

# **Title IX and System Regulation 08.01.01: Mandatory Training for the Texas A&M University System**

Rick Olshak, Director of Title IX Compliance  
August 5, 2020



## For this training...

1. It will be helpful for you to keep a copy of the new 08.01.01 in front of you during this training
2. Aubrey Craft of SECO will keep members muted throughout today's training; questions will be taken by section by using the "Q&A" function in Webex; we have a lot of material to cover in our time together today. To ask a question:
  - a) Open the Q&A Panel
  - b) Type your question into the text box
  - c) In the Ask drop down list, select **Aubrey Craft** as the recipient
  - d) Select Send

*There will be a Final Q&A at the end of the program to address any unresolved questions.*
3. If you have questions after this program, please direct those questions to your Title IX Coordinator (TIXC). We ask that the TIXCs collect and submit questions to Rick Olshak so that SECO can issue any necessary guidance to all members. TIXCs – please submit your questions by the end of the day on Friday, August 14<sup>th</sup>, and I will respond by the end of the following week (the 21<sup>st</sup>)



### For this training...

4. This Power Point presentation is available on TrainTraq, and those involved in processing civil rights cases as civil rights officers (including Title IX coordinators and deputies), investigators, adjudicators, advisors, and appellate officers must all log in to TrainTraq and pass a post-test before you will be able to participate in civil rights compliance case management. **The deadline to complete this post-test is 5:00 pm on Wednesday, August 12.** If you are attending the Webex training, you will receive an access code for the post-test at the end of this program. If you are viewing this training on TrainTraq, the post-test will come at the end of the program.
5. Please note that the material being addressed today may involve explicit descriptions or details that some may find offensive, while others may find these materials triggering. Nothing is being done today simply for “shock value” but will be consistent with the real-world language and details that we are confronted with in this work. If you find yourself triggered, please step away to the degree that you need to, and please seek appropriate assistance if necessary.



### For this training...

6. With respect to the questions you ask and comments you make today, we want this to be a safe space for our participants. No recording is being made, so please ask and share freely; we also ask that everyone respect the privacy of what others share in this space.
7. As Aubrey noted, joining us today are Dr. Joni Baker, Director of Equal Opportunity and Diversity with the A&M System, Janet Gordon, Director of System Ethics and Compliance, and Jerry Brown, Managing Counsel for Student Affairs and Special Projects. They will all have open mics for this program and will be weighing in to offer their perspectives and to answer questions as well. David Halpern from OGC will also be attempting to join us for this program.



## Agenda

1. Title IX
2. System Regulation 08.01.01
  - a) Definitional Changes
  - b) Responsibilities of Members
  - c) Responsibilities of Employees and Students
  - d) Responsibilities of System Ethics and Compliance Office (SECO)
  - e) Civil Rights Complaint Processing
    - a) Complaints
    - b) Investigations
    - c) Decisions
    - d) Sanctions
    - e) Appeals
    - f) Informal Resolution
  - f) Scenarios
  - g) Appendices
  - h) Scheduled Trainings
3. Final Q&A and Post-Test Access



## Agenda

Please note we are scheduled to go to 4:30 pm today. We will not run over, unless people wish to remain late for supplemental Q&A. In the event that we finish the material early, the balance of the remaining time will be dedicated to Q&A for those wishing to remain.



## Title IX



U.S. Department of Education

Student Loans   Grants   Laws   Data

### ABOUT ED / OFFICES

## Sex Discrimination: Overview of the Law

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in education programs and activities that receive federal financial assistance. All federal agencies that provide grants of assistance are required to enforce Title IX. The U.S. Department of Education gives grants of financial assistance to schools and colleges and to certain other entities, including vocational rehabilitation programs.

Examples of the types of discrimination that are covered under Title IX include sexual harassment; the failure to provide equal opportunity in athletics; discrimination in a school's science, technology, engineering, and math (STEM) courses and programs; and discrimination based on pregnancy. A fuller list of Title IX issues OCR addresses appears [here](#). The Title IX regulation is enforced by OCR and is in the Code of Federal Regulations at 34 CFR Part 106.

