

## 08.01.01 Civil Rights Compliance

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### Regulation Summary

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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 to each member 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 appropriately reviewed and addressed in accordance with this regulation.

This regulation establishes systemwide standards for each member's receipt and processing of reports, complaints, formal complaints, investigations, adjudication, appeals, and use of informal resolution in cases involving allegations 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.

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### Definitions

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Advisor – an individual selected by each complainant and respondent to provide guidance during the investigation and resolution process and to conduct cross-examination when a complaint is referred to a formal hearing. An advisor may be an attorney. A member may appoint an advisor of the member's choice for a complainant or respondent for a hearing if either party does not have an advisor present. Advisors may not otherwise represent or speak for the party they are advising. Each party is allowed one advisor, although members may establish circumstances under which a second advisor would be permitted (e.g., accommodating a party with a disability). See Section 4.2.5.

Appellate authority – an individual or panel responsible for rendering appeal decisions as specified in member rules. The role of the appellate authority is to review the process by which an original decision was reached and render an appellate decision, consistent with the grounds for appeal. Title IX Coordinators may not serve as an appellate authority in any case involving an allegation of discrimination or harassment based on sex.

Coercion – the act, process, or power of compelling a person to take an action, make a choice, or allow an act to happen that they would otherwise not choose or give consent to.

Complainant – the individual(s) who is alleged to have been subjected to discrimination.

Complaint - an oral or written report of an alleged violation of this regulation. A complaint may be filed by a complainant, any system member employee or student, or a third party. The complaint does not have to meet the definition of a “formal complaint” (see below).

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.

Confidential reporter – an employee designated or permitted by a member to receive complaints of discrimination and maintain confidentiality. Confidential Reporters are required to provide general nonidentifying information as required to comply with the Clery Act, and must report to the Title IX Coordinator any type of sex-based incident made known to them, but may not include any information that would violate that person’s expectation of privacy. Exceptions to confidentiality/privacy include reports of child abuse, abuse or neglect of disabled or elderly persons, and when a party poses an imminent danger to themselves or others.

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 is asleep or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or whose agreement was made by threat, coercion, or force, cannot give consent. Consent may be revoked by any party at any time.

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 U.S.C. 12291(a)(10)]

Dating violence is explicitly prohibited under this regulation. Aiding another in the commission of dating violence is also prohibited under this regulation. Dating violence is a form of sexual harassment or sex-based misconduct.

Designated administrator – the decision-making entity specified in member rules. This may be an administrator or a hearing officer/panel but may not include a person with a clear conflict of interest (e.g., supervisor, subordinate, and/or family member of either party) or personal bias. The role of the designated administrator is to determine whether or not allegations of misconduct rise

to the level of a violation of this regulation based on the evidence provided and utilizing the preponderance of the evidence standard. The designated administrator cannot have served as an investigator nor may they later serve as an appellate authority in the same case. Title IX Coordinators may not serve as a designated administrator in any case involving an allegation of discrimination or harassment based on sex. Designated administrators may consist of a single decision-maker (hearing officer for formal hearings) or a group of decision makers (hearing panel for formal hearings). When a hearing panel is utilized by a member, it must be chaired by a voting member and consist of an odd number of total voting members.

Discrimination - a materially adverse action or actions that intentionally or unintentionally excludes one from full participation in, denies the benefits of, or affects the terms and conditions of employment or access to educational or institutional programs because of an individual's race, color, sex, religion, national origin, age, disability, genetic information, veteran status, sexual orientation, gender identity, or any other classification protected by federal, state, or local law. Discrimination includes harassment (based on both hostile environment and quid pro quo) and retaliation based on a legally protected category.

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 U.S.C. 12291(a)(8)]

Domestic violence is explicitly prohibited under this regulation. Aiding another in the commission of domestic violence is also prohibited under this regulation. Domestic violence is a form of sexual harassment or sex-based misconduct.

Educational program or activity – an “educational program or activity” is interpreted broadly to include all of the member's operations, including locations, events, or circumstances over which the member exercised substantial control over both the respondent and the context in which the alleged discriminatory behavior occurred, including any building owned or controlled by a student organization that is officially recognized by the system member.

Employee – all personnel employed by the member including faculty, staff and students who receive compensation in either a full- or part-time capacity. Employees who are also students would have their status in the civil rights process determined by the context of the allegations; these individuals are subject to civil rights processes, as well as student conduct and employment standards set by the member.

Exculpatory evidence – evidence that would tend to support a finding that a respondent did not commit the alleged misconduct.

Formal complaint – a document or electronic submission (such as by electronic mail or through an on-line portal provided for this purpose) filed by a complainant, or signed by the Title IX Coordinator, alleging sex-based discrimination against a respondent and requesting that the member investigate the allegation(s). The formal complaint must contain the complainant’s physical or digital signature, or otherwise indicate that the complainant is the person filing the complaint. Alternatively, a Title IX Coordinator may sign a formal complaint but is not a complainant or otherwise a party to the complaint.

Hostile environment – a situation in which there is unwelcome 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 objectively offensive. 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/or the mental or emotional effect of the conduct on the individual(s) subjected to the alleged discrimination.

Incapacitated – a state in which a person, due to a disability, the use of alcohol or drugs, being asleep, or for any other reason, is not capable of making rational decisions about consent to sexual activity and recognizing the consequences of their decision.

Inculpatory evidence – evidence that would tend to support a finding that a respondent is responsible for alleged misconduct.

