consulting and Similar Fees, and Dual or Outside Employment**

#### 10.21 Dual Employment and Payment of Consulting and Similar Fees to State Employees

##### 10.211 Dual Employment

Regental approval is required by law before The University may simultaneously employ an individual who holds non-elective public office or is employed by another governmental agency. Approval cannot be given unless such dual employment is of benefit to the State or is required by law and if there is no conflict of interest involved.

#### 10.22 Payment of Consulting and Similar Fees for Specific Short-Term Assignments to Faculty and Staff of Other UT Component Institutions and to Personnel of Other State Institutions and Agencies

##### 10.221 Faculty and Staff of Other UT Component Institutions

Consulting fees and lecture fees, in addition to regularly budgeted salaries, will not be paid by UT Permian Basin for the service of an employee of another institution of The University of Texas System (other than allowable travel reimbursement) unless it is expressly found by the President that it is in the interest of UT Permian Basin and the State of Texas to do otherwise. Such exceptions shall be approved in advance by

the President, as well as the president of the institution by whom the consultant or lecturer is employed.

#### 10.222 Personnel of Other State Institutions and Agencies

Interagency Cooperation Contracts shall be used for such situations insofar as practicable as determined by the President. If an Interagency Contract is not used, such payments may be made under the provisions listed above. The written prior approval of the President and the written approval of the chief administrative officer or agency head of the supplying institution or agency must be obtained. Copies of both of these authorizations shall accompany the payment voucher.

#### 10.23 Consulting or Employment of University Employees with Industry and the Private Sector (Regents Rule 30103)

These rules apply to persons who are employed full-time with UT Permian Basin.

The first responsibility is to UT Permian Basin.

Any outside employment is in addition to normal UT Permian Basin employment.

Outside employment is considered an overload and must not interfere with full-time obligations.

Outside employment must not involve conflict of interest or be in conflict with the individual's obligation to UT Permian Basin or The University's objectives.

Prior approval must be obtained from either the President or the President's designee.

#### 10.24 Correspondence Course and Extension Center Teaching

The policies stated herein are not intended to restrict the use of institutional faculty and staff in correspondence course and extension center teaching (such activities, for purposes of these guidelines, are considered to include teaching in organized continuing education departments, institutes, short courses, seminars, and workshops).

Compensation to full-time staff members for correspondence course and extension center teaching is authorized by Regents' Rules and Regulations, Rule 31004.

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The Division of Continuing Education offers non-credit short courses, seminars, workshops, institutes, and conferences designed for professional development and career enhancement. Taught by U. T. Permian Basin faculty as well as qualified instructors from the community, these programs are supported by the registration fees they generate. Faculty are encouraged to contact the Director of Continuing Education about involvement in non-credit programs.

## **11. Provisions Regarding Employee Leaves**

### **11.1 Leave for Jury Duty**

It is the policy of The University of Texas of the Permian Basin to provide leave consistent with applicable state law for employee service as a juror or as a witness in a judicial proceeding or legislative hearing. No deduction shall be made from the salary or wages of an employee of The University of Texas System who is called for jury service, nor shall the employee be required to account to The University of Texas System for any fee or compensation received for jury service.

### **11.2 Vacation Leave**

Staff employees who are appointed to work twenty hours or more per week and for at least four and one half months or more are eligible to accrue paid vacation leave; however, vacation leave may not be granted until the employee has completed six months of continuous service in a regular employee status, although vacation time will accrue during that period. Once an employee has completed six months or more of continuous State employment that person is eligible to take annual leave as it is earned upon reemployment, or be paid for it upon termination of employment. The Request for Leave form must be submitted to the appropriate supervisor for approval in advance of any leave taken. The Request for Leave form is available on the HR website. Students employed in positions which require student status as a condition of employment are not eligible for vacation leave.

### **11.3 Sick Leave**

Eligible employees will earn sick leave beginning on the first day of state employment and on the first calendar day of each succeeding month of state employment.

Eligible full-time employees, i.e., those who work 40 hours per week, accrue sick leave at the rate of eight hours for each month or fraction of a month of service. Eligible part-time employees, i.e., those who work 21 to 39 hours per week, accrue sick leave on a proportionate basis.

Employees do not earn sick leave when they are in an ineligible status, including leave without pay, for an entire calendar month. An employee who transfers from a leave-eligible status to an ineligible status will, at the time of the transfer, have his or her accrued sick leave balance "frozen." If the employee returns to a leave eligible status, he or she may begin to use the previous sick leave balance and to accrue sick leave.

#### **11.4 Emergency Leave including Funeral Leave**

An eligible employee of The University of Texas of the Permian Basin will be granted emergency leave as funeral leave or may be granted emergency leave for other reasons deemed to be for good cause.

