

08.01.01 Civil Rights Compliance

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Regulation Summary

The Texas A&M University System (system) will provide equal opportunity to all employees, students, applicants for employment and admission, and the public. This regulation provides guidance in complying with local, state and federal civil rights laws and regulations (laws) and related system policy.

All complaints, appeals, or reports of discrimination received by the system will be taken seriously, appropriately reviewed, and addressed in accordance with this regulation.

This regulation establishes systemwide standards for the receipt and processing of complaints, appeals, or reports (“complaints”) of discrimination, harassment and/or related retaliation based on a protected class (“discrimination”), including complaints made by employees, students and/or third parties.

A member also has a duty to respond to inappropriate employee or student conduct that does not constitute discrimination under this regulation. See System Policy 32.02, *Discipline and Dismissal of Employees*; System Regulation 32.02.02, *Discipline and Dismissal of Nonfaculty Employees*; and System Policy 12.01, *Academic Freedom, Responsibility and Tenure*. For student misconduct, see the member’s student code of conduct.

Definitions

Advisor – an individual selected by each complainant and respondent to provide support and guidance throughout the investigation and resolution process. Each party is allowed one advisor. See Section 4.2.4.

Complainant – the individual(s) subjected to the alleged discrimination.

Confidential – communication that cannot legally be disclosed to another person without the consent of the individual who originally provided the information, except under very limited circumstances such as allegations of elderly, disabled or child abuse; an imminent threat of injury or to the life of any person; or as required by law.

Consent – clear, voluntary and ongoing agreement to engage in a specific sexual act. Persons need not verbalize their consent to engage in a sexual act for there to be permission. Permission to engage in a sexual act may be indicated through physical actions rather than words. A person who was asleep or mentally or physically incapacitated, either through the effect of drugs or alcohol or

for any other reason, or whose agreement was made under duress or by threat, coercion, or force, cannot give consent.

Dating violence – violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- (a) The existence of such a relationship will be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (b) For the purposes of this definition:
 - (1) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - (2) Dating violence does not include acts covered under the definition of domestic violence.
[34 CFR 668.46(a)]

Designated administrator – the decision-making entity specified in member rules. This may be an administrator or a hearing panel, but may not be the direct supervisor of the respondent.

Domestic violence – a felony or misdemeanor crime of violence committed by:

- (a) a current or former spouse or intimate partner of the victim;
- (b) a person with whom the victim shares a child in common;
- (c) a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- (d) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- (e) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred. [34 CFR 668.46(a)]

Employee – all personnel employed by the member including faculty, staff and students who receive compensation in either a full- or part-time capacity.

Hostile environment – a situation in which there is harassing conduct based on a legally protected class that is severe, persistent, or pervasive enough to create a work, educational, or campus living environment that a reasonable person would consider intimidating or abusive. The determination of whether an environment is “hostile” must be based on all of the circumstances, which may include the frequency of the conduct, the nature and severity of the conduct, whether the conduct was physically threatening or humiliating, and the mental or emotional effect of the conduct on the individual(s) subjected to the alleged harassment.

Investigative authority – one or more trained individuals appointed to conduct a formal inquiry to discover and examine the facts of an allegation and conclude if, based on the preponderance of the evidence, the allegation is substantiated, unsubstantiated, or if there is insufficient information.

Private – that which affects, characterizes, or belongs to an individual person, as opposed to the general public. With respect to this regulation, private means restricting information to those with a reasonable need to know.

Quid pro quo sexual harassment – “this” for “that”; i.e., unwelcome sexual advances, requests for sexual favors or other verbal, nonverbal or physical conduct of a sexual nature, the submission to or rejection of which may result in an adverse educational or employment action.

Reporter – an individual who observed or was made aware of an alleged violation and who provides an initial oral or written account of an alleged violation of this regulation.

Respondent – an individual who is alleged to have discriminated against another.

Sexual assault – an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program. [34 CFR 668.46(a)]

Sexual exploitation – a situation in which an individual(s) takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. For example, sexual exploitation could include such actions as secretly videotaping sexual activity, voyeurism, sexually-based stalking, invasion of sexual privacy, exposing one's genitals or causing another to expose one's genitals, and knowingly transmitting a sexually transmitted infection to another person.

Sexual harassment – a form of sex discrimination. Unwelcome sexual advances, requests for sexual favors or other verbal, nonverbal or physical conduct of a sexual nature constitute sexual harassment when this conduct is so severe, persistent or pervasive that it explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work or educational performance, or creates an intimidating or hostile work, educational, or campus living environment. Unwelcome means that an individual did not request or invite it and considers the conduct to be undesirable or offensive. Submission to the conduct or failure to complain does not always mean that the conduct was welcome. Sexual harassment may be quid pro quo (“this for that”) or may constitute a hostile environment. Sexual harassment includes non-consensual sexual contact, sexual assault, sexual exploitation, stalking, dating violence, and domestic violence when based on sex.