Informal resolution – resolution of a civil rights complaint without the use of a formal hearing. Informal resolutions may or may not involve the establishment of findings of fact and the application of sanctions.

Investigative authority – one or more trained individuals appointed to conduct a formal investigation 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. In complaints involving allegations of sex-based behaviors, the investigative authority will be limited to only reporting the evidence collected during the investigation, as well as issuing appropriate determinations surrounding credibility of witnesses and evidence.

Member – any or all members of The Texas A&M University System, including universities, agencies and System Offices.

Misconduct – an action or actions that violate published behavioral standards.

Objectively offensive – behavior determined by a reasonable person to be offensive.

Offensive – actions that cause unreasonable harm or distress to another individual or group of people.

Persistent – conduct occurring frequently over an unspecified period of time.

Pervasive – conduct existing in or spreading over a large area of an activity or program over a period of time.

Predation – an intent to engage in acts of misconduct prior to their occurrence demonstrating premeditation, planning or forethought, and is reflected in communicated intent (physical, verbal, visual, or written), threats directed at a party, attempts to incapacitate a party, attempts to isolate a party, utilizing physical force or violence, or other actions that a reasonable person would construe as a pre-meditation to engage in actions that are unwanted by/against the recipient. Committing any of these actions with an individual under the age of consent is also considered predatory.

Preponderance of the evidence – what is more likely than not to be true, based on the totality of the available evidence. The preponderance of the evidence is the standard of evidence used for all determinations made under this regulation.

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.

Private body parts – a person’s breast, posterior (butt), groin, and/or genitals.

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. Quid pro quo sexual harassment is explicitly prohibited under this regulation. Aiding another in the commission of quid pro quo sexual harassment is also prohibited under this regulation.

Reasonable person – a comparative standard on one person’s assessment of an action, actions, or situation compared with how most persons might act or react based on similar circumstances. This standard considers the identities of an individual as well as the context of the actions being evaluated.

Remedies – actions taken to restore or preserve equal access to the member’s education program or activity. Remedies may be disciplinary in nature and may burden the respondent.

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 has been alleged to have engaged in discriminatory conduct as defined in system policy and this regulation.

Retaliation – intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured under civil rights laws and regulations, or because the individual has opposed a discriminatory practice, files a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. The exercise of rights protected under the First Amendment does not constitute prohibited retaliation, nor does the filing of a mandatory report as required by Section 2.1 of this regulation. In addition, a university official who files a mandatory report or charges an individual with making a materially false statement in the course of an investigation has not engaged in prohibited retaliation. Retaliation is explicitly prohibited under this regulation. Aiding another in the commission of retaliation is also prohibited under this regulation.

Severe – of sufficient seriousness to interfere with the rights, privileges, and legal activities of an individual, as well as actions that would be deemed by a reasonable person to be extreme or life-threatening.

Sexual assault – an offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Uniform Crime Reporting system. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances in which the victim is incapable of giving consent. These offenses are defined as:

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

Sexual assault is explicitly prohibited under this regulation. Aiding another in the commission of sexual assault is also prohibited under this regulation. Sexual assault is a form of sexual harassment or sex-based misconduct.

Sex-based misconduct – unwelcome conduct on the basis of sex that is severe, persistent, or pervasive enough to create a work, educational, or campus living environment that a reasonable person would consider intimidating, abusive, or offensive. Sex-based misconduct is explicitly prohibited under this regulation. Aiding another in the commission of sex-based misconduct is also prohibited under this regulation. Sex-based includes, but is not limited to, sexual assault, sexual exploitation, dating violence, domestic violence, and stalking based on sex.

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 exposing another person to a sexually transmitted infection or disease. Sexual exploitation is a form of sex-based misconduct.

Sexual harassment – a form of sex discrimination. Unwelcome conduct on the basis of sex (of a sexual nature or otherwise): (1) by an employee of the member who conditions the provision of an aid, benefit, or service of the member on an individual's participation in that unwelcome sexual conduct; (2) determined by a reasonable person to be so severe and pervasive and objectively offensive that it effectively denies a person equal access to the member's education program or activity; or (3) sexual assault or dating violence, domestic violence, or stalking 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)]

Stalking is explicitly prohibited under this regulation. Aiding another in the commission of stalking is also prohibited under this regulation. Stalking based on sex is a form of sexual harassment or sex-based misconduct.

Student – individual enrolled in member universities or someone who has accepted an offer of admission or, if not currently enrolled, otherwise has a continuing relationship with the university; for example, someone enrolled in a future semester. Students who are also employees would have their status in the civil rights process determined by the context of the allegations; these individuals are subject to civil rights processes as well as student conduct and employment standards set by the member.

Supportive measures – non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the member's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the member's educational or work environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus or workplace, and other similar measures.

Title IX Coordinator – an employee designated and authorized to coordinate the member's efforts to comply with its responsibilities under the Title IX of the Education Amendments of 1972 Act.