##### **11.41 Funeral Leave**

Employees are eligible for funeral leave in the event of a death of an employee's spouse or the employee's or spouse's children, parents, grandparents, grandchildren, brothers, or sisters, an eligible employee shall be granted an emergency leave without loss of regular pay. Emergency leave granted for a funeral may be authorized for a period not to exceed three (3) days.

##### **11.42 Other Emergency Leave**

The chief administrative officer or his or her delegate may make a determination on other reasons for emergency leave when the employee shows good cause for such leave. Examples of such reasons might include a death of a relative other than those described above or the need for a number of days other than those described above. Requests for leave described in this paragraph must be fully documented.

##### **11.43 Eligibility for Emergency Leave**

To be eligible for emergency leave, an employee must be appointed to work at least twenty (20) hours per week for a period of four and one-half months or more in a position that does not require student status.

#### **11.5 Other Leave**

Employees who work at least 20 hours per week for a period of four and one half months who are not employed in a position for which the employee is required to be a student as a condition of employment may be eligible for other types of leave as outlined by The Office of Human Resources

## **11.6 Family Medical Leave Act**

The purpose of this policy is to set forth guidelines and procedures to be followed in complying with the Family Medical Leave Act of 1993 (to be referred to in the policy as the “Act”).

Employees of The University of Texas of the Permian Basin are eligible for up to twelve weeks of family leave per year for certain family reasons provided they have been employed for at least twelve months by the State of Texas, and have worked at least 1,250 hours during the twelve month period immediately preceding the commencement of leave.

The Family Medical Leave Policy and Procedures for The University of Texas of the Permian Basin are outlined in the Office of Human Resources.

## **11.7 Military Leave**

### **11.71 Paid Military Leave**

A University of Texas of the Permian Basin employee who is called to active duty or authorized training as a member of the state military forces or any of the reserve components of the United States Armed Forces is entitled to a paid leave of absence from his or her respective duties without loss of time, efficiency rating or performance review rating, vacation time, or salary for not more than fifteen working days in a federal fiscal year (October 1 through September 30.)

### **.11.72 Unpaid Military Leave**

The USERRA protects and gives reemployment rights to University of Texas of the Permian Basin employees returning from military service, as long as they have given advance notice to the University of their military service obligation. It provides protection to members of the U.S. Armed Services (including reservists), the Army National Guard, the Air National Guard, and the commissioned corps of the Public Health Service. USERRA applies to voluntary as well as involuntary military service. It does not apply to active duty service in the State of Texas National Guard.

For periods of military service of less than 91 days, USERRA requires that the employee is entitled to the job he or she would have attained if they had not been called for military service, provided the individual is or can become qualified for that job. If the individual is unable to become qualified for a new job after a reasonable effort by the employer, the person is entitled to

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the job he or she left. Reasonable efforts are actions, including training, that do not cause an undue hardship to the University.

## **12. Accommodating Disabilities in the Workplace**

It is the policy of The University of Texas of the Permian Basin to provide equal access and opportunity to employees having a known, documented physical or mental impairment as defined under the Rehabilitation Act of 1973, the Americans of Disabilities Act (ADA), or the Texas Commission of Human Rights Act.

The University prohibits discrimination on the basis of disability in all aspects of the application process and the employment relationship. The University of Texas of the Permian Basin will make reasonable workplace accommodation for any employee with a disability that does not constitute an undue hardship to the employer.

### **13. University Holidays**

All employees appointed at least twenty hours per week for a period of four and one-half months or more in positions not requiring student status are entitled to holidays as provided by state law and approved annually by the University of Texas System.

Campuses of the University of Texas system have the authority to establish their own holiday schedule in keeping with the academic schedule, provided the number of holidays does not exceed the number of holidays to which state employees are entitled.

## **14. Work Toward an Advanced Degree**

### **14.1 Enrollment in Courses By University Employees**

Faculty members are eligible to enroll in courses at The University. Enrollment by a full-time faculty member for more than three hours of course work per semester requires the approval of the Vice President for Academic Affairs.

A part-time employee who is at the salary level of an instructor is entitled to register for the following course load: during a long session, six hours if employed three-fourths time, nine hours if employed half time, or twelve hours if employed one-fourth time; during the summer session, four, five or six semester hours respectively.

A regular salaried employee may also register for a thesis course in addition to the course load authorized in the above rules, provided that the thesis course does not require absence from the place of employment.

### **14.2 Work Toward An Advanced Degree by Faculty Members**

The following University of Texas System guidelines concern work toward an advanced degree by faculty members.

A faculty member (tenured or not) may pursue an advanced degree in an institution of The U. T. System other than the one at which he or she is employed or at another institution outside of The U. T. System. Such course work for a full-time faculty member must be approved by the head of the faculty member's department and the appropriate dean or deans and the chief administrative officer of the institution.