Stalking – engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (a) fear for the person's safety or the safety of others; or
- (b) suffer substantial emotional distress.

For the purposes of this definition:

- (a) *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (b) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.
- (c) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. [34 CFR 668.46(a)]

Regulation

1. RESPONSIBILITIES OF MEMBERS

Each member chief executive officer (CEO) has the primary responsibility for ensuring compliance with civil rights laws and related system policy.

- 1.1 The CEO will designate a contact person(s) responsible for overseeing its civil rights protections program. This person(s) will ensure that all complaints of discrimination are promptly, thoroughly, and equitably investigated and resolved in accordance with this regulation. The designee(s) will periodically follow up on situations in which discrimination is found to ensure that the situation does not reoccur.
- 1.2 Members receiving an inquiry or a charge of discrimination from a local, state or federal agency must immediately inform the System Ethics and Compliance Office (SECO) which will, in coordination with the System Office of General Counsel (OGC), serve as the liaison between the member and the agency.
- 1.3 Each member must develop and publicly display a rule for the receipt, investigation and resolution of discrimination complaints, in accordance with this regulation.
- 1.4 To ensure consistency, thoroughness and impartiality, each member will designate one office (designated office) to receive and investigate all complaints involving a student respondent(s) and one office (designated office) to receive and investigate all complaints involving an employee or third party respondent(s). All complaints can be handled by the same office.
- 1.5 Members must provide a quarterly report to SECO on all alleged violations of System Policy *08.01, Civil Rights Protections and Compliance*. The format, timeline and specific reporting requirements will be developed and communicated by SECO.

2. RESPONSIBILITIES OF ALL EMPLOYEES AND STUDENTS

- 2.1 All employees are responsible for ensuring their work and educational environments are free from discrimination. When alleged or suspected discrimination is experienced by, observed by or made known to an employee, the employee is responsible for reporting that information as outlined in Section 4.1, except as provided by Section 2.2. An employee's failure to report alleged or suspected discrimination may result in disciplinary action, including dismissal.
- 2.2 Only certain employees may keep complaints of discrimination confidential, such as licensed health care personnel and sexual assault advocates who have completed a training program approved by the Attorney General of Texas, when acting in this capacity as part of their official employment. All other employees informed of possible discrimination should advise the reporter that they cannot keep the information confidential and are required to report it. Employees should inform the reporter where

confidential guidance can be obtained, such as the student counseling center or employee assistance program. To the extent possible, the member will protect the privacy of all parties to the report. (See definitions for “confidential” and “private.”)

- 2.3 Requests to withhold any name, or a request not to investigate or seek action against the alleged violator, will be considered in the context of the member’s duty to provide a safe and nondiscriminatory work, educational or campus living environment. This may require that the member take actions when the reporter requests no action, such as when violence is involved, when the threat of violence exists, or when required by law, as in the case of elderly, disabled, or child abuse. A request to withhold information or not to investigate the alleged misconduct may limit the member’s ability to respond.
- 2.4 Reporters and complainants may, but cannot be required to, submit a complaint or report with any law enforcement authority. Employees receiving a complaint under this regulation may not disclose the identity of the complainant to any law enforcement authority unless expressly authorized by the complainant, when an imminent threat to health or safety may exist, or when required by law.
- 2.5 Complainants and respondents may, at any time, file a complaint with any local, state or federal civil rights office, including, but not limited to, the Equal Employment Opportunity Commission, the Texas Workforce Commission’s Civil Rights Division, the U.S. Department of Education’s Office of Civil Rights and the U.S. Department of Justice.
- 2.6 Complaints of suspected discrimination must contain as much specific information as possible to allow for proper assessment of the nature, extent and urgency of preliminary investigative procedures.
- 2.7 All employees must, and students should, cooperate fully with those performing an investigation pursuant to this regulation. Employees failing to cooperate with those performing an investigation pursuant to this regulation may be disciplined, up to and including dismissal.

No employee or student may retaliate against a person for filing a complaint or participating in an investigation under this regulation. Employees or students found to have retaliated, or intentionally provided false or materially misleading information regarding alleged discrimination under this regulation, may be disciplined, up to and including dismissal or expulsion.