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## Regulation

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### 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 must 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 must designate at least one Title IX Coordinator, who may or may not be the same employee designated in 1.1 above. Members must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, and employees of the name or title, office address, electronic mail address, and telephone number of the employee(s) designated as the Title IX Coordinator(s). The notification should also state that the member does not discriminate on the basis of sex in its education programs and activities, including admission and employment, in accordance with Title IX of the Educational Amendments of 1972 and its implementing regulations. The contact information for the Title IX Coordinator(s) must be prominently displayed on the member's website and in each handbook or catalog that it makes available to persons entitled to notification as listed above.
- 1.3 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.
- 1.4 Each member must adopt and publicly display a rule for the receipt, investigation and prompt and equitable resolution of discrimination complaints, in accordance with this regulation. Rules must be published in student and personnel handbooks or the institution's equivalents, if any, and published on a dedicated website. Individuals entitled to notifications as specified in Section 1.2 must be provided notice of the member's grievance process, including how to report or file a complaint of discrimination, how to report or file a formal complaint of sexual harassment, and how the member will respond.
- 1.5 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.
- 1.6 Member universities must provide orientation training to all entering freshman and undergraduate transfer students on sexual harassment, sexual assault, dating violence, and stalking during the student's first semester. Students are required to complete this training. The training may be conducted in person or online at the discretion of the member university.
- 1.7 Member universities must develop and implement comprehensive prevention and outreach programs on sexual harassment, sexual assault, dating violence, and stalking. These programs must address prevention strategies and reporting protocols. Reporting protocols must also be emailed to each student at the beginning of each fall and spring semester.
- 1.8 To facilitate effective communication and coordination regarding allegations of sexual harassment, sexual assault, dating violence, and stalking at the institution, member



universities must enter into one or more memoranda of understanding with an entity from one or more of the following categories, as agreeable to these entities:

- (a) local law enforcement agencies;
- (b) sexual harassment, sexual assault, dating violence, or stalking advocacy groups; and
- (c) hospitals or other medical resource providers.

- 1.9 Members must ensure that all of those involved in the administration of civil rights complaints (including but not limited to: reporting, administering, investigating, adjudicating, advising, and informal resolution) complete annual training specific to their roles in accordance with requirements established by SECO. A document entitled *Minimum Training Requirements for Civil Rights Investigations, Advisement, Adjudication, Appeals, and Informal Resolution in The Texas A&M University System*, is an appendix to this regulation. Training requirements adopted by members must be consistent with the *Minimum Training Requirements* included in the appendix to this regulation. All campus law enforcement officers reviewing complaints based on sexual harassment, sexual assault, dating violence, and stalking must receive training in trauma-informed investigations. All training materials must be published on the member's website.
- 1.10 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 in the course and scope of their employment, the employee is responsible for promptly reporting that information as outlined in Section 4.1, except as provided by Section 2.3. An employee's failure to report alleged or suspected discrimination may result in disciplinary action, including dismissal. A member must dismiss an employee if, in accordance with its applicable disciplinary processes, the member determines that the employee knowingly failed to make a required report, or that the employee, with the intent to harm or deceive, knowingly made a report that is false.
- 2.2 Notwithstanding Section 2.1, an employee is not required to report an incident in which that employee was a victim of sexual harassment, sexual assault, dating violence, or stalking, or an incident about which the employee received information due to a disclosure made at a sexual harassment, sexual assault, dating violence, or stalking public awareness event sponsored by the member, or by a student organization affiliated with the member, or under circumstances in which the person has either learned of the incident during the course of their employer's review or process, or has confirmed with the designated office overseeing the review or process, that the incident has been previously reported.
- 2.3 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. Researchers are deemed confidential only when the research project is federally funded and the identity of research subjects on the specific project are deemed confidential by law. These employees must provide information required under the Clery Act and other applicable state and federal laws and regulation. Confidential reporters must report to the Title IX Coordinator only the type of incident made known to them and may not include any information that would violate that person's expectation of privacy. 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.")

- 2.4 Each member university must designate one or more persons to serve as a person with whom students may speak confidentially concerning incidents involving sexual harassment, sexual assault, dating violence, or stalking, and who have reporting responsibilities consistent with expectations established in Section 2.3. All students must be informed of the existence and identities of these confidential reporters.
- 2.5 Requests from complainants to withhold any name, or a request not to investigate or seek action against the respondent, will be considered by the member in the context of the member's duty to provide a safe and nondiscriminatory work, educational, and campus living environment. This may require that the member take actions when the complainant 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.
- 2.6 In cases in which a complainant has requested that a member not investigate a complaint, the member may initiate an investigation based on the seriousness of the allegation, whether or not there are multiple allegations, and/or whether or not a respondent poses a risk of harm to others. The member must inform the complainant of its intentions to investigate or to comply with the request not to investigate.
- 2.7 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.
- 2.8 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.
- 2.9 Reports of suspected discrimination should contain as much specific information as possible to allow for proper assessment of the nature, extent, and urgency of preliminary investigative procedures and supportive measures.

- 2.10 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 may be disciplined, up to and including dismissal.
- 2.11 Employees and students must not retaliate against a person for filing a complaint or participating in an investigation under this regulation. Employees and 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. Employees and student must not retaliate against administrative personnel (e.g., Title IX Coordinator, Investigative Authority, Decision Maker, Hearing Panel members) for processing civil rights investigations under this regulation.

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;
  - (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; and
  - (d) using intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured under civil rights laws and regulations, or because the individual participated in any manner in the administration, investigation, proceedings, or hearings related to this regulation.
- 2.12 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 (2) 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, rules, and appropriate training.
- 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 2.3 and 2.4, an employee who experiences, observes, or becomes aware of alleged discrimination must promptly report the

incident(s) to a member official, administrator or other designee identified in the member's applicable rule. If an employee reasonably believes that an incident constitutes sexual harassment, sexual assault, or domestic violence, dating violence, or stalking based on sex and that the incident is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident, the employee must promptly report the incident to the member's Title IX Coordinator or Deputy Title IX Coordinator, or designee. 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. When applicable, an alleged victim of sexual harassment, sexual assault, or domestic violence, dating violence, or stalking based on sex should be encouraged to go to a hospital for treatment and/or preservation of evidence as practicable following an incident.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination) in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours).