A non-tenured faculty member who wishes to pursue an advanced degree on his or her home campus must be recommended by the head of the department in which he or she is employed, and the recommendation must be approved by the appropriate dean or deans and the chief administrative officer of the institution.

A tenured faculty member should not normally pursue an advanced degree on his or her home campus.

Depending upon the amount of course work carried by the faculty member (student), adjustments in salary may be made as deemed appropriate by the head of the institution in which he or she is employed. Any paid faculty development leave for such a purpose should be paid from faculty salaries as permitted under Legislative appropriations or from non-State funds.

In view of the need for self-improvement and increased interdisciplinary education, there should be no prohibition against faculty members taking course work which is not to be applied toward a degree.

The amount of course work allowed a full time faculty member is normally not more than one course during the work day without advance approval of the immediate supervisor.

### **14.3 Work toward an Advanced Degree by University Staff Members**

It is the policy of The University of Texas of the Permian Basin to encourage employees to pursue further study at The University as long as it does not interfere with their employment, and the course load is not excessive. Full-time employees who desire to enroll in a course at The University during normal working hours must receive permission from the budget head and must present an acceptable plan for compensatory work at other times during the week. Normally, an employee may take only one course during normal working hours.

## **15. Current Mailing Address**

Each employee shall keep the President or his/her delegate notified of his/her current mailing address and home telephone number. Written notices or communications required by Regents' Rules and Regulations or by procedures developed by The University of Texas of the Permian Basin will be sent by mail to the last address given by the employee.

## **16. Grievance Policies and Procedures**

It is the policy of The University of Texas of the Permian Basin to encourage fair, efficient and equitable solutions for problems arising out of the employment relationship and to meet the requirements of state and federal laws.

### **16.1 Scope of Grievance Policy**

Complaints concerning wage, hours of work, working conditions, performance evaluations, merit raises, job assignments, reprimands or the interpretation or application of a rule, regulation or policy shall not be processed through the Discipline and Dismissal Appeal Procedures. Such complaints will be considered on an informal basis in order to allow prompt correction or explanation of the subject of the complaint.

#### **16.11 Probationary Employees Included**

The complaint of all employees (except faculty) including probationary employees will be considered pursuant to the procedure provided below.

#### **16.12 Retaliation Prohibited**

No employee will be penalized, disciplined or prejudiced for exercising the right to make a complaint or for aiding another employee in the presentation of that complaint.

### **16.2 Procedure for Bringing a Grievance**

#### **16.21 Formal Complaint**

The employee shall formally present the complaint to his or her supervisor for discussion, consideration and resolution within five (5) working days from the date of the action that is subject of the complaint. If the supervisor is the subject of the complaint, the employee may address the complaint to the department head or administrative equivalent.

#### **16.22 Written Complaint**

If the complaint is not satisfactorily resolved by the supervisor within five (5) working days, the employee may present the complaint in writing to the appropriate department head or administrative equivalent for consideration and action. A written decision will be mailed to the employee within five (5) working days of receipt of the complaint.

#### **16.23 Written Appeal**

If the employee is not satisfied with the decision of the department head or administrative equivalent, a written appeal stating why the appealed decision is incorrect may be made to the appropriate dean or administrative equivalent within five (5) working days of the date of the appealed decision; within ten (10) working days of the date of the appeal a written decision will be mailed to the employee.

#### 16.24 Appeal to the Appealed Decision

Complaints not satisfactorily resolved by the dean or administrative equivalent may be appealed in writing to the appropriate vice president or administrative equivalent for the employee's department within five (5) working days of the date of the appealed decision. The appeal shall state why the appealed decision is not correct. Within a reasonable time, not to exceed thirty (30) days following the receipt of the appeal, a written decision shall be mailed to the employee. This decision is final.

#### 16.25 Decisions or Responses Regarding Complaint

The written complaint and all decisions or responses regarding such complaint shall be a part of the personnel file of the employee.

### **16.3. Protection from Retaliation for Reporting Suspected Wrongdoing**

UT Permian Basin is committed to including employees in the process of ensuring that The University operates in an ethical, honest, and unlawful manner. It is the policy of The University to encourage employees to report, or cause to be reported, and to assist in any investigation by persons authorized or responsible for such matters, known or suspected violations of laws, rules, regulations, policies, improper activities.

The University will prohibit unlawful retaliation against employees as a consequence of good faith actions in the reporting of, or the participation in an investigation pertaining to allegations of wrongdoing.

## **17. DISCIPLINE AND DISMISSAL OF CLASSIFIED EMPLOYEES**

### **17.1 Policy and Purpose.**

It is the policy of The University of Texas of the Permian Basin to encourage fair and efficient processes to resolve disputes arising out of the employment relationship and to meet the requirements of State and federal law.