Prohibited conduct includes, but is not limited to:

- (a) attempting to coerce, compel or prevent an individual from reporting alleged discrimination or providing testimony or relevant information;
- (b) removing, destroying or altering documentation or other evidence (e.g., text messages) relevant to the investigation; or
- (c) providing false or misleading information to member officials who are involved in the investigation and resolution of a complaint, or encouraging others to do so.

2.8 All employees are responsible for complying with state law requiring system training on equal opportunity and nondiscrimination within 30 days of hire and every two years thereafter.

3. RESPONSIBILITIES OF THE SYSTEM ETHICS AND COMPLIANCE OFFICE (SECO)

3.1 SECO, in coordination with OGC, will serve as the liaison between the members and any local, state or federal agency investigating a complaint of discrimination or conducting a civil rights audit or review.

3.2 In coordination with OGC, SECO will provide general guidance on the implementation of applicable laws, policies, regulations and rules.

3.3 SECO is also responsible for the coordination of all reporting requirements related to equal opportunity and affirmative action for the system and its members.

4. CIVIL RIGHTS COMPLAINT PROCESSING

4.1 Complaints

4.1.1 Except as specified in Section 2.2, employees who experience, observe or become aware of alleged discrimination must promptly report the incident(s) to their supervisor or a member official, administrator or other designee identified in the member's applicable rule. Students and third parties (including, but not limited to, anyone receiving services from the member, vendors and private business associates) are strongly encouraged to report the incident(s) promptly to the member's office designated to receive such complaints.

4.1.2 An employee or student is not required to report discrimination to a direct supervisor or to the alleged offender. The alleged offense may instead be reported to another member official, administrator, supervisor or other designee identified in the member's applicable rule. Each member must provide an anonymous electronic reporting option for students and employees as provided by state law.

4.1.3 SECO is designated to receive, review and investigate complaints against the chancellor, a member CEO, or an employee who reports directly to a CEO or the chancellor. The chancellor or designee will serve as the designated administrator in complaints against a member CEO or an employee who reports directly to a CEO. The chair of the Board of Regents or designee will serve as the designated administrator in complaints against the chancellor or an employee who reports directly to the chancellor.

4.1.4 An employee's or student's complaint alleging discrimination should be reported as soon as possible after the action that caused the complaint.

4.1.5 All complaints of discrimination must be reported to SECO and OGC in writing upon receipt by the designated member office.

Notification to SECO and OGC must include the:

- (a) date(s) of the complaint and alleged incident(s);
- (b) nature and description of the alleged conduct;
- (c) name(s), category (employee, student, and/or third party) and title(s), if applicable, of the individual who was subjected to the alleged discriminatory conduct; and
- (d) name(s), category (employee, student, and/or third party) and title(s), if applicable, of the respondent(s), if known.

4.1.6 The filing of a discrimination complaint will not stop, delay or affect pending personnel or disciplinary actions. This includes, but is not limited to, performance evaluations or disciplinary actions related to an employee or student who is not performing at acceptable levels or standards or who has violated system policies or regulations or member rules.

4.2 Investigations

4.2.1 The designated office(s) to receive complaints of discrimination will review each one to determine if there is sufficient information to proceed with an investigation or if additional information is needed.

- (a) If the information is insufficient, the designated office, in consultation with OGC, may conduct an inquiry into the circumstances of the complaint and (1) dismiss it as baseless; (2) close it for insufficient information to investigate; or (3) refer it to another office which has responsibility for such complaints. The designated office will notify the complainant of such action in writing.
- (b) If the information is sufficient, the designated office will forward the complaint to an appointed investigative authority within five business days of the determination to proceed with the investigation.
- (c) The designated office will provide written notification to the complainant(s) and the respondent(s) of: (1) receipt of the complaint stating the allegation of a violation of this regulation; (2) the appointed investigative authority; (3) the appointed designated administrator; (4) interim protections imposed, if any; and (5) admonishments regarding cooperation and prohibiting retaliation.
- (d) A redacted version of the complaint will be given to an employee respondent(s) and their advisor, if applicable, with admonishments regarding privacy. For student respondent(s), see Section 4.3.

4.2.2 At any point in the process, an employee may be suspended with pay, reassigned, and/or placed in another type of temporary status pending completion of the investigation and final resolution of the allegations. This is not a disciplinary action.