- 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 Except as specified in Sections 2.2 and 2.4, the report must include all information concerning the incident known to the reporting person including whether a complainant has expressed a desire for confidentiality in reporting the incident.
- 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 SECO is designated to receive, review, investigate, and adjudicate complaints against the chancellor, a member Chief Executive Officer (CEO), an employee who reports directly to a CEO or the chancellor, or a Title IX Coordinator. 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.
- 4.1.6 All complaints of discrimination should be reported immediately and immediate and appropriate supportive measures should be implemented by all levels of supervision. Reports should be made to SECO and OGC in writing (through the centralized reporting process) within two (2) business days 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;
- (d) name(s), category (employee, student, and/or third party) and title(s), if applicable, of the respondent(s), if known; and
- (e) documentation of the immediate supportive measures taken.

4.1.7 Not less than once every three months, the member Title IX Coordinator must submit to the CEO a written report on all complaints of sexual harassment, sexual assault, and dating violence, domestic violence, and stalking based on sex, as well as acts of sex-based misconduct alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident (without personally identifying information), including information regarding:

- (a) the investigation of those reports;
- (b) the disposition, if any, of any disciplinary processes arising from those reports; and;
- (c) the reports for which the institution determined not to initiate a disciplinary process, if any.

4.1.8 In addition, the member Title IX Coordinator will immediately report to the CEO an incident covered under Section 4.1.6 if the coordinator has cause to believe that the safety of any person is in imminent danger as a result of the incident.

4.1.9 At least once during each fall or spring semester, the CEO will submit to the Board of Regents and post on the member's website a report of complaints covered under Section 4.1.6. However, the report:

- (a) may not identify any person; and
- (b) must include:
  - (1) the number of reports received;
  - (2) the number of investigations conducted as a result of those reports;
  - (3) the disposition, if any, of any disciplinary processes arising from those reports;
  - (4) the number of those reports for which the institution determined not to initiate a disciplinary process, if any; and
  - (5) any disciplinary actions taken.

4.1.10 Each CEO will annually certify in writing to the Texas Higher Education Coordinating Board that the university is in substantial compliance with Chapter 51 Education Code, Subchapter E-2.

4.1.11 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 and Adjudications

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 initial assessment into the circumstances of the complaint and (1) dismiss it as baseless; (2) close it for insufficient information to investigate or lack of jurisdiction (see 4.2.9); (3) refer it to another office which has responsibility for such complaints; or (4) with the consent of the parties, as well as with the approval of SECO, refer the complaint to informal resolution. Cases involving allegations based on sex require the submission of a formal complaint before they may be referred to informal resolution. 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 (5) 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 supportive measures, if any; (5) admonishments regarding cooperation and prohibiting retaliation, and (6) any informal resolution process that may be available.
- (d) An unredacted version of the complaint will be given to an employee respondent(s) and their advisor, if applicable, with admonishments regarding privacy.

4.2.2 At any point in the process, a respondent may be subject to removal from the member's education program or activity on an emergency basis, provided that an individualized safety and risk analysis (conducted by or in conjunction with a member's behavioral assessment team) has determined that an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifies removal and provides the respondent with notice and opportunity to challenge the decision immediately following the removal. Upon being removed, any student respondent must be granted the opportunity for a hearing within five (5) business days to review whether or not the removal is

warranted. The outcome of this hearing is not subject to appeal and is not a disciplinary action. Members shall designate the assignment of a hearing authority for this purpose.

- 4.2.3 Section 4.2.2 above does not preclude a member from suspending with pay, reassigning, and/or placing an employee in another type of temporary status pending completion of the investigation and final resolution of the allegations. This is not a disciplinary action.
- 4.2.4 The member should offer the complainant(s), the respondent(s) and other affected individuals supportive measures (see Definitions). In all sex-based complaints, the Title IX Coordinator or designee must promptly contact the parties to discuss the availability of supportive measures, consider the parties' wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. Members must maintain the privacy of any supportive measures provided to the complainant or respondent to the extent that maintaining such privacy would not impair the ability of the member to provide supportive measures. The Title IX Coordinator or designee is responsible for coordinating the effective implementation of supportive measures. Failure to comply with the terms of supportive measures such as mutual no contact restrictions may be considered a separate violation of system policies and regulations and member rules and procedures. In cases in which a student complainant and student respondent are enrolled in the same course, either student may elect to drop the course without any academic penalty.
- 4.2.5 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. Prior to any formal hearing, the role of any advisor will be limited to being present and communicating only with their advisee; advisors may not represent the party or otherwise actively participate in the process.
- 4.2.6 The investigative authority will review each complaint, interview witnesses (if applicable), review relevant documentation, and provide an initial 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 (10) business days. The investigative authority will have five (5) business days to create a final draft report and share that document electronically with both the complainant and the respondent. The complainant and respondent will have ten (10) business days to review the report and submit written commentary to the investigative authority. The investigative authority will then have five (5) additional business days to prepare a final report for review by OGC and SECO, who will have five (5) business days to provide feedback. The latter review provided by OGC and SECO may be waived by mutual agreement between the member and OGC/SECO if no substantive changes were made following the initial review. The final report shall be submitted directly to the designated administrator.

