



## 08.01.01.W1 Civil Rights Compliance

Approved August 29, 2016  
Revised February 10, 2023  
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### Rule Summary

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System Policy 08.01 on Civil Rights Protections and Compliance establishes civil rights protections prohibiting discrimination against employees, students, applicants for employment or admission, or the public. System Regulation 08.01.01 on Civil Rights Compliance establishes system-wide standards for the reporting, review, and resolution of civil rights-based compliance that is in conformity with federal and state law. The purpose of this rule is to define the rules and processes by which the policy and regulation will be enforced at West Texas A&M University (WTAMU).

Furthermore, WTAMU is committed to creating and maintaining a campus environment where all individuals are treated with respect and dignity and where all are free to participate in a lively exchange of ideas. Each student has a right to learn, including online and virtual environments, and each employee has the right to work in an environment free of discrimination.

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### Rule

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#### 1. RESPONSIBILITIES

All employees and students are responsible for ensuring their work, and educational, and residential environments are free from discrimination. When alleged or suspected discrimination is experienced, or observed by, or made known to, an employee or student, the employee/student is responsible for reporting that information as outlined below.

##### 1.1. Civil Rights Protections Program Oversight

The President/CEO designates the Executive Director of Civil Rights and Title IX, or designated Deputy Title IX Coordinator in the absence of the Executive Director, as the person responsible for overseeing WTAMU's civil rights protection program. The Executive Director is available at: Title IX office address: 301 23rd St. Canyon, Texas 79015 Old Sub Building #108, (806) 651-3199, TitleIX@wtamu.edu. The Executive Director shall (1) ensure that all allegations of discrimination are promptly, thoroughly, and equitably investigated and resolved; (2) periodically follow up on situations in which discrimination is found to ensure that the situation does not recur; (3) develop, conduct, coordinate, and oversee campus civil rights

compliance training; and (4) provide periodic updates to managers and the campus community regarding the civil rights compliance program.

## 1.2. Corrective Measures

WTAMU designates the following employees as having authority to institute corrective measures: Title IX Coordinator, Deputy Title IX Coordinators, Human Resources, Dean of Faculties, Office of the Provost, and the Student Conduct Office. An employee with authority to institute "corrective measures" means an employee with authority to redress discrimination for complaints involving only Title IX and sex-based misconduct.

## 2. RESPONSIBILITIES OF ALL EMPLOYEES AND STUDENTS

- 2.1. Employees and students are prohibited from discriminating against any person in WTAMU's educational programs, activities, admission, and employment, and application for admission and employment.
- 2.2. Except as otherwise provided, any employee who, experiences, observes, or becomes aware of discrimination is required to promptly report the incident(s) to the Executive Director of Civil Rights and Title IX. The report must include all information concerning the incident known to the reporting person that is relevant to the investigation, including if the reporting party has expressed a desire for confidentiality or anonymity in reporting.
- 2.3. Except as otherwise provided, any student who experiences, observes, or becomes aware of discrimination is strongly encouraged to promptly report the incident(s) to any WTAMU employee, faculty, Executive Director of Civil Rights and Title IX, or campus law enforcement.
- 2.4. Persons who are designated by the institution as a person with whom students may speak confidentially, are identified specifically as student counselors, while performing their duties as a student counselor for Student Counseling Services. These individuals are exempt from mandatory reporting; however, they are required to report the incidents to the Executive Director of Civil Rights and Title IX without any details that could violate a student's expectation of privacy.
- 2.5. An employee, in the course and scope of employment, who witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of WTAMU at the time of the incident shall promptly report the incident to the Executive Director of Civil Rights and Title IX or designated Deputy Title IX Coordinator. Failure to report or making a false report may result in the termination of the employment of an employee.

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

- 3.1. SECO, in coordination with the Office of General Counsel (OGC), will serve as the liaison between WTAMU and any local, state, or federal agency investigating a complaint of discrimination or conducting a civil rights audit or review.
- 3.2. SECO is also responsible for the coordination of all reporting requirements related to equal opportunity and affirmative action for the A&M system.

#### 4. CIVIL RIGHTS COMPLAINT PROCESSING

##### 4.1. Complaints:

Upon receipt of a complaint, and if deemed to be a Civil Rights or Title IX complaint, the Executive Director of Civil Rights and Title IX will assign the complaint to an Investigative Authority. Not less than once every three months, the Executive Director of Civil Rights and Title IX must submit to the President 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 the information regarding:

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

In addition, the Executive Director of Civil Rights and Title IX must immediately report to the President an incident covered above if the Executive Director has cause to believe that the safety of any person is in imminent danger as a result of the incident.

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 A&M System policies or regulations or WTAMU rules.

##### 4.2. Investigations

The Investigative Authority shall review each reported allegation, interview witnesses (if applicable), review relevant documentation, investigate fully, and prepare a draft report on the merits of the allegations for review by the Texas A&M University System Office of General Counsel (OGC) in accordance with system policy. If determined not to be a Civil Rights discrimination complaint, the allegation will be submitted for processing to the Department of Human Resources for employee and third-party respondents and the Office of Student Affairs for student respondents.

