

08.01.01 Civil Rights Compliance



~~Approved March 3, 2009~~

~~Revised May 3, 2011~~

~~Revised February 9, 2013~~

~~Revised September 18, 2015~~

~~Revised April 25, 2018~~

Next Scheduled Review: April 25, 2023~~September 18, 2020~~

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Regulation Summary Statement

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.

Reason for Regulation

~~This regulation provides establishes guidance in complying with local, state and federal civil rights laws and regulations. This regulation applies to systemwide standards for the receipt and processing of complaints and/or, appeals of employment or disciplinary actions made by faculty, administrators, staff, students and/or third parties alleging illegal, or reports (“complaints”) of discrimination, sexual harassment and/or related retaliation based on a protected class (“discrimination”), including complaints made by employees, students and/or third parties.~~

~~As provided in System Policy 32.02, *Discipline and Dismissal of Employees*, all nonfaculty positions in the system are “at will,” meaning that any nonfaculty employee may be dismissed from employment with or without cause.¹ Nothing in this regulation shall be construed as modifying any nonfaculty employee’s “at will” status.~~

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.

¹ ~~This reference excludes a nonfaculty system employee having a written employment contract entered in accordance with System Policy 25.07, *Contract Administration*.~~

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 – ~~a form of privileged communication which need not that cannot legally~~ be disclosed ~~in court~~ to another person without the consent of the individual who originally provided the information, except under very limited circumstances such as evidence, answered by a witness either in depositions ~~allegations~~ or trial, or provided to the parties to a lawsuit of elderly, disabled or child abuse; or their attorneys. This is based on the inherent private relationship between the person communicating and the confidante’s occupation ~~an imminent threat of injury or relationship to that~~ the life of any person; or as required by law.

Consensual – ~~involving or based on mutual consent.~~

Consent – clear, ~~and~~ voluntary and ongoing agreement to engage in a specific sexual activity. 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.

Disability – ~~the term “disability” means, with respect to an individual,~~

- ~~(a) a physical or mental impairment that substantially limits one or more major life activities of such individual;~~

- ~~(b) a record of such impairment; or~~
- ~~(c) being regarded as having such an impairment.~~

Domestic or family 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)]

~~an act, other than a defensive measure to protect oneself against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault, or the threat of which reasonably causes fear of such harm. (Texas Family Code Section 71.004)~~

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 ~~status~~class that is severe, persistent, or pervasive enough to create a work, ~~or~~educational, environment 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 ~~illegal discrimination, sexual harassment and/or related retaliation. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality or policy violation.~~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.

~~Major life activities—major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working and the operation of a major bodily function including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.~~

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.

~~Qualified individual—an individual who, with or without reasonable accommodations, can perform~~

~~the essential functions of the employment position that such individual holds or desires.~~

Quid pro quo sexual harassment – “this” for “that”²; i.e., unwelcome sexual advances, requests for sexual favors or other verbal, physical, nonverbal or ~~non~~-physical conduct of a sexual nature, the submission to or rejection of which may result in an adverse educational or employment action.

~~Reasonable accommodations – reasonable accommodations may include making existing facilities used by employees, students and the public readily accessible to and usable by individuals with disabilities; job restructuring, part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.~~

~~Regarded as having a disability – the individual establishes that he or she has been subjected to an action prohibited under this regulation because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity. However, this will not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.~~

Reporter – ~~the~~ 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. ~~This may be the individual who was subjected to the alleged violation, or a third party who observed or was made aware of the alleged violation.~~

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

Sexual assault – ~~any intentional or knowing penetration of the sex organs, anus, or mouth without the other person’s consent. 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, an 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 ~~and/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, ~~or~~ 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, ~~and~~ stalking, dating violence, and domestic violence when based on sex.

~~Stalking – knowingly engaging in conduct, including following a person, that one reasonably believes is threatening the bodily injury or death of themselves, a member of their family or household, or their property. (Texas Penal Code 42.072)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)]~~

~~Undue hardship—an action requiring significant difficulty or expense when considered in light of the following factors:~~

- ~~(a) —The nature and cost of the accommodation needed;~~
- ~~(b) —The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility, the effect on expenses and resources; or the impact otherwise of such accommodation upon the operation of the facility;~~
- ~~(c) —The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and~~
- ~~(d) —The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.~~