- 4.2.7 Time frames for the receipt, investigation, and adjudication of complaints may be extended for good cause with written notice to the complainant and respondent of the delay and/or extension and the reasons therefor. Good cause is to be determined by the member in consultation with OGC and SECO and reasonable extensions may be granted at the discretion of the member. The investigative authority should send an extension request, if needed, to the office or individual who appointed them.
- 4.2.8 If in the course of an investigation a member decides to investigate allegations about the complainant or respondent that were not included in the original notice, the member must provide notice of the additional allegations to the parties.
- 4.2.9 Complaints (or formal complaints in Title IX cases) will be investigated and adjudicated under one of the following processes:
1. Title IX (see 4.2.10)
  2. Sex-Based Misconduct (see 4.2.11)
  3. All other civil rights complaints (see 4.2.12)
    - (a) When a complaint involves allegations of misconduct that involve both sex-based allegations (1 and/or 2 above) and allegations of other civil rights violations (3 above), the process shall be conducted under the requirements established for sex-based offenses (1 or 2 above). Sex-based complaints include those complaints based on sex, sexual orientation, and/ or gender identity.
    - (b) In addition to reviewing complaints against students for civil rights violations, members are expected to review allegations for possible violations of codes of student conduct and professional expectations of employees.
    - (c) When unprofessional behavior by an employee that does not rise to the level of a violation of this regulation is discovered during the civil rights investigation and adjudication process, the information will be forwarded to the employee's supervisor.
    - (d) When possible violations of the code of student conduct by a student that do not rise to the level of a civil rights violation are discovered during the civil rights investigation process, and where there are no civil rights charges brought forward as a result of the investigation, the information will be forwarded for review to the student conduct process.
    - (e) When possible violations of the code of student conduct by a student that do not rise to the level of a civil rights violation are discovered during the civil rights investigation process, and where there is also going to be an adjudication of the civil rights violation (through a formal hearing, or through informal resolution methods that result in a finding and sanction), the case will be consolidated into one adjudication conducted under the processes described in 4.2.9(a).
    - (f) Any complaints involving allegations of pay disparities and/or program inequities (excluding hostile environment) will be addressed under Section 4.2.12.



4.2.10 Title IX - The following applies to complaints of sexual harassment, sexual assault or domestic violence, dating violence, or stalking based on sex at member institutions of higher education only:

(a) Complaints will be processed under Title IX if all of the following apply:

- i. The member has actual knowledge of a notice of sexual harassment or a complaint involving allegations of sexual harassment, sexual assault, and/or dating violence, domestic violence, and stalking based on sex to the member's Title IX Coordinator or any member official who has authority to institute corrective measures on behalf of the member. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. Each member must designate in its rule which employees have the authority to institute corrective measures;
- ii. A formal complaint is filed by the complainant or signed by the Title IX Coordinator (see Definitions);
- iii. The alleged behavior/conduct must have occurred against a person while in the United States;
- iv. At the time the formal complaint was filed, the complainant was participating or attempting to participate in the member's education program or activity. This includes an enrolled student, an employee, and applicants for admission or employment at the system member, and;
- v. The alleged conduct meets the definition of sexual harassment as set forth in this regulation (see Definitions).

(b) The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the member and not on the parties, provided that the member cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the member obtains that party's voluntary, written consent to do so for the grievance process.

(c) In all investigations and in any hearing, a presumption will exist that a respondent is not responsible for the allegations until a determination is made at the conclusion of an adjudicatory process.

(d) Mandatory dismissals - If the conduct alleged in the formal complaint would not constitute sexual harassment as defined even if proved, did not occur in the member's education program or activity, or did not occur against a person in the United States, then the member must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such dismissal does not preclude action under another provision of the member's conduct standards, nor does it preclude the member proceeding with a civil

rights process under this Regulation as Sex-based Misconduct provided that the investigatory, adjudicatory, and informal resolution processes are administered as outlined in Section 4.2.9.

- (e) Discretionary dismissals - Members may also dismiss a formal complaint if the complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw it, if the respondent is no longer enrolled or employed by the member, or if specific circumstances prevent the member from collecting evidence sufficient to reach a determination (for example, when the complainant has ceased participating in the process; in certain fact-specific cases when the passage of time precludes the collection of sufficient evidence; when complainant's identity is not known; and when the exact same allegations have already been investigated and adjudicated); such dismissal does not preclude action under another provision of the member's conduct standards, nor does it preclude the member proceeding with a civil rights process under this Regulation as Sex-based Misconduct provided that the investigatory, adjudicatory, and informal resolution processes are administered as outlined in Section 4.2.9.
- (f) Upon a dismissal required or permitted pursuant to (d) and (e) above, the member must promptly send written notice of the dismissal and the reason(s) therefore simultaneously to the parties. The parties must be given the opportunity to appeal a dismissal to the member designated appellate authority. Appeals processes will be established by each member in consultation with OGC and SECO.
- (g) Members may consolidate formal complaints as to allegations of sex-based violations against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, when the allegations of sexual harassment arise out of the same facts or circumstances.
- (h) Members must provide a notice of allegations in cases involving sex-based violations which include sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice who may be, but is not required to be, an attorney, and that they may inspect and review evidence. The written notice must also inform the parties that they are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process. If, in the course of an investigation, the member decides to investigate allegations about the complainant or respondent that were not included in the original notice, the member must provide notice of the additional allegations to the parties whose identities are known.
- (i) Members must provide to each party whose participation in the investigation

is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, and other meetings, with sufficient time for the party to prepare to participate.