All Designated Administrators authorized for adjudication and sanctioning responsibilities must meet the mandatory training requirements under the Clery Act, including annual training in the areas of sexual assault, sexual misconduct, domestic/dating violence, and stalking. Additionally, all DA's must have successfully

completed the university's Civil Rights Hearing Process Orientation and biennial A&M System-approved certification training.

At any point in the process, a respondent may be subject to removal from the campus activity on an emergency basis, provided that an individualized safety and risk analysis (conducted by or in conjunction with the WTAMU behavioral intervention 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. This does not preclude suspending without pay, reassigning, and/or placing an employee in another type of temporary status pending completion of the investigation and final resolution of the allegations. These actions are not considered a disciplinary action.

- 4.2.1. In all sex-based complaints, the Executive Director of Civil Rights and Title IX 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. WTAMU employees 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 to provide supportive measures. The Executive Director of Civil Rights and Title IX 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 A&M System policies and regulations and WTAMU 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.
- 4.2.2. 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.
- 4.2.3. 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 WTAMU and OGC/SECO if no substantive changes were made following the initial review. The final report shall be submitted directly to the designated administrator.

- 4.2.4. 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 WTAMU in consultation with OGC and SECO and reasonable extensions may be granted at the discretion of WTAMU. The investigative authority should send an extension request, if needed, to the office or individual who appointed them.
- 4.2.5. If in the course of an investigation WTAMU decides to investigate allegations about the complainant or respondent that were not included in the original notice, WTAMU must provide notice of the additional allegations to the parties.
- 4.2.6. Complaints (or formal complaints in Title IX cases) will be investigated and adjudicated under one of the following processes:
  1. Title IX
  2. Sex-based misconduct
  3. All other civil rights complaints:
    - (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 includes those complaints based on sex, sexual orientation, and/or gender identity.
    - (b) In addition to reviewing complaints against students for civil rights violations, WTAMU shall 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.

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

- (a) Complaints will be processed under Title IX if all of the following apply:
- i. WTAMU 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 WTAMU Executive Director of Civil Rights and Title IX. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. The WTAMU Executive Director of Civil Rights and Title IX or designee has the authority to institute corrective measures;
  - ii. A formal complaint is filed by the complainant or signed by the Executive Director of Civil Rights and Title IX or designee;
  - 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 a WTAMU education program or activity. This includes an enrolled student, an employee, and applicants for admission or employment at WTAMU, and;
  - v. The alleged conduct meets the definition of sexual harassment.
- (b) The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests with WTAMU and not on the parties, provided that WTAMU 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 WTAMU 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 a WTAMU education program or activity, or did not occur against a person in the United States, then WTAMU 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 WTAMU conduct standards, nor does it preclude WTAMU proceeding with a civil rights process under this Regulation as Sex-based Misconduct provided that the investigatory, adjudicatory, and informal resolution processes are administered.
- (e) Discretionary dismissals - WTAMU may also dismiss a formal complaint if the complainant notifies the Executive Director of Civil Rights and Title IX or designee in writing that the complainant wishes to withdraw it, if the respondent is no longer enrolled or employed by WTAMU, or if specific

circumstances prevent WTAMU from collecting evidence sufficient to reach a determination; such dismissal does not preclude action under another provision of the WTAMU conduct standards, nor does it preclude WTAMU proceeding with a civil rights process as Sex-based Misconduct provided that the investigatory, adjudicatory, and informal resolution processes.

- (f) Upon a dismissal required or permitted pursuant to (d) and (e) above, WTAMU 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 WTAMU designated appellate authority.
- (g) WTAMU 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) WTAMU 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, WTAMU decides to investigate allegations about the complainant or respondent that were not included in the original notice, WTAMU must provide notice of the additional allegations to the parties whose identities are known.
- (i) WTAMU 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) WTAMU 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, WTAMU 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 WTAMU.

- (k) After the final draft investigation report is prepared, WTAMU 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 WTAMU 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) business 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 WTAMU 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.
- (o) Administrative conferences - If the complainant, respondent, and WTAMU 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 sanctioning requirements. The pre-hearing conference may serve as the administrative conference. Administrative conferences are considered a form of informal resolution.



- (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. WTAMU 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, WTAMU shall provide a trained advisor to assist them in the hearing process.
  - 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 WTAMU 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 WTAMU imposes on the respondent, and whether remedies designed to restore or preserve equal access to a WTAMU education program or activity will be provided by WTAMU to the complainant, and;
  - 6. WTAMU procedures for the complainant and respondent to appeal.
- xii. If for any reason there is reasonable cause for WTAMU 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 WTAMU pending the resolution of a complaint, the process will continue and, WTAMU will not issue a transcript on behalf of the student until the conclusion of the process.
- xiv. Upon request by another postsecondary educational institution, WTAMU must provide to the requesting institution any determination that a student violated the WTAMU Code of Student Life by committing sexual harassment, sexual assault, sex-based misconduct, and/or dating violence, domestic violence, and/or stalking based on sex.

4.2.8. Sex-based Misconduct - The following applies to complaints of sex-based misconduct:

- (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 Executive Director of Civil Rights and Title IX, in consultation with OGC and SECO.