The purpose of this policy is to provide a procedure for the discipline and dismissal of classified employees who are subject to its provisions. Classified employees are at-will employees who serve without tenure. No provision of the policy and procedures that follows shall confer rights to employees that are contrary to the employment-at-will doctrine.

### **17.2 Applicability.**

These policies and procedures are applicable to conduct or job performance of a classified employee that results in a decision to impose a disciplinary penalty of demotion, suspension without pay, or dismissal. It does not apply to:

Institutional police or faculty who are subject to other approved discipline or dismissal procedures;

Suspension with pay pending investigation of allegations relating to an employee;

Decisions not to offer reappointment to persons whose appointment for a stated period of one year or less expires at the end of such period without the necessity of notice of non-renewal as provided in the Regents' Rules and Regulations or the policies of The University of Texas of the Permian Basin;

Administrative and professional employees who are appointed to positions without fixed term and serve at the pleasure of a specific administrative officer;

Persons who are employed in positions that require student status as a condition of employment; or

Dismissal of employees:

- (a) who occupy positions that are dependent upon funding from a specific source and such funding is not received,
- (b) as a result of a reduction in force,

- (c) due to financial exigency,
- (d) during any probationary period of employment,
- (e) who are appointed for a stated period that is less than 180 days,
- (f) who are appointed at a per diem or hourly rate and work on an as needed basis, or
- (g) who have not attained or maintained the necessary clearance, certification or licensure for their position, or
- (h) who have exhausted applicable leave entitlements.

### **17.3. Discipline and Dismissal Policy and Procedures.**

#### 17.31 Employee Standard of Conduct.

Each employee is expected to become familiar with the performance criteria for his or her particular job and with all rules, procedures, and standards of conduct established by the Board of Regents, The University of Texas of the Permian Basin, and the employee's department or unit. An employee who does not fulfill the responsibilities set out by such performance criteria, rules, procedures, and standards of conduct may be subject to adverse personnel action.

#### 17.32 Conduct Subject to Disciplinary Action.

##### (a) Work Performance.

Work performance is to be judged by the supervisor's evaluation of the quality and quantity of work performed by each employee. Failure of an employee to maintain satisfactory work performance standards or to meet a reasonable and objective measure of efficiency and productivity may constitute grounds for disciplinary action including dismissal.

##### (b) Unacceptable Conduct.

All employees are expected to maintain standards of conduct suitable and acceptable to the work environment. Disciplinary action, including dismissal, may be imposed for unacceptable conduct. Examples of unacceptable conduct include, but are not limited to:

- (1) falsification of time sheets, personnel records, or other institutional records;

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- (2) neglect of duties;
- (3) smoking anywhere except in designated smoking areas;
- (4) gambling or participating in lotteries or any other games of chance on the premises at any time;
- (5) soliciting or collecting money or circulating petitions on the premises other than within the rules and regulations of the institution;
- (6) bringing intoxicants or drugs onto the premises of the institution, using intoxicants or drugs on the premises at any time, having intoxicants or drugs in one's possession on the premises at any time, or being under the influence of intoxicants or drugs on the premises at any time;
- (7) abuse or waste of tools, equipment, fixtures, property, supplies, or goods of the institution;
- (8) creating or contributing to unhealthy or unsanitary conditions;
- (9) violation of safety rules or accepted safety practices;
- (10) failure to cooperate with supervisor or co-worker, impairment of function of work unit, or disruptive conduct;
- (11) disorderly conduct, harassment of other employees (including sexual harassment), or use of abusive language on the premises;
- (12) fighting, encouraging a fight, or threatening, attempting or causing injury to another person on the premises;

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- (13) theft, dishonesty, or unauthorized use of institutional property, including records and confidential information;
- (14) creating a condition hazardous to another person on the premises;
- (15) destroying or defacing institutional property or records or the property of a student or employee;
- (16) refusal of an employee to follow instructions or to perform designated work that may be required of an employee, or refusal to adhere to established rules and regulations; or
- (17) repeated tardiness or absence, absence without proper notification to the supervisor, or absence without satisfactory reason or unavailability for work.

17.33 Discipline Procedures.

The following procedures will be followed when an employee who is subject to this policy is demoted for disciplinary reasons, suspended without pay, or dismissed.

- (a) The supervisor will review the evidence and the proposed disciplinary action with the chief human resources officer or his or her designee.
- (b) Once the supervisor has sought and obtained the concurrence of the chief human resources officer or his or her designee, he or she must then obtain the concurrence of the department head or administrative equivalent to whom he or she reports before proceeding with the proposed disciplinary action.
- (c) The supervisor shall inform the employee in writing of the reasons for the proposed disciplinary action and the facts upon which the supervisor relies. The employee shall be provided with an opportunity to respond to the charges either verbally or in writing within a reasonable time not to exceed two (2) working days and to persuade the supervisor that the grounds for the disciplinary action are mistaken or incorrect before a final decision is made to take disciplinary action. This pre-disciplinary notification serves as an opportunity to avoid

mistaken decisions to impose discipline and is not intended to definitively resolve the propriety of the disciplinary action being considered.