- (j) Members must provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence; not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence; provide the parties with the same opportunities to have others with them during the grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice; and not limit the choice or presence of the advisor in any meeting or grievance proceeding. However, the member may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. Advisors who fail to adhere to established rules may be dismissed from the process at the discretion of the member.
- (k) After the final draft investigation report is prepared, members must provide parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the member does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. This includes sending to each party and the party's advisor, if any, the final draft investigation report (with exhibits) subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten (10) days to submit a written response, which the investigative authority will consider prior to final completion of the investigative report. Both the report and the collected evidence will be unredacted to the extent allowed by law. Investigation reports should include a statement of the allegation(s), a listing of individuals interviewed including the dates of the interviews, all inculpatory and exculpatory evidence collected in the investigation, credibility assessments (which may not be based on an individual's status as a complainant, respondent, or witness), and a listing of relevant documents attached to the report as exhibits. Reports should not contain speculation, opinions, findings, decisions, or recommendations for sanctions.
- (l) After the investigative authority has reviewed responses from the parties (if any), a final investigation report will be developed and sent to SECO and OGC for review, along with the responses from the parties. SECO and OGC have five (5) business days to provide feedback to the investigative authority, at which point the investigative authority will then have five (5) business days to finalize the investigation report. The final investigation report will be issued to the designated administrator. The review by OGC and SECO may be waived by mutual agreement between the member and OGC/SECO if no substantive changes were made to the draft report previously reviewed by OGC/SECO.
- (m) The designated administrator or designee will provide the final investigative

report and exhibits to the parties. The parties will be provided a pre-hearing conference to review the hearing process as well as to explore any available options for informal resolution. The parties will be provided at least ten (10) business days to review the final investigative report and to respond in writing to the designated administrator (if desired) prior to the hearing.

- (n) At any time prior to the adjudication of a formal complaint, the parties may seek informal resolution to resolve the complaint. Informal resolution is described in 4.6.
- (o) Administrative conferences - If the complainant, respondent, and member all agree on both the findings associated with the allegations and the sanctions to be imposed, a designated administrator may reach a written resolution of the complaint without a hearing, provided any sanctions imposed are in compliance with the sanctioning requirements noted in 4.5.5. The pre-hearing conference may serve as the administrative conference. Administrative conferences are considered a form of informal resolution (see 4.6).
- (p) If a formal complaint cannot be resolved through an informal process or if either the complainant or the respondent requests a hearing, a formal live hearing will be conducted by the designated administrator (a hearing officer or hearing panel). Under this option, the following rules apply:
  - i. Unless waived by the parties, following the pre-hearing conference the parties will be given a minimum of five (5) business days notice of any formal hearing. The notice must include the date, time, and location of the hearing, as well as instructions for those participating in hearings through online means.
  - ii. Hearings will be closed to the public. Members must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. Physical access to the recording or transcript must be provided upon request for the purpose of preparing an appeal following the hearing.
  - iii. A complainant and a respondent at a hearing must have an advisor with them. In cases in which a party does not have an advisor, the university will provide a trained advisor to assist them in the hearing process. Training requirements for university advisors are outlined in the Training Requirements (see 1.9).
  - iv. Cross-examination of the complainant, respondent, and any witnesses may not be conducted by the opposing party but must be conducted by their advisor. Questions are to be directed to the hearing officer or hearing panel chair, who will determine whether or not each question will be admitted into the hearing. If a question is deemed repetitious or not relevant, the decision-maker(s) must explain the decision to exclude it. When parties are being subject to cross-examination, the advisor may not answer on behalf of the party.
  - v. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that

someone other than the respondent committed the alleged conduct, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The hearing panel chair or hearing officer makes final determinations on the relevance of questions and evidence.

- vi. Attendance at a hearing may be in person or may be conducted through remote means, provided that all parties and the hearing officer or hearing panel can see and hear one another in real time during the course of the hearing.
- vii. Hearing officers/hearing panels cannot draw an inference regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- viii. No hearing officer or hearing panel member can also serve as an investigative authority or appellate authority in the same complaint. Students (who are otherwise not full-time employees) may not serve in the role of investigative authority, hearing officer, hearing panel member, or appellate authority.
- ix. When a hearing panel is being utilized to resolve a complaint, either a voting chairperson or non-voting administrative advisor who does not serve on the panel shall oversee the live hearing and deliberations, and assist in the development of a finding of fact, decision rationale, and, when appropriate, a sanction rationale in consultation with the panel members.
- x. Following the hearing, the hearing officer or hearing panel will develop a draft decision and submit the draft to SECO within two (2) business days. SECO will have a maximum of three (3) business days to provide feedback to the hearing officer/hearing panel. Thereafter, the designated administrator will have a maximum of three (3) additional business days to issue a decision letter. The decision letter must be sent simultaneously to both/all parties.
- xi. Decision letters must include:
  - 1. The identification of the allegations;
  - 2. A description of the procedural steps taken from the receipt of a formal complaint through determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held if any;
  - 3. Findings of fact supporting the determination;
  - 4. Conclusion regarding the application of the member's conduct standards to the facts;
  - 5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the member imposes on the respondent, and whether remedies designed to restore or preserve equal access to the

member's education program or activity will be provided by the member to the complainant, and;

6. The member's procedures and permissible bases for the complainant and respondent to appeal.
- xii. If for any reason there is reasonable cause for a member to delay the issuance of the decision letter, this will be communicated to the parties by the designated administrator or designee.
- xiii. If a student respondent withdraws or graduates from a member university pending the resolution of a complaint, the process will continue and, the member university will not issue a transcript on behalf of the student until the conclusion of the process.
- xiv. Member universities, upon request by another postsecondary educational institution, must provide to the requesting institution any determination that a student violated the member university's code of conduct by committing sexual harassment, sexual assault, sex-based misconduct, and/or dating violence, domestic violence, and/or stalking based on sex.