- 4.2.3 The member should offer the complainant(s), the respondent(s) and other affected individuals interim protections or remedies, such as physical separation, contact limitations, alternative work or other arrangements, academic adjustments, and/or counseling services. Failure to comply with the terms of interim protections may be considered a separate violation of system policies and regulations and member rules and procedures.
- 4.2.4 Both the complainant(s) and the respondent(s) must receive equitable treatment in all facets of the complaint investigation and resolution process including, but not limited to, the right to an advisor (if any), the right to present evidence and witnesses, and the right to be informed of the outcome of the investigation. The role of any advisor will be limited to being present and communicating only with their advisee; advisors may not examine witnesses or otherwise actively participate in the process.
- 4.2.5 The investigative authority will review each complaint, interview witnesses (if applicable), review relevant documentation, and provide a draft report of their investigation to OGC for review within 30 business days. OGC will coordinate with SECO and provide its review to the investigative authority within ten business days. The investigative authority will have five business days to finalize the report and submit it directly to the designated administrator. Circumstances may warrant extensions to the time frames in this section. The investigative authority should send an extension request, if needed, to the office or individual who appointed them. Both the complainant(s) and the respondent(s) should be notified of any extensions in writing.
- 4.2.6 Investigation reports should include a statement of the allegation(s), a listing of individuals interviewed including the dates of the interviews, and a listing of relevant documents attached to the report as exhibits. Reports should not contain speculation, opinions, findings, decisions, or recommendations for sanctions, although universities using the investigator model for students are permitted to include sanction recommendations. Investigators may provide assessments of the credibility of the parties and any witnesses.
- 4.2.7 For employee and third party respondent cases, investigation reports may conclude that each allegation is substantiated, unsubstantiated, or if there is insufficient information. In student respondent cases, the investigation report will be used as directed in the university's student conduct rules.
- 4.2.8 In all investigations and subsequent decisions, the standard used to determine the merits of the allegation(s) is the preponderance of the evidence; i.e., more likely than not.

4.3 Students as Respondents

When a student respondent(s) is charged with violating a conduct rule(s), both the complainant(s) and the respondent(s) will be provided, to the fullest extent permitted by law, an unredacted copy of the investigation report (without exhibits) prior to a decision being rendered by the designated administrator. If requested, access to exhibits, which may be redacted, may be provided.

4.4 Decisions

- 4.4.1 For a complaint against an employee or third party, the designated administrator will review the investigation report and provide a draft decision to OGC for review within five business days after receiving the investigative authority's report. OGC will coordinate with SECO and provide its review of the draft decision within five business days. The designated administrator will have five business days to finalize the decision and provide it to the complainant(s), the respondent(s), and the investigative authority. In cases where the allegations are substantiated, the final decision will also be provided to the respondent's supervisor. Circumstances may warrant extensions to the time frames in this section. The designated administrator should send an extension request, if needed, to the office or individuals who appointed them. Both the complainant(s) and the respondent(s) should be notified of any extensions in writing.
- 4.4.2 For a complaint against a student, universities using the investigator model will follow the process as set forth above. For universities using a conduct panel model for student cases, it is impractical for OGC to review the intended decision prior to issuance by the conduct panel. These universities are exempt from obtaining OGC review of the decision prior to issuance.
- 4.4.3 When the respondent(s) is an employee, both the complainant(s) and the respondent(s) may review a copy of the investigation report and exhibits, with admonishments regarding privacy, after the decision is rendered. The report will be redacted in accordance with state and/or federal law.

4.5 Sanctions

- 4.5.1 The designated administrator may decide sanctions, if any, or may delegate the sanctioning decision to another authority within the member. Sanctioning decisions involving employees must be determined in consultation with OGC. The sanctioning authority may review an unredacted copy of the investigation report and exhibits.
- 4.5.2 Sanctions may have educational, restorative and rehabilitative components for employees and/or students. In addition, employee sanctions may have punitive components. Examples of sanctions may include, but are not limited to, written warning or reprimand, required training and/or counseling, "no contact" order, probation, suspension, and employment dismissal and/or expulsion from an educational institution. For students, expulsion is a disciplinary action taken to teach them that their actions and conduct have consequences, which includes ineligibility to continue as a member of the educational community.
- 4.5.3 Universities may not take any disciplinary action against an enrolled student who in good faith reports to the university being the victim of, or a witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking for a violation by the student of the university's code of conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the university's disciplinary process regarding the incident, if

any. This does not apply to a student who reports the student's own commission or assistance in the commission of sexual harassment, sexual assault, dating violence, or stalking.

- 4.5.4 For sex discrimination complaints, both the complainant(s) and the respondent(s) will be informed in writing of any and all sanctions, except when to do so would violate state or federal law (e.g., Family Educational Rights and Privacy Act).