- (d) If the supervisor is not persuaded by the employee's response that the decision to take disciplinary is incorrect or mistaken, the supervisor will proceed to impose the disciplinary action. The supervisor shall inform the employee in writing of the following:
- (1) whether the disciplinary action is a demotion, suspension without pay or dismissal and its effective date;
  - (2) a specific period for a suspension without pay, not to exceed one (1) month;
  - (3) the specific incident, conduct, course of conduct, unsatisfactory work performance, or other basis for the disciplinary action;
  - (4) any previous efforts to make the employee aware of the need to change or improve work performance or conduct; and
  - (5) reference to any relevant rule, regulation, or policy.

#### 17.34 Effect Upon Employee Benefits.

An employee who is demoted or suspended without pay continues to accrue vacation and sick leave, to be covered by group insurance, and to be entitled to other employee benefit programs. If a demotion or suspension without pay is appealed and the appeal of the demotion or suspension is successful, the employee shall be entitled to payment for wages lost as a result of the demotion or suspension. If an appeal of dismissal is successful, the employee shall be reinstated to the same or similar position and shall be entitled to payment of back wages less any unemployment compensation insurance benefits received by the employee after the date of dismissal. Employee benefits such as vacation and sick leave shall be credited back to the date of dismissal.

#### **17.4 Procedure for Appeal.**

Disciplinary actions resulting in dismissal, suspension without pay, or demotion may be appealed by the affected employee pursuant to the process set out below by submitting a written request for a hearing to the vice president or administrative equivalent for the employee's department. The request must be made within ten (10) working days following the date of the disciplinary action. The failure of the

employee to submit the appeal in a timely manner shall constitute a withdrawal of the appeal. The vice president or administrative equivalent shall, at his or her discretion, either hear the appeal in person or appoint a delegate(s) to hear the appeal. The hearing shall be conducted as soon as practical pursuant to the following procedures.

17.41 Naming of Delegate.

If the vice president or administrative equivalent elects to appoint a delegate(s) to hear the appeal, the name or names will be furnished to the employee as soon as practical after the selection is made. If more than one person is appointed, one of them shall be designated in the notice to the employee to serve as chair.

17.42 Challenges as to Fairness.

An employee may challenge the fairness and impartiality of the vice president or administrative equivalent or an appointed delegate(s). The challenge must be in writing and must clearly state the factual basis for the challenge. A challenge of the vice president or administrative equivalent must be made within five (5) days of the date of the request for a hearing and a challenge of a delegate(s) must be made within five (5) days after the date of the notice appointing the delegate(s). It shall be up to the person challenged to determine whether he or she can serve with fairness and impartiality. If the challenged vice president or administrative equivalent determines that he or she cannot be fair and impartial in the consideration of the appeal, he or she shall appoint a delegate(s) to hear the appeal. If a challenged delegate(s) determines that he or she cannot be fair and impartial in the consideration of the appeal, the vice president or administrative equivalent shall appoint another delegate(s).

17.43 Exchange of Information.

At least five (5) working days prior to the time set for the hearing, the institutional representative for the appeal and the employee shall furnish each other with the names of the witnesses to be called, a summary of their expected testimony, and a copy of each document, record or exhibit to be introduced at the hearing.

17.44 Chair.

The vice president or administrative equivalent or the delegate designated as chair shall preside at the hearing and ensure the order of presentation as well as decide on questions of relevancy. The chair shall also have the discretion to determine the length of the hearing and the form and scope of cross-

examination allowed during the hearing. Upon request, the chair may consult with and be advised by counsel during the hearing.

17.45 Right to Representation.

The employee has the right to be represented at the hearing by an attorney or other individual representative. If the employee is represented by an attorney or an individual from an employee organization, the institution may be represented by an attorney from the institution or the Office of General Counsel of The University of Texas System Administration.

17.46 Record of the Hearing.

In all appeal hearings, the institution shall make a tape recording of the hearing and make a copy of the tape available to the employee on request. The tape recording of the proceedings shall be the official record of the hearing.

17.47 Burden of Proof.

The institution shall demonstrate by the greater weight of the credible evidence that the disciplinary action should be sustained. The institution shall present its case first after which the employee shall present his or her case.

17.48 Evidence.

The hearing shall consist of testimony by witnesses called by the institution and the employee, with both parties having the right to cross-examine witnesses. Relevant exhibits may be introduced by either party and the chair shall take notice of the employee's personnel record.