Title IX prohibits retaliation for filing an OCR complaint or for advocating for a right protected by Title IX. Title IX also prohibits employment discrimination, but employment discrimination complaints filed with OCR are generally referred to the Equal Employment Opportunity Commission.

Find more information on Title IX [here](#).

Links to Title IX of the Education Amendments of 1972 and its implementing regulations:

- 20 USC 1681: Sex ([USCode.house.gov](#))
- 34 CFR Part 106 and Electronic Code of Federal Regulations

### How Do I Find...

- Student loans, forgiveness
- College accreditation
- Every Student Succeeds Act (ESSA)
- FERPA
- FAFSA
- 1098, tax forms

[More >](#)

### Information About...

- Transforming Teaching
- Family and Community Engagement
- Early Learning

### Related Topics

- [How to File a Complaint](#)
- [Topics A-Z](#)



## Title IX

Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq. was signed into law by President Nixon on June 23, 1972 –

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”





## Title IX - Since 1972

Title IX enforcement is overseen by the Office for Civil Rights (OCR) in the U.S. Department of Education (ED). ED can issue regulatory guidance by complying with the Administrative Procedures Act, or it can issue sub-regulatory guidance on its own in order to interpret regulations. The latter guidance does not carry the weight of law, but the former guidance does carry the weight of law.

### Major Developments for Title IX:

- 2001 Revised Guidance on Sexual Harassment
- 2011 “Dear Colleague Letter” on Campus Sexual Violence (sub-regulatory)
- 2014 OCR “Q&A” document clarifying the 2011 DCL (sub-regulatory)
- 2017 Interim Guidance that rescinded the 2011 and 2014 documents (sub-reg)
- 2020 Title IX Regulations (regulatory)



## Title IX – Major Changes in 2020

1. Redefined Sexual Harassment
2. Makes no distinction between students and employees
3. In order to trigger ED enforcement, Title IX now requires an empowered official at an educational institution to have “actual knowledge” of harassment rather than “constructive knowledge”
4. Investigations can only be initiated with the filing of a signed “formal complaint” from a complainant, or by a Title IX Coordinator filing a signed formal complaint on behalf of a complainant
5. Title IX now only applies to behavior taking place in the United States
6. At the time of filing a formal complaint, a complainant must be participating or attempting to participate in an educational program or activity of the educational institution
7. An educational institution’s grievance process must include a statement that the respondent is presumed not responsible for the alleged conduct until a formal determination of responsibility has been issued



### Title IX – Major Changes in 2020

8. An educational institution can dismiss a Title IX complaint if the respondent is not enrolled as a student or employed by the institution at the time the complaint is filed
9. Parties may be assisted by an advisor of their choice throughout the investigations process; if a live hearing is conducted, both the complainant and respondent must have advisors present, or the educational institution is responsible for assigning an advisor
10. Educational institutions must provide for live hearings in all cases that fall under the jurisdiction of Title IX
11. In live hearings, cross examination of parties and witnesses is required, and must be conducted the advisors to the complainant and the respondent
12. If a party or witness does not appear at a hearing and submit to cross-examination, decision-makers cannot rely on any of the information they provided to reach a decision



## Title IX – Major Changes in 2020

13. “Emergency removals” (on an interim basis) of student respondents may only occur when the respondent represents an immediate threat to the physical health or safety of any student or other individual; this must include an individualized safety and risk analysis, and the respondent is entitled to a “show cause” hearing to contest the removal
14. Prior to the finalization of an Investigation Report, parties are provided ten days to review a preliminary report and all relevant evidence; parties provided another ten-day review period prior to a hearing after the final report has been issued
15. Investigators and decision-makers must be different people
16. The standard of preponderance of the evidence or clear and convincing evidence may be used, provided the same standard is applied to both students and employees (The A&M System uses only the preponderance of the evidence standard)



Title IX – Major Changes in 2020

- 17. Provides for informal resolution of a formal complaint by trained facilitators
- 18. Requires an appeals process for both parties and establishes minimum bases for appeals (procedural irregularity, new evidence, and conflict of interest/bias)



Title IX – Questions?