4.2.11 Sex-based Misconduct - The following applies to complaints of sex-based misconduct at all member universities and agencies:

- (a) Cases involving allegations of sexual harassment, sexual assault, and dating violence, domestic violence, and/or stalking based on sex that are subject to mandatory or discretionary dismissal from the Title IX process may be subject to investigation and adjudication as sex-based misconduct at the discretion of the Title IX Coordinator, in consultation with OGC and SECO.
- (b) All cases involving sex-based allegations are to be investigated and adjudicated under the procedures outlined in 4.2.10, noting that the process is to determine whether or not the allegations are substantiated and, if substantiated, created a hostile environment.

4.2.12 All Other Civil Rights Complaints (Non sex-based) - The following applies to all civil rights complaints based on race, color, religion, national origin, age, disability, genetic information, and/or veteran status:

- (a) After SECO's and OGC's review of the initial draft report, the investigative authority will have five (5) business days to create a final draft report and share that document electronically with both the complainant and the respondent. The complainant and respondent will have ten (10) business days to review the report and submit responses and/or written, relevant questions that the party wants asked of any other party or witness. The investigative authority will, provide each party with the other party's questions and answers, and allow for additional, limited follow-up questions from each, provide each party with the questions and answers, and allow for additional, limited follow-up questions from each party. The investigative authority will have ten (10) business days to complete this process. The investigative authority must explain to the party proposing the questions any decision to exclude a question as repetitious or not relevant.

- (b) The investigative authority will then have five (5) additional business days to prepare a final report for review by OGC and SECO. Once approved by OGC and SECO, the final report shall be submitted 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.
- (c) Investigation reports should include a statement of the allegation(s), a listing of individuals interviewed including the dates of the interviews, all inculpatory and exculpatory evidence collected in the investigation, credibility assessments (which may not be based on an individual's status as a complainant, respondent, or witness), and a listing of relevant documents attached to the report as exhibits. Investigators must conclude, based on the preponderance of the evidence, whether or not the alleged behavior/conduct occurred, did not occur, or there was insufficient evidence to establish that the behavior occurred or not, but will not determine whether or not the behavior establishes a violation of system or member regulations or rules. Reports should not contain speculation, opinions, findings, decisions, or recommendations for sanctions.
- (d) At any time prior to the adjudication of a formal complaint, the parties may seek informal resolution to resolve the complaint. Informal resolution is described in 4.6.

### 4.3 Decisions (non sex-based cases)

- 4.3.1 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 (5) business days after receiving the investigative authority's report. OGC will coordinate with SECO and provide its review of the draft decision within five (5) business days. The designated administrator will have five (5) business days to finalize the decision and provide it to the complainant(s), the respondent(s), and the investigative authority. In cases in which the allegations are substantiated, the final decision will 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.
- 4.3.2 For student respondent cases, the investigation report will be used as directed in the university's student conduct rules.
- 4.3.3 For a complaint against a student, it is impractical for OGC to review the intended decision prior to issuance by the hearing officer or hearing panel. Universities are therefore exempt from obtaining OGC review of the decision prior to issuance but may request assistance from OGC and SECO when needed.
- 4.3.4 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.

#### 4.4 Sanctions

- 4.4.1 Disciplinary sanctions or other actions that are not supportive measures may not be imposed on respondents prior to a determination of responsibility except in cases meeting the requirements for removal on an emergency basis.

Remedies, which may be disciplinary or punitive in nature and may burden the respondent, must be designed to restore or preserve the complainant's equal access to the member's education program or activity. Members must describe or list the range of possible disciplinary sanctions and remedies that the member may implement following any determination of responsibility for any discrimination finding in their member rule.

- 4.4.2 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.

- 4.4.3 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 student 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.

- 4.4.4 Students found responsible for committing dating or domestic violence and/or non-consensual sexual penetration of another person will be subject to a minimum sanction of a one-year suspension, in the absence of significant mitigating factors. Students found responsible for these acts who have demonstrated predation for the purpose of carrying out these acts will be subject to permanent expulsion.

- 4.4.5 Member universities must establish guidelines for sanctions and remedies for sexual harassment or sexual misconduct student violations. These guidelines must be disseminated widely to the university community and utilized in the training of adjudicators and appellate officers. A model guidelines document, *Model Sanctioning Matrix for Sexual Violence and Sexual Harassment Violations by Students in The Texas A&M University System*, is an appendix to this regulation. Guidelines adopted by members must be consistent with the *Model Sanctioning Matrix* included in the appendix to this regulation.

- 4.4.6 Students found responsible for committing acts of sexual harassment, sexual assault, and dating violence, domestic violence, stalking based on sex, and/or any



other sex-based misconduct who are allowed to return to a member university after a suspension of one year or more will be ineligible to hold an office in any student organization, ineligible to represent the university in any way (including intercollegiate athletics or other competitions, both on and off campus), and ineligible to receive an institutional scholarship, in the absence of significant mitigating factors.