- (b) All cases involving sex-based allegations are to be investigated and adjudicated, noting that the process is to determine whether or not the allegations are substantiated and, if substantiated, created a hostile environment.

4.2.9. 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 WTAMU 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.

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

Upon conclusion of the civil rights investigation, in consultation with OGC, the investigative report and exhibits will be submitted to the Designated Administrator (DA) (or hearing panel) for adjudication and sanctioning if warranted.

- 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

For student conduct rule violations, including sexual assault, dating violence, domestic violence, and stalking, WTAMU will use the Code of Student Life to determine annotations to be included on the student's transcript, as well as the student's eligibility to represent WTAMU in extracurricular activities, both on and off campus. The initial determination of eligibility for participation in extracurricular activities must exclude any administrator who has an inherent conflict of interest in the student's participation in that activity (e.g., the coach of a student-athlete, the advisor to a student club or organization). Civil Rights discrimination complaint sanctions must be handled in accordance with WTAMU's minimum sanction guidelines, which are found in the Code of Student Life. The Code is located at: <https://www.wtamu.edu/student-life/default.aspx>.

In the case of a complaint against a faculty employee, including sexual harassment, sexual assault, dating violence, domestic violence, and stalking, WTAMU will use the judicial process described in the Faculty Handbook in accordance with university sanctioning guidelines. Faculty Handbook is located at: <https://www.wtamu.edu/webres/File/About/Faculty%20Handbook.pdf>.

In the case of a complaint against a staff employee, WTAMU will use the judicial process described in the A&M System Regulation 32.01.02, *Complaint and*

*Appeal Process for Nonfaculty Employees*. System Regulation 08.01.01, *Civil Rights Compliance* governs complaints alleging discrimination.

Student appeals of sanctions of separation (expulsion or suspension) will be addressed as provided in the Code of Student Life, which contains the WTAMU minimum sanction guidelines.

- 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 a WTAMU education program or activity.
- 4.4.2. The designated administrator may decide sanctions, if any, or may delegate the sanctioning decision to another WTAMU authority. 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 WTAMU.
- 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. A 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 regulation 08.01.01 Civil Rights Compliance.
- 4.4.6. Students found responsible for committing acts of sexual harassment, sexual assault, dating violence, domestic violence, stalking based on sex, and/or any other sex-based misconduct who are allowed to return to WTAMU 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, WTAMU shall 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 with another member of the university, the sanction will be termination of employment.
- 4.4.9. WTAMU 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 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

A request for appeal of the finding or sanction must be submitted in writing, within five (5) business days of receipt of the finding or sanction, to the Executive Director of Civil Rights and Title IX Compliance.

An Appellate Administrator will be assigned by the Executive Director of Civil Rights and Title IX to review the appeal request and begin the appeal screening process. 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 appeals form;
- (c) the Executive Director of Civil Rights and Title IX, 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.

The Appellate Administrator will consider the request based on its merit for appeals. If the appeal request does not meet the threshold for granting an appeal, all parties will be notified of this decision, and the decision will be final. If the request is approved, the appeal will move forward through the appellate process.

To avoid a conflict of interest, the appeal must be directed to an Appellate Administrator who had no previous involvement and/or participation in the investigation and/or decision.

4.5.1. Appellate Administrators must meet the mandatory training requirements under the Clery Act, including annual training in the areas of sexual assault, sexual misconduct, domestic/dating violence, and stalking. Additionally, Appellate Administrators must have successfully completed university Civil Rights Hearing Process Orientation and A&M System-approved biennial certification.

4.5.1.1. In order to avoid the appearance of a conflict of interest, appeals must be directed to an Appellate Administrator who had no previous involvement and/or participation in the investigation and/or decision. The appellate authority 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. WTAMU shall 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 Process 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 Code of Student Life 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. WTAMU, 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 may include mediation, restorative conferences, shuttle facilitation, and other forms of facilitated dialogue.
- (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) WTAMU 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.

#### 4.7. Follow-up

Students involved in the complaint resolution process may additionally receive services from Student Medical Services, as well as advice or counseling from the Student Counseling Services Office. Faculty and staff may seek advice and counseling through the Human Resources Employee Assistance Program identified on the HR website at: [www.wtamu.edu/hr](http://www.wtamu.edu/hr).

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

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

[System Regulation 08.01.01, Civil Rights Compliance](#)

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

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

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

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## **Definitions**

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Refer to the [System Regulation 08.01.01](#) for all definitions.

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## **Revision History**

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**Approval Office**

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Office of the President  
(806) 651-2100

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**Approval Signature**

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Walter Wendler  
President/CEO

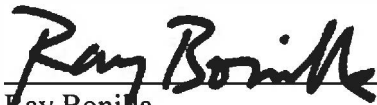
2/20/23  
Date

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**System Approvals\***

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**Approved for Legal Sufficiency:**



Kay Bonina  
General Counsel

2/10/23  
Date

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**Approved:**



John Sharp  
Chancellor

2/10/23  
Date

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**\*System approvals are contingent upon incorporation of any and all System-required changes in the rule's final posting.**