17.49 Witnesses.

Any employee may be asked to appear as a witness for either party. It shall be the duty of an employee requested to testify to do so as to any facts which may be relevant to the appeal. It is the responsibility of each party to assure attendance by its witnesses.

17.410 Notification to Vice President.

The delegate(s) shall deliberate, prepare, and forward written findings and recommendations to the vice president or administrative equivalent within ten (10) working days after the close of the hearing.

17.411 Employee Notification.

The vice president or administrative equivalent shall mail his or her decision to the employee within ten (10) working days following the receipt of the findings and recommendations from the delegate(s).

If the vice president or administrative equivalent has heard the appeal, he or she shall mail a written decision to the employee within ten (10) working days after the close of the hearing.

The decision of the vice-president or administrative equivalent is final.

#### **17.5 Records of Disciplinary Actions.**

Copies of all documents pertaining to disciplinary actions shall be filed in the employee's personnel file.

#### **17.6 Authority/Related Policies**

Regents' Rules and Regulations, Rule 30601

## **18. Standards of Conduct Guide**

In accordance with Texas Government Code 572.051 and 2113.014, all employees will be provided with a “Standards of Conduct Guide.” The Office of Human Resources shall maintain documentation that all employees have received the guide.

## **19. Management Responsibilities Handbook**

The Management Responsibilities Handbook was developed to assist vice presidents, deans, department chairs, and other budget heads (who are responsible for management of campus departments and units) to understand their roles and responsibilities in campus administration. It defines and clarifies areas of accountability and provides a guide to the expertise and assistance available from campus administrative support departments. The Management Responsibilities Handbook is on The University of Texas of the Permian Basin website (<http://ba.utpb.edu/compliance/management-responsibilities-handbook/>).

## 20. Criminal Background Check Policy

**20.1 Purpose.** The University of Texas of the Permian Basin is committed to promoting a safe and secure environment. To that end, this policy sets forth requirements for criminal background checks in employment decisions.

**Such criminal history or criminal conviction information will be used only for the purpose of evaluating the security risk and suitability of the individual for employment at the institution. The information will not be used to discriminate on the basis of race, color, national origin, religion, sex, disability, age, or sexual orientation.**

**20.2 Criminal Background Check Required.** The University of Texas of the Permian Basin will obtain criminal background checks,<sup>1</sup> on:

**20.2.1 Applicants for Employment:** any applicant, internal or external, who is under final consideration, following normal screening and selection processes, for employment in a regular (i.e. not temporary) full-time or part-time security sensitive position with the University of Texas of the Permian Basin.

**Authorization:** The institution will receive an authorization form signed by the applicant before the institution requests the check. The format of the authorization form is specified in the institution's HOP and conforms to applicable state and federal law.

**Sources for applicants:** Any or all of the following background check sources may be used, as appropriate:

- i. The TX DPS Crime Records Service – Secure Site.
- ii. A private vendor that offers national criminal background checks services.
- iii. Other state, national, and international sites.

**20.2.2 Current Employees:**

- a. a current employee who although not an applicant, is transferred, demoted, promoted or reclassified from one security-sensitive position

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<sup>1</sup> This policy and procedure addresses criminal background checks only and does not limit the University's authority to conduct other background checks as permitted by law.

- to another security-sensitive position and on whom the University did not previously obtain either criminal history or criminal conviction record information within the past two years ;
- b. a current regular (i.e., not temporary) employee if the institution has not previously obtained a criminal background check on the employee; and
  - c. a current employee when the President, or his/her designee, determines it is necessary to further the goals of the institution.

**Sources for current employees:** Any or all of the following background check sources may be used, as appropriate:

- i. The TX DPS Crime Record Service—Public Site.
- ii. A private vendor that offers national criminal background checks services.
- iii. Other public state, national, and international sites.

**20.2.3 Statutorily Required Criminal Background Check.** Where state or federal law requires that a position be subject to a criminal background check using a specific source of criminal background check information and/or certain procedures, the University of Texas of the Permian Basin will comply with such laws. To the extent such laws impose criminal background checks that are more extensive or substantially similar; the institution may rely on compliance with the statute to satisfy the requirements of this policy.

**20.3 Job Descriptions, Advertisements, and Postings** The University of Texas of the Permian Basin Office of Human Resources (OHR) will ensure that all job advertisements and postings for any position at the institution that meets the definition of security sensitive as defined in Texas Education Code § 51.215 include a statement that the position is security sensitive and the employer is authorized to obtain a criminal background check including criminal history record information.