## System Regulation 08.01.01 – Major Changes by Section

### **08.01.01 Civil Rights Compliance**

Revised [July 7, 2020](#) (Effective August 14, 2020)

Next Scheduled Review: July 7, 2025

Click to view [Revision History](#).



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### **Regulation Summary**

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



## System Regulation 08.01.01 – Overall Member Feedback Commentary

### 1. Member feedback (categories)

- a) Structural
- b) Insightful additions and edits
- c) Pushback on process and language
- d) Questions about implementation

### 2. Where the Regulation stands now

- a) Possible changes coming after the November election
- b) Work will begin in fall semester on anticipated changes; new version expected to be sent out for review some time in the spring of 2021
- c) Expect a restructuring of the regulation in the next version





System Regulation 08.01.01 – Major Changes by Section – Definitions ([highlighted definitions to be reviewed in following slides](#))

**Added** – **Advisor**, Appellate Party, Coercion, Complainant, **Complaint**, Confidential Reporter, Discrimination, Educational Program or Activity, **Exculpatory Evidence**, **Formal Complaint**, **Incapacitated**, **Inculpatory Evidence**, **Informal Resolution**, Member, Misconduct, Objectively Offensive, Offensive, Persistent, Pervasive, Preponderance of the Evidence, Private Body Parts, Reasonable Person, **Remedies**, Retaliation, Severe, **Sex-based Misconduct**, Student, **Supportive Measures**, Title IX Coordinator

**Amended** – **Consent**, Dating Violence, Designated Administrator, Domestic Violence, Employee, **Hostile Environment**, Investigative Authority, Predation, Quid Pro Quo Sexual Harassment, Reporter, Respondent, Sexual Assault, Sexual Exploitation, **Sexual Harassment**, Stalking



### System Regulation 08.01.01 – Major Changes by Section - Definitions

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



### System Regulation 08.01.01 – Major Changes by Section - Definitions

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

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



### System Regulation 08.01.01 – Major Changes by Section - Definitions

**Consent** – clear, voluntary and ongoing agreement to engage in a specific sexual act. Persons need not verbalize their consent to engage in a sexual act for there to be permission. Permission to engage in a sexual act may be indicated through physical actions rather than words. A person who is asleep or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or whose agreement was made by threat, coercion, or force, cannot give consent. Consent may be revoked by any party at any time.

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



## System Regulation 08.01.01 – Major Changes by Section - Definitions

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

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



## System Regulation 08.01.01 – Major Changes by Section - Definitions

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



## System Regulation 08.01.01 – Major Changes by Section - Definitions

**Supportive Measures** – non-disciplinary, non-punitive **individualized services** offered as appropriate, as **reasonably available**, and **without fee or charge** to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are **designed to restore or preserve equal access to the member’s education program or activity without unreasonably burdening the other party**, including measures designed to protect the safety of all parties or the member’s educational or work environment, or deter sexual harassment.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus or workplace, and other similar measures.

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



### System Regulation 08.01.01 – Major Changes by Section - Definitions

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

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

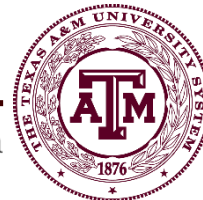




### System Regulation 08.01.01 – Major Changes by Section - Definitions

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

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



Definitions – Questions?



### System Regulation 08.01.01 – Major Changes by Section – Section I

Added 1.2 - Members must designate at least one **Title IX Coordinator**, who may or may not be the same employee designated in 1.1 above. Members must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, and employees of the name or title, office address, electronic mail address, and telephone number of the employee(s) designated as the **Title IX Coordinator(s)**. The notification should also state that the member does not discriminate on the basis of sex in its education programs and activities, including admission and employment, in accordance with Title IX of the Educational Amendments of 1972 and its implementing regulations. The contact information for the **Title IX Coordinator(s)** must be prominently displayed on the member's website and in each handbook or catalog that it makes available to persons entitled to notification as listed above.