4.6 Appeals

- 4.6.1 Appeal of Decision and/or Sanctions – Allegations of Sex Discrimination. With respect to allegations of sex discrimination, the designated administrator's decision and the sanction(s) imposed by the sanctioning authority can be appealed by the complainant(s) and/or the respondent(s), but only on the following bases, as applicable:

- (a) a procedural error or omission that significantly impacted the outcome;
- (b) new evidence, unknown or unavailable during the investigation, that could have significantly impacted the outcome; or
- (c) the appropriateness or severity of the sanctions.

4.6.1.1 In order to avoid the appearance of a conflict of interest, appeals on any of these bases must be directed to an authority who had no previous involvement and/or participation in the investigation and/or decision. The appellate authority must be specified in the member's rule, whose decision with regard to the appeal will be final.

4.6.1.2 The appeal will be confined to a review of the written documentation and record of the investigation and/or hearing, and pertinent documentation regarding the grounds for appeal. The appeal does not create an entitlement to a new investigation or a full re-hearing of the complaint. The appeal process for both the complainant(s) and the respondent(s) must be equitable, but not necessarily identical. The appeal must be filed within the time period specified in the member's rule.

4.6.1.3 If the respondent is an employee or third party, the appellate authority will provide a draft decision to OGC for review within five business days after receiving the appeal(s). OGC will coordinate with SECO and provide its review of the draft decision within five business days. The appellate authority will have five business days to finalize the decision and provide it to the complainant(s), the respondent(s), and the investigative authority. If the complaint on appeal is substantiated, the respondent's supervisor will also be informed. Circumstances may warrant extensions to the time frames in this section. The appellate authority should send extension requests, if needed, to the office or individual(s) who appointed them. Both the complainant(s) and the respondent(s) should be notified of any extensions in writing.

4.6.1.4 For student cases, universities using the investigator model will follow the process as set forth above. For universities using an appellate panel model for student cases, it is impractical for OGC to review the intended decision prior to issuance by the appellate panel. These universities are exempt from obtaining OGC review of the decision prior to issuance.

4.6.2 Appeals – Allegations of Discrimination Not Based on Sex. Any employee disciplined pursuant to this regulation may appeal that action in accordance with System Policy 12.01, *Academic Freedom, Responsibility and Tenure*; System Policy 32.01, *Employee Complaint and Appeal Procedures*; System Regulation 32.01.01, *Complaint and Appeal Procedures for Faculty Members*; System Regulation 32.01.02, *Complaint and Appeal Process for Nonfaculty Employees*; and/or other system policies or regulations as appropriate. In such cases, the employee will receive an unredacted copy of the investigation report and exhibits, upon request, with admonishments regarding privacy.

Any student receiving a sanction of separation (expulsion or suspension) pursuant to this regulation may appeal the sanction in accordance with the member rule and/or code of conduct for student grievances.

Related Statutes, Policies or Requirements

[Family Educational Rights and Privacy Act \(FERPA\)](#)

[The Equal Pay Act of 1963](#)

[Title VII of The Civil Rights Act of 1964, as amended](#)

[The Age Discrimination in Employment Act of 1967](#)

[The Age Discrimination Act of 1975](#)

[Title IX, Education Amendments of 1972](#)

[The Rehabilitation Act of 1973, as amended](#)

[Americans with Disabilities Act of 1990, as amended](#)

[The Genetic Information Nondiscrimination Act of 2008](#)

[Executive Order 11246, as amended](#)

[Executive Order 13672](#)

[Texas Commission on Human Rights Act](#)

[Texas Fair Housing Act](#)

[Tex. Educ. Code § 51.9363, Sexual Assault Policy](#)

[Tex. Educ. Code § 51.9365, Electronic Reporting Option for Certain Offenses](#)

[Tex. Educ. Code § 51.9366, Amnesty for Students Reporting Certain Incidents](#)

[Tex. Lab. Code, Ch. 21, Employment Discrimination](#)

[System Policy 08.01, Civil Rights Protections and Compliance](#)

[System Policy 12.01, Academic Freedom, Responsibility and Tenure](#)

[System Policy 32.01, Employee Complaint and Appeal Procedures](#)

[System Regulation 32.01.01, Complaint and Appeal Procedures for Faculty Members](#)

[System Regulation 32.01.02, Complaint and Appeal Process for Nonfaculty Employees](#)

This regulation supersedes:

System Regulation 33.02.01, *EEO and Affirmative Action Programs*

System Regulation 33.02.02, *Compliance with Employment Provisions of the Americans with Disabilities Act*

System Regulation 34.01.01, *Sexual Harassment*

Member Rule Requirements

A rule is required to supplement this regulation. See Section 1.3.

Contact Office

System Ethics and Compliance Office
(979) 458-6203