~~RegulationProcedures and Responsibilities~~

1. RESPONSIBILITIES OF ~~SYSTEM~~-MEMBERS

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

- 1.1 The CEO ~~will~~shall designate a contact person(s) responsible for overseeing its civil rights protections program. This person(s) will ensure that all ~~allegations~~complaints of ~~illegal~~ discrimination, ~~sexual harassment and/or related retaliation~~ are promptly, thoroughly, and equitably investigated and resolved in accordance with this regulation. The designee(s) will periodically follow up on situations in which ~~illegal~~ discrimination, ~~sexual harassment and/or related retaliation~~ is found to ensure that the situation does not reoccur.
- 1.2 Members receiving an inquiry or a charge of ~~illegal~~ discrimination, ~~sexual harassment, and/or related retaliation~~ 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 ~~illegal~~ discrimination, ~~sexual harassment and/or related retaliation~~ complaints ~~or appeals~~, 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 ~~illegal~~ discrimination, ~~sexual harassment and/or related retaliation~~. When alleged or suspected ~~illegal~~ discrimination, ~~sexual harassment and/or related retaliation~~ is experienced ~~by, or~~ 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 ~~reports~~complaints of ~~violations of this regulation~~discrimination confidential, ~~such as~~ licensed health care personnel and ~~licensed~~ 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 ~~violations of this regulation~~discrimination should advise the reporter that they cannot keep the information confidential and are required to report it. ~~The e~~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 ~~An individual's r~~Requests to withhold ~~his or her any~~ name ~~the name of the alleged violator~~, 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, ~~and~~ educational or campus living environment. This may require that the member take actions when the reporter requests no action, ~~if~~such as when violence is involved, ~~if~~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 ~~to a complaint~~.
- 2.4 Reporters and complainants may, but cannot be required to, submit a complaint or report with any law enforcement authority. Employees receiving a ~~report~~complaint under this regulation may not disclose the identity of the ~~complainant~~individual subjected to the reported conduct to any law enforcement authority unless expressly authorized by the ~~individual subjected to the alleged illegal discrimination complainant, sexual harassment and/or related retaliation~~ or when an imminent threat to health or safety may exist, or when required by law. ~~Employees receiving relevant information should inform the individual or office designated by the member per Section 1.1.~~
- 2.5 Complainants and respondents ~~Reporters~~ 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, ~~and~~ the U.S. Department of Education's Office of Civil Rights and the U.S. Department of Justice.
- ~~2.6 All employees and students should cooperate fully with those performing an investigation pursuant to this regulation. No employee or student may retaliate against a person for participating in an investigation under this regulation.~~
- ~~2.67 Reports~~Complaints of suspected ~~illegal~~ discrimination, ~~sexual harassment and/or related retaliation~~ must contain as much specific information as possible to allow for proper assessment of the nature, extent and urgency of preliminary investigative procedures. ~~Employees or students found to have intentionally made false or materially misleading allegations of suspected illegal discrimination, sexual harassment and/or related retaliation under this regulation may be disciplined, up to and including dismissal or expulsion.~~
- 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 ~~charge or~~ complaint of ~~illegal~~ discrimination, ~~sexual harassment and/or related retaliation~~, or conducting a civil rights audit or review.

3.2 In coordination with ~~the Office of General Counsel (OGC)~~, SECO will provide general guidance on the implementation of ~~civil rights protections and compliance with civil rights~~applicable laws ~~and~~, 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 Reporting Complaints

4.1.1 Except as specified in Section 2.2, ~~any employees or student~~ who experiences, observes or becomes aware of ~~illegal~~alleged discrimination, ~~sexual harassment and/or related retaliation should~~ must promptly report the incident(s) to ~~their his or her~~ supervisor or a member official, administrator or other designee identified in the member's applicable rule. ~~A Students and third party parties~~ (including, but not limited to, anyone receiving services from the member, vendors and private business associates) ~~should are strongly encouraged to promptly report promptly~~ the incident(s) ~~involving an employee or student~~ to the member's ~~human resources office or other~~ office designated to receive such complaints.

4.1.2 An employee or student is not required to report ~~illegal~~ discrimination, ~~sexual harassment and/or related retaliation~~ 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.

4.1.34 ~~An employee's or student's complaint or appeal alleging illegal discrimination, sexual harassment and/or related retaliation in connection with discipline and/or dismissal should be filed reported within 10 business days of as soon as possible after the action that caused the complaint or it may be deemed untimely filed and dismissed. An employee's or student's complaint or appeal alleging illegal discrimination, sexual harassment and/or related retaliation unrelated to discipline and/or dismissal should be filed within 90 calendar days of the most recent incident or it may be deemed untimely filed and dismissed.~~

4.1.45 ~~AnyAll~~ complaints, appeals or reports of ~~illegal~~ discrimination, ~~sexual harassment, and/or related retaliation~~ must shall 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.