### System Regulation 08.01.01 – Major Changes by Section – Section I

Added 1.9 - Members must ensure that all of those involved in the administration of civil rights complaints (including but not limited to: reporting, administering, investigating, adjudicating, advising, and informal resolution) complete annual training specific to their roles in accordance with requirements established by SECO. A document entitled [Minimum Training Requirements for Civil Rights Investigations, Advisement, Adjudication, Appeals, and Informal Resolution in The Texas A&M University System](#) is an appendix to this regulation. Training requirements adopted by members must be consistent with the Minimum Training Requirements included in the appendix to this regulation. All campus law enforcement officers reviewing reports/complaints based on sexual harassment, sexual assault, dating violence, and stalking must receive training in trauma informed investigations. [All training materials must be published on the member's website.](#)



### System Regulation 08.01.01 – Major Changes by Section – Section I

From *Minimum Training Requirements for Civil Rights Investigations, Advisement, Adjudication, Appeals, and Informal Resolution in The Texas A&M University System* –

The System Ethics and Compliance Office (SECO) provides member training upon request and conducts and facilitates large training events as needed to meet training obligations. The Director, Title IX Compliance is responsible for approving all training materials to be used to train system members. Training by SECO staff will be provided to members for mandatory public posting on their Title IX website. Training materials provided to members by internal member trainers and external third parties must be submitted to SECO at least one week in advance of any training for review and approval. Once training has been conducted, these materials must also be publicly posted on the member's Title IX website.



## System Regulation 08.01.01 – Major Changes by Section – Section 2

Modified 2.3 - Only certain employees may keep complaints of discrimination confidential, such as licensed health care personnel and sexual assault advocates who have completed a training program approved by the Attorney General of Texas, when acting in this capacity as part of their official employment. Researchers are deemed confidential only when the research project is federally funded and the identity of research subjects on the specific project are deemed confidential by law. These employees must provide information required under the Clery Act and other applicable state and federal laws and regulation. Confidential reporters must report to the Title IX Coordinator only the type of incident made known to them and may not include any information that would violate that person's expectation of privacy. All other employees informed of possible discrimination should advise the reporter that they cannot keep the information confidential and are required to report it. Employees should inform the reporter where confidential guidance can be obtained, such as the student counseling center or employee assistance program. To the extent possible, the member will protect the privacy of all parties to the report. (See definitions for "confidential" and "private.")



## System Regulation 08.01.01 – Major Changes by Section – Section 2

Added 2.4 - Each member university must designate one or more persons to serve as a person with whom **students** may speak confidentially concerning incidents involving sexual harassment, sexual assault, dating violence, or stalking, and who have reporting responsibilities consistent with expectations established in Section 2.3. All students must be informed of the existence and identities of these confidential reporters.



## System Regulation 08.01.01 – Major Changes by Section – Section 2

Amended 2.11 - Employees and students must not retaliate against a person for filing a complaint or participating in an investigation under this regulation. Employees and students found to have retaliated, or intentionally provided false or materially misleading information regarding alleged discrimination under this regulation, may be disciplined, up to and including dismissal or expulsion. **Employees and students must not retaliate against administrative personnel (e.g., Title IX Coordinator, Investigative Authority, Decision Maker, Hearing Panel members) for processing civil rights investigations under this regulation.** Prohibited conduct includes, but is not limited to:

- (a) attempting to coerce, compel, or prevent an individual from reporting alleged discrimination or providing testimony or relevant information;
- (b) removing, destroying, or altering documentation or other evidence (e.g., text messages) relevant to the investigation;
- (c) providing false or misleading information to member officials who are involved in the investigation and resolution of a complaint, or encouraging others to do so, and;
- (d) **using intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured under civil rights laws and regulations, or because the individual participated in any manner in the administration, investigation, proceedings, or hearings related to this regulation.**





Sections 1 through 3 – Questions?