## **20.4 Conducting a Criminal Background Check**

**20.4.1 Applicants.** A criminal background check will not be performed until OHR receives and forwards to the Office of Police a completed, signed

Criminal Background Check Form. The hiring official is responsible for directing the individual to complete, sign, and return the form to the hiring official who will deliver the form to OHR along with the Request to Make an Offer form. An applicant who fails to complete, sign, and submit the form will be removed from further consideration for the position. In addition, if the applicant is a current employee, such refusal is grounds for disciplinary action.

- 20.4.2** OHR will send the completed Criminal Background Check Form and, if applicable, a copy of the finalist's employment application to the Office of Police.
- 20.4.3** The criminal background check should include states where the applicant has resided and/or been employed during the period of no less than seven years immediately preceding the date the individual signed the Criminal Background Check Form.
- 20.4.4** The Office of the Police will promptly obtain and review the criminal background information and will notify the hiring official and the appropriate OHR representative of the results of the investigation.
- 20.4.5** ODOP will conduct the criminal background check before the hiring official makes the employment decision. However, if circumstances require that an offer of employment be made before the completion of the criminal background check, the offer must be in writing and contain a statement that the offer is contingent on the completion of a satisfactory criminal background investigation. The individual to whom the position is offered may not begin work until the requirements of the policy have been met without the prior approval of the President or his/her designee.

## **20.5. Conducting a Criminal Background Check on Non-Applicant Current Employees.**

- 20.5.1** The University will utilize the TxDPS Crime Records Service – Public Site and/or other publically available local, state, or federal criminal record sources to perform these checks to obtain criminal conviction record information and other publically available information. The TxDPS secure site will not be used for these checks.
- 20.5.2** OHR will determine a procedure to identify the current U. T. System Administration employees for whom a criminal background check has

not previously been obtained and provide such information to the Office of Police.

**20.5.3** OHR may require an employee to complete, sign, and deliver a criminal background check form to OHR. An employee's refusal to comply is grounds for disciplinary action.

**20.5.4** The Office of Police will promptly obtain and review the criminal background information and will notify the department head and the appropriate OHR representative of a criminal record, if any.

**20.6 No Automatic Disqualification for Criminal Background.** An individual with a criminal record will not automatically be disqualified from employment or promotion. In the event the investigation reveals criminal record information, the hiring official, in consultation with OHR and the Office of Police, will determine on a case-by-case basis whether the individual is qualified based on factors such as:

- (a) specific duties of the position;
- (b) number of offenses;
- (c) nature of each offense;
- (d) length of time intervening between the offense and the employment decision;
- (e) employment history;
- (f) efforts at rehabilitation; and
- (g) accuracy of the information that the individual provided on the employment application.

**20.7 Falsification or Omission of Criminal Record Information.** Falsification of an application or omission of criminal record information required to be reported is grounds to reject an applicant or discipline/terminate an employee.

**20.8 Notice Requirement.**

**20.8.1** If OHR receives a report indicating that an applicant or a current employee has a criminal record that may be relied on regarding an employment decision, the individual will be notified, provided with a copy of the report, except as provided by law or DPS policy or procedure,

informed of the right to challenge the accuracy and completeness of the report with the agency that provided the report, and informed that he/she has the opportunity to submit additional information relating to the criminal record and why it should not affect an employment decision.

**20.8.2** If the University has used a third-party vendor credit reporting agency to conduct criminal record checks, the resulting report is considered a “consumer report” under the Fair Credit Reporting Act (FCRA). If such a report is relied on to deny employment, deny a promotion, reassign, or terminate an employee, the individual will be provided with a specific pre-adverse action disclosure that includes a copy of the individual's consumer report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act," a document prescribed by the Federal Trade Commission. The credit reporting agency that furnishes the individual's report is required to give the University the summary of consumer rights.

(<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre35.pdf>)

## **20.9 Opportunity to Respond**

**20.9.1 Staff Positions.** If the Office of Police or OHR advises the hiring official that the individual may be unacceptable for the position being filled or for continued employment, the individual will be notified and within five business days following the receipt of the report or receipt of information that the individual has a criminal background as provided in Section 8.1, the individual may submit additional information to the hiring official/supervisor relating to the criminal record and why it should not affect the employment decision. Before the hiring official/supervisor makes a final employment decision, he/she will review all information provided to him/her with OHR and the Office of Police and consult about whether to proceed with an offer or adverse employment action. If either OHR or the Office of Police is of the opinion that the results of the criminal background check indicate that the individual may be unacceptable for the position being filled or for continued employment, then the hiring official may not extend an offer to or continue employment of the individual without the prior written approval of the president or his or her designee.

### **20.9.2 Faculty Positions.**

**20.9.2.1 Outside Applicant.** Within five business days following the receipt of the report or receipt of

information that the individual has a criminal background as provided in 8.1., the individual may submit additional information to the hiring official relating to the criminal record and why it should not affect an employment decision. Before the hiring official makes a final employment decision, he/she will review all information provided to him/her with an official designated by the institution and obtain a recommendation from the designated official about whether to proceed with an offer. The decision of the hiring official is final and may not be appealed.