- 4.4.7 For other sex-based student conduct rule violations, member universities must establish a process to determine the student's eligibility to represent the university in extracurricular activities, both on and off campus. The initial determination of eligibility must exclude any administrator who has an inherent conflict of interest in the student's participation in a particular activity (e.g., the coach of a student-athlete, the advisor to a student club or organization).
- 4.4.8 When an employee is found to have sexually harassed or engaged in sex-based misconduct (as defined by this regulation) another member of the university or agency community, the sanction will be termination of employment.
- 4.4.9 Universities may not take any disciplinary action against an enrolled student or employee 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 or employee of the university's code of conduct occurring at or near the time of the incident and reasonably related to the incident, for which suspension, expulsion, or dismissal from the university is not a possible punishment, 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 or employee who reports their own commission or assistance in the commission of sexual harassment, sexual assault, dating violence, or stalking.
- 4.4.10 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).

#### 4.5 Appeals

- 4.5.1 Appeal of Decision and/or Sanctions – Allegations of Sex Discrimination. With respect to allegations of sex discrimination, including sexual harassment and sex-based misconduct, 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 irregularity that affected the outcome;
  - (b) new evidence, not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome. The new evidence must be provided at the time of appeal with the appropriate member appeals form;

- (c) the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome;
- (d) the appropriateness or severity of the sanctions.

4.5.1.1 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.

4.5.1.2 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 five (5) business days of notification of the decision. The appeals process carries a presumption that the original decision was correct unless a preponderance of the evidence demonstrates that one or more of the conditions of the appeal are met, and that either or both parties was deprived of a fair process.

4.5.1.3 Members must notify the other party in writing when an appeal is filed and implement appeal procedures equitably for both parties. Parties will be given three (3) business days to review the appeal and submit any written response in support of, or challenging, the outcome to the appellate authority.

4.5.1.4 If the respondent is an employee or third party, the appellate authority will provide a draft decision to OGC for review within five (5) business days after receiving the appeal(s). OGC will coordinate with SECO and provide its review of the draft decision within five (5) business days. The appellate authority will then have five (5) additional business days to finalize the decision and provide it to the complainant(s), the respondent(s), and the investigative authority simultaneously to the extent possible. If the complaint on appeal is substantiated, the respondent's supervisor will also be informed. Circumstances may warrant extensions to the timeframes 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) must be notified of any extensions in writing.

4.5.1.5 For student cases, the appellate authority has ten (10) business days to reach the decision and provide it to the complainant(s), the respondent(s), and the investigative authority simultaneously to the extent possible. Appellate authorities are exempt from obtaining OGC review of the decision prior to issuance but may request assistance from OGC and SECO when needed.

4.5.1.6 The appellate authority may reach one of the following outcomes:

- (a) affirm the original finding and sanction;
- (b) affirm the finding and modify the sanction; or
- (c) remand the case to a new hearing or review.

4.5.2 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.

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.

4.5.3 Employees appealing sanctions issued pursuant to this regulation will receive an unredacted copy of the investigation report and exhibits, upon request, with admonishments regarding privacy.

#### 4.6 Informal Resolution

4.6.1 At any time prior to the determination of a final decision, the parties may seek informal resolution to resolve the complaint. The following conditions apply to informal resolution:

- (a) Informal resolution is a voluntary process. No party may be compelled to participate in informal resolution. The system member, in consultation with SECO, must agree to allow an informal resolution to move forward and must obtain the parties' voluntary, written consent to the informal resolution process.
- (b) Prior to an informal resolution, the parties will be provided with: (a) written notice of the allegations; (b) the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; and (c) the consequences of withdrawing from the informal process and resuming the formal process, and including the records that will be maintained or could be shared.
- (c) Once a party agrees to participate in informal resolution, they may withdraw from the process at any time prior to a final agreement and resume the formal grievance process. Information shared in the informal resolution process may not be introduced into the formal process without independent evidence.
- (d) Once a final agreement is established through informal resolution, the complaint may not return to the formal complaint process unless one or both parties fails to abide by any conditions established in the agreement.

- (e) Informal resolution options include mediation, restorative conferences, shuttle facilitation, and other forms of facilitated dialogue. Each member must work in consultation with SECO in developing informal resolution programs and the conditions for their use.
- (f) Mediation may not be used to resolve complaints of rape, statutory rape, dating violence, domestic violence, or any case in which imminent threats of harm may exist.
- (g) Members may not offer an informal resolution process in sex-based complaints unless a formal complaint is filed and may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

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## **Related Statutes, Policies or Requirements**

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[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 of the 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 Subchapter E-2, Reporting Incidents of Sexual Harassment, Sexual Assault, Dating Violence, and Stalking](#)

[Tex. Educ. Code § 51.282, Sexual Harassment, Sexual Assault, Dating Violence, and Stalking](#)

[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 Process 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*

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## **Appendix**

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[Model Sanctioning Matrix for Sexual Violence, Sexual Harassment, and Sex-based Misconduct by Students in The Texas A&M University System](#)

[Minimum Training Requirements for Civil Rights Investigations, Advisement, Adjudication, Appeals, and Informal Resolution in The Texas A&M University System](#)

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## **Member Rule Requirements**

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A rule is required to supplement this regulation. See Section 1.4.

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## **Contact Office**

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System Ethics and Compliance Office  
(979) 458-6203