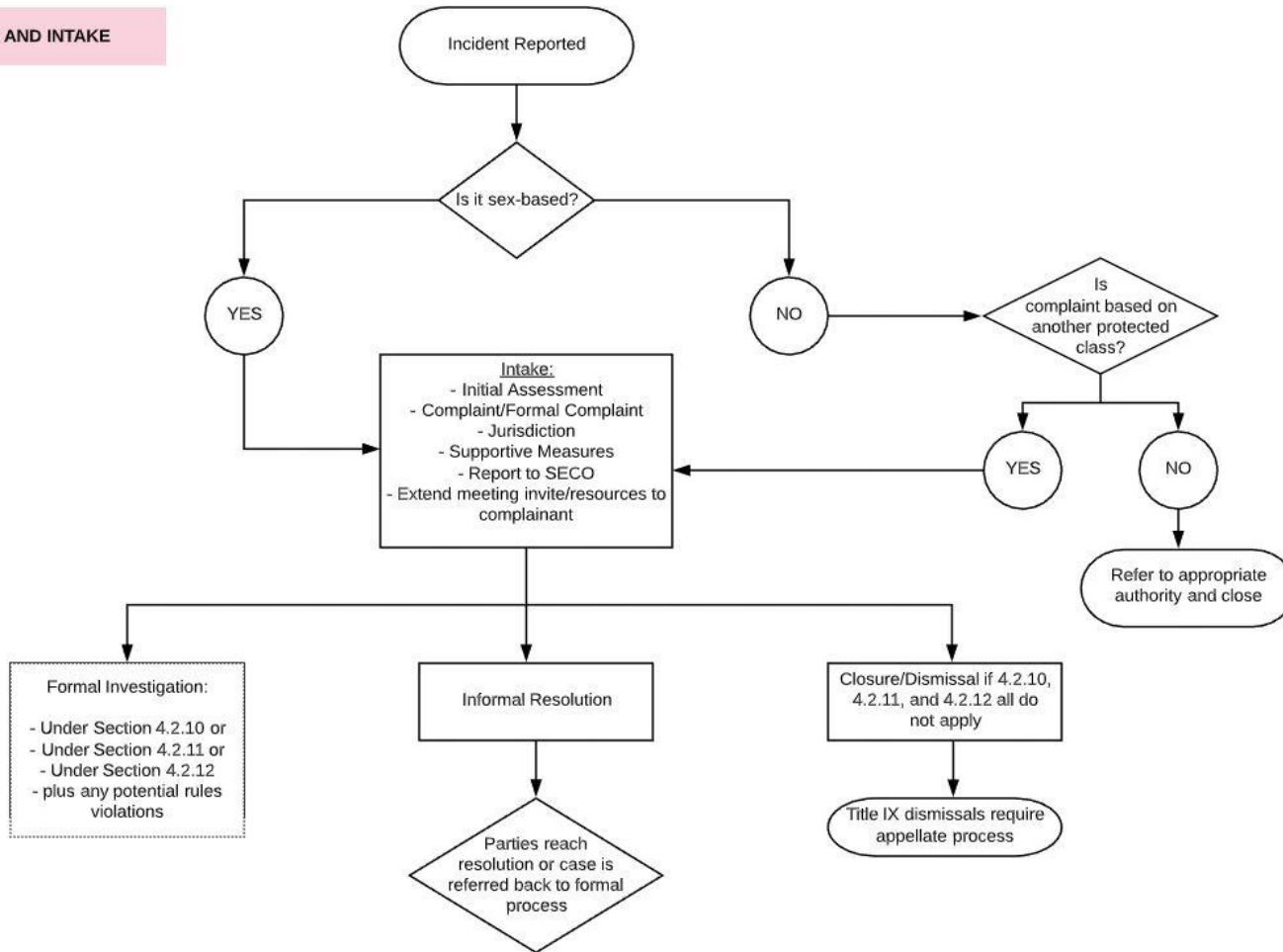


System Regulation 08.01.01 – Major Changes by Section – Section 4

Before we examine the major changes to Section 4, which deals with the mechanics of our reporting, intake, investigations, and grievance processes, let's first take a few minutes to visualize how our new civil rights processes will function...