**20.9.2.2 Current Faculty Member.** Within five business days following the receipt of the information as provided in 8.1(unless an extension has been granted by the Dean because the faculty member is on leave and unable to respond in the five day period), the current faculty member may submit additional information to the Dean of their school relating to the criminal record and why it should not affect their employment. If the current faculty member so requests in writing, before the employment decision is made, the Dean or designated official will review the information with an officially designated faculty committee and obtain a written recommendation from the committee about whether to proceed with an offer or adverse employment recommendation to the Provost. The faculty committee will be constituted completely by tenured faculty appointed by the President from the list of faculty recommended by the Senate to serve on faculty hearing tribunals.

**20.9.3 External Applicants for Employment.** The decision of the University is final and may not be appealed.

**20.9.4 Current Employees.** If the individual is a current employee subject to a background check, standard employee grievance procedures are available to challenge the decision. If the criminal record leads to termination, the applicable employee discipline and discharge procedure will be used.

**20.9.5 Post-Decision Disclosure When Private Vendor Services Used to Conduct Criminal Background Check .** If a consumer report has been relied on to deny employment, deny a promotion, reassign, or terminate an

employee after the institution has taken an adverse action, the individual must be given notice that the action has been taken. It must include

- (a) the name, address, and phone number of the credit reporting agency that supplied the report;
- (b) a statement that the credit reporting agency that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it; and
- (c) a notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished, and his or her right to an additional free consumer report from the agency upon request within 60 days.

## **20.10 Post Application/Employment: Self-Report of Charges or Convictions Required.**

**20.10.1 External Applicants for Employment.** Applicants must report in writing any charges or convictions, excluding misdemeanor offenses punishable only by fine, occurring after the date of application.

**20.10.2 Current Employees:** U. T. institution employees must report to their supervisor in writing, within five business days, any criminal convictions, excluding misdemeanor offenses punishable only by fine. Subject to standard grievance and disciplinary procedures as applicable, failure to do so is a violation of policy and may lead to disciplinary action as appropriate.

## **20.11 Criminal Background Check Records.**

Criminal background check records shall be handled and retained in accord with applicable state and federal laws.

Such criminal history or criminal conviction information will be treated as confidential as required by law. Such information will not be made a part of the applicant's file, or the employee's personnel file, or communicated to any

unauthorized person. The release of criminal history information to unauthorized persons is a criminal offense under *Texas Government Code §411.085*.

The Chief of Police of the institution shall destroy all criminal history record information and specific criminal background check information that the institution obtained about the individual six months after it is obtained. The Chief of Police will notify the Director of Human Resources when the destruction is complete.

If the University has discovered an item of concern through a university-sponsored faculty background check, and the faculty member was cleared, that item will be considered closed for review as long as the faculty member remains in the employ of the university and does not have a significant job change as described in Section 2.2 a of this policy.

#### **20.12 Relevant Federal and State Statutes**

*Texas Education Code § 51.215* – Access to Police Records of Employment

##### Applicants

*Texas Government Code § 411.094* – Access to Criminal History Record Information: Institution of Higher Education

*Texas Government Code § 411.081* et seq. – Criminal History Clearinghouse

*Texas Government Code § 411.135* – Access to Certain Information by Public  
*Fair Credit Reporting Act*, 15 U.S.C. § 1681 et seq.

#### **20.13 Relevant Forms**

Criminal Background Check Form

#### **20.14 System Administration Office(s) Responsible for Policy**

Office for Business Affairs

Office of General Counsel

#### **20.15 Dates Approved or Amended**

November 26, 2002

Amended August, 2010

#### **20.16 Contact Information**

Questions or comments about this policy may be directed to U. T. System Office of General Counsel (512) 499-4462.

## **21. Performance Evaluation Program**

It is the policy of The University of Texas of the Permian Basin that a written performance evaluation be conducted for all non-faculty employees, excluding student workers.

Employees will be evaluated in a manner that does not discriminate against an individual in connection with his or her compensation or the terms, conditions, or privileges of his or her employment.

Probationary employees shall have their work performance evaluated at 90-days and 180-days of employment. These evaluations shall utilize that standard performance evaluation form.

Non-probationary employees shall have their work performance evaluated not less than once per year. Performance evaluations may take place more frequently than once per year at the discretion of the employee's supervisor or other administrative supervisor.

A copy of the completed performance evaluation shall be retained by the appropriate office, such as the Office of Human Resources, for maintenance in an appropriate employee file and a copy shall be retained by the department.

Performance evaluation policy and procedures for faculty issues can be found in The Handbook of Operating Procedures, Part I, Faculty Issues, Section 14.