4.1.56 ~~The filing of an illegal discrimination, sexual harassment and/or related retaliation~~ 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 ~~a reporter~~ 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) individual(s) or office(s) designated by the member~~ to receive complaints, ~~appeals and/or reports~~ of ~~illegal~~ discrimination, ~~sexual harassment, and/or related retaliation~~ will review each one to determine if there is sufficient information to proceed with an investigation or if additional information is needed. ~~If the information is sufficient, the individual or office will forward the complaint, appeal or report to an appointed investigative authority within five business days of receipt.~~

(a) If the information is insufficient, ~~that~~ the designated individual or office, in consultation with OGC, may conduct an inquiry into the circumstances of the complaint/report/appeal and (a1) dismiss it as ~~untimely filed, baseless, or not a violation of civil rights policy;~~ (b2) close it for insufficient

information to investigate; or (e3) refer it to ~~the another~~ office(s) which has responsibility for such complaints handles complaints or appeals not related to civil rights. 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 the respondent~~ 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) individual subjected to the alleged illegal discrimination, sexual harassment and/or related retaliation,~~ 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) individual subjected to the alleged illegal discrimination, sexual harassment and/or related retaliation~~ and the respondent(s) must receive equitable treatment in all facets of the complaint ~~and~~ investigation, and resolution process, including but not limited to the right to ~~representation~~ 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 ~~report, complaint and/or appeal,~~ interview witnesses (if applicable), review relevant documentation, and provide a draft report ~~on the merits of the allegations of their investigation~~ to OGC for ~~legal sufficiency~~ review within 30 business days ~~of receipt of the complaint.~~ OGC will coordinate with SECO and provide its ~~legal~~ review to the investigative authority within ten (10) 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 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. However, investigators, 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 faculty, staff employee and third-party respondent cases, investigation reports may conclude that each allegation is substantiated, unsubstantiated, or if there is insufficient evidence information to determine whether or not the allegation is substantiated. In student respondent conduct cases, the investigation report will shall 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 Decisions Students as Respondents

The designated administrator will review the investigation report and render a decision in writing to student respondent(s) is charged with violating a conduct rule(s), both the individual subjected to the alleged illegal discrimination, sexual harassment complainant(s) and/or related retaliation, the respondent(s), will be provided, to the fullest extent permitted by law, an unredacted copy of the investigative authority 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 Sanctions Decisions

4.4.1 For a complaint against an employee or third party, the designated administrator will review the investigation report and the respondent's supervisor and department head(s) 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 an extension of 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.

4.4.5 Sanctions

4.45.1 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.

4.45.2 Sanctions may have educational, restorative and rehabilitative components for ~~faculty, staff~~employees and/or students. In addition, ~~faculty and staff~~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 ~~for a definite or indefinite period~~, suspension, ~~for a definite or indefinite period~~, and employment ~~termination~~dismissal and/or expulsion from an educational institution. For students, expulsion is a disciplinary action taken to teach ~~the~~student that their actions and ~~behaviors~~conduct have consequences, which includes ineligibility to continue as a member of the educational community.

~~4.4.3 Both the individual subjected to the alleged illegal discrimination, sexual harassment and/or related retaliation and the respondent may~~

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).

4.56 Appeals

4.56.1 Appeal of ~~Finding 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 ~~either the complainant(s) individual subjected to the alleged illegal discrimination, sexual harassment and/or related retaliation or the~~ respondent~~(s)~~, but only on the following bases, as applicable:

- ~~(a) A~~ procedural error or omission that significantly impacted the outcome;
- ~~(b) N~~ew evidence, unknown or unavailable during the investigation, that could have significantly impacted the outcome; or
- ~~(c) T~~he 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 ~~the~~ 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 ~~may~~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) individual subjected to the alleged illegal discrimination, sexual harassment and/or related retaliation~~ 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 ~~4.5.2 ——— Appeal of Sanctions — Allegations of Illegal Discrimination and/or Related Retaliation Not Based on Sex. 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.

4.56.2 Appeals – Allegations of Discrimination Not Based on Sex. Any employee disciplined pursuant to this regulation may appeal that action in accordance with System Policy 32.01, *Employee Complaint and Appeal Procedures*; System Policy 12.01, *Academic Freedom, Responsibility and Tenure*; 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)~~disciplined~~ pursuant to this regulation may appeal the sanction in accordance with the member rule and/or code of conduct for student grievances.