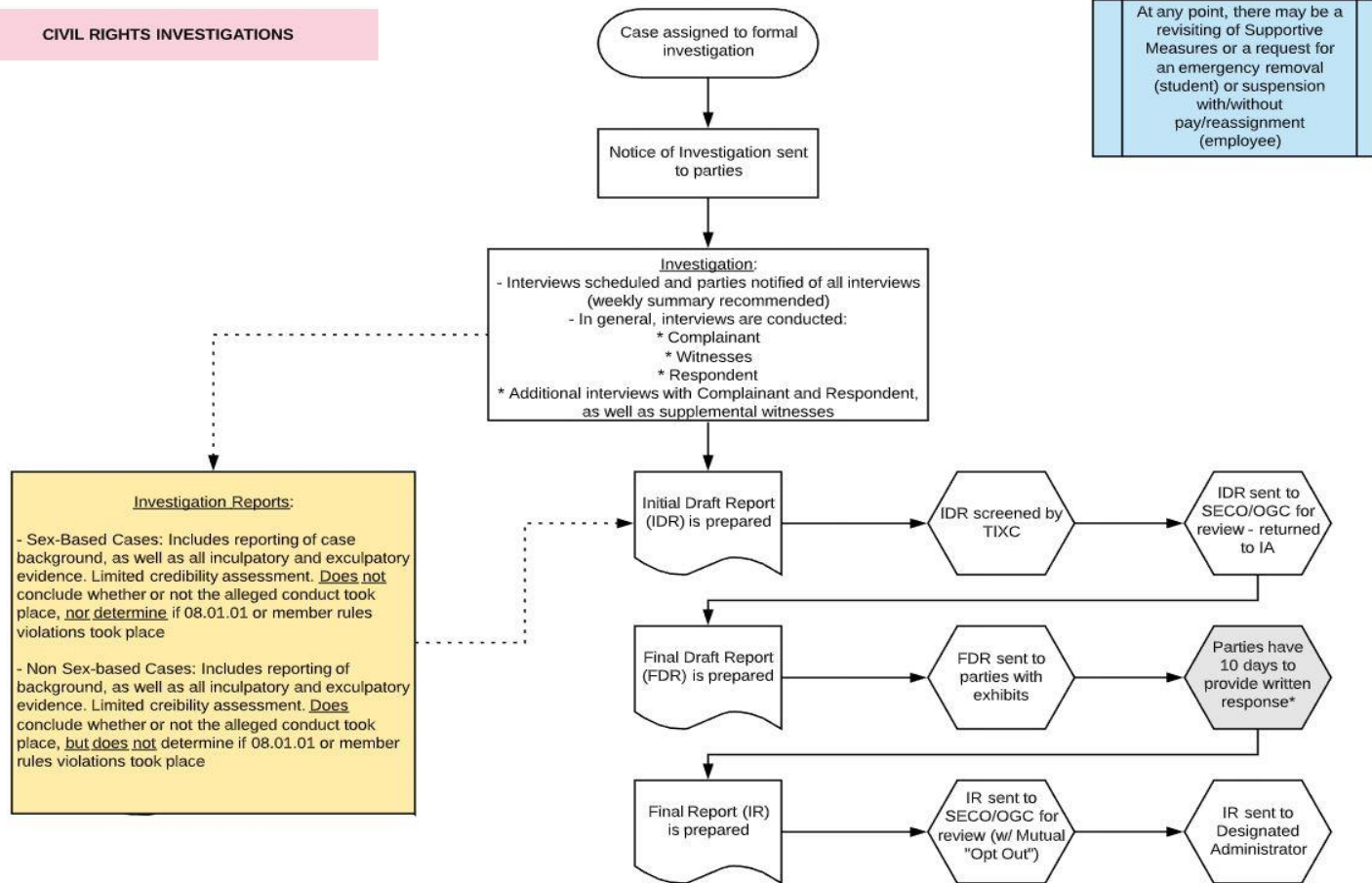


## CIVIL RIGHTS REPORTING AND INTAKE



## CIVIL RIGHTS INVESTIGATIONS