~~5. IMPROPER CONSENSUAL RELATIONSHIPS~~

~~5.1 “Improper consensual relationship” means a mutually agreeable amorous, romantic, and/or sexual relationship between two employees, between an employee and a student at a member institution or agency, or between an employee and a third party; AND in which one of the individuals has one or more of the following: authority over any term or condition of the other individual’s employment or academic status; or job duties making that individual directly or indirectly responsible for hiring, supervising, evaluating, teaching, coaching, grading or advising the other individual, or providing benefits to or obtaining benefits from the third party, including employment. Relationships not meeting this definition are not covered by this section.~~

~~5.2 These relationships may be problematic, even though both parties are willing participants. Improper consensual relationships are characterized by a difference in actual or perceived power that creates potential for any of the following:~~

~~(a) A conflict of interest;~~

~~(b) Allegations that the relationship resulted from coercion, exploitation and/or harassment; or~~

~~(c) Allegations of favoritism and/or unfair treatment.~~

~~5.3 If an improper consensual relationship exists, the individual with the hiring, supervisory, evaluative, teaching, coaching, grading or advisory responsibilities, or the employee providing benefits to or obtaining benefits from the third party, must promptly notify his or her immediate supervisor of the relationship and cooperate in making alternative arrangements for hiring, supervising, evaluating, teaching, coaching, grading, advising or providing benefits to or obtaining benefits from the other individual. The individual’s immediate supervisor must ensure that the issue is promptly reported in writing to the member CEO. The member retains the right to determine if alternative arrangements are possible and, if so, which one(s) are selected.~~

~~5.4 An employee’s failure to promptly self-report the improper consensual relationship as required by Section 5.3, or an improper consensual relationship that is not remedied through alternative arrangements, may result in disciplinary action up to and including~~

~~dismissal.~~

~~5.5 The employment or supervision of spouses or close relatives is addressed in System Policy 33.03, *Nepotism*.~~

~~6. DISABILITIES~~

~~6.1 The system will not discriminate against a qualified individual on the basis of disability in such matters as job application procedures; hiring, advancement or discharge practices; compensation; job training; or other terms, conditions and privileges of employment. Further, no individual will be excluded from participation in, or be denied the benefit of, or be subjected to illegal discrimination based on disability under any system program or activity.~~

~~6.2 Section 503 of the Rehabilitation Act of 1973 allows federal contractors and subcontractors to invite individuals with disabilities to identify themselves for affirmative action purposes. However, this information may not be provided to search committees or hiring officials, and it must be maintained as a separate, confidential record, apart from the hiring or personnel file. Otherwise, members may not ask any disability related question or require any medical examination before an offer of employment has been made. Members may state the physical requirements of a job and ask if an applicant can satisfy those requirements with or without a reasonable accommodation. Members may also ask applicants to describe or demonstrate how they would perform job tasks, as long as all applicants in the job category are asked to do this. However, when a member can reasonably believe that an applicant may not be able to perform a job function because of an obvious or a voluntarily disclosed disability, that applicant can be asked to describe or demonstrate how he or she would perform job tasks without the member having to ask all applicants to do so.~~

~~6.3 A medical examination may be required after an offer of employment has been made, and prior to commencement of employment duties, if all persons offered the position are required to have the examination. An offer of employment may be conditioned on the results of such an examination.~~

~~6.4 Members will provide reasonable accommodations to qualified individuals with a disability under the provisions of this regulation. Applicants extended an offer of employment and employees who request an accommodation are responsible for obtaining a medical statement that contains a diagnosis, prognosis and the major life function that is substantially limited. This medical statement should include an evaluation as to the effect that the disability has on the employee's or prospective employee's ability to perform the duties associated with the position. All medical information will be treated as confidential and will be kept in a separate file from other personnel records.~~

~~6.5 It may be a defense to a charge of illegal discrimination that an alleged application of qualification standards, tests or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation. The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety~~

~~of other individuals in the workplace.~~

~~7. Members will post all advertising required job openings with the Texas Workforce Commission. All employment vacancy announcements will affirm equal employment opportunity. Purchase orders, bid requests and other such documents sent to suppliers, contractors and subcontractors should contain an appropriate statement to conform to affirmative action requirements and the system's historically underutilized businesses program.~~

Related Statutes, Policies or Requirements

~~Family Educational Rights and Privacy Act~~

~~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 Amendments 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, Campus 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. Fam. Code, Title 4, Subtitle A, Ch. 71, § 71.0021~~

~~Tex. Fam. Code Title 4, Subtitle A, Ch. 71, § 71.004~~

[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](#)

[Tex. Penal Code, Title 5, Ch. 22, § 22.011](#)

[Tex. Penal Code, Title 9, Ch. 42, § 42.072](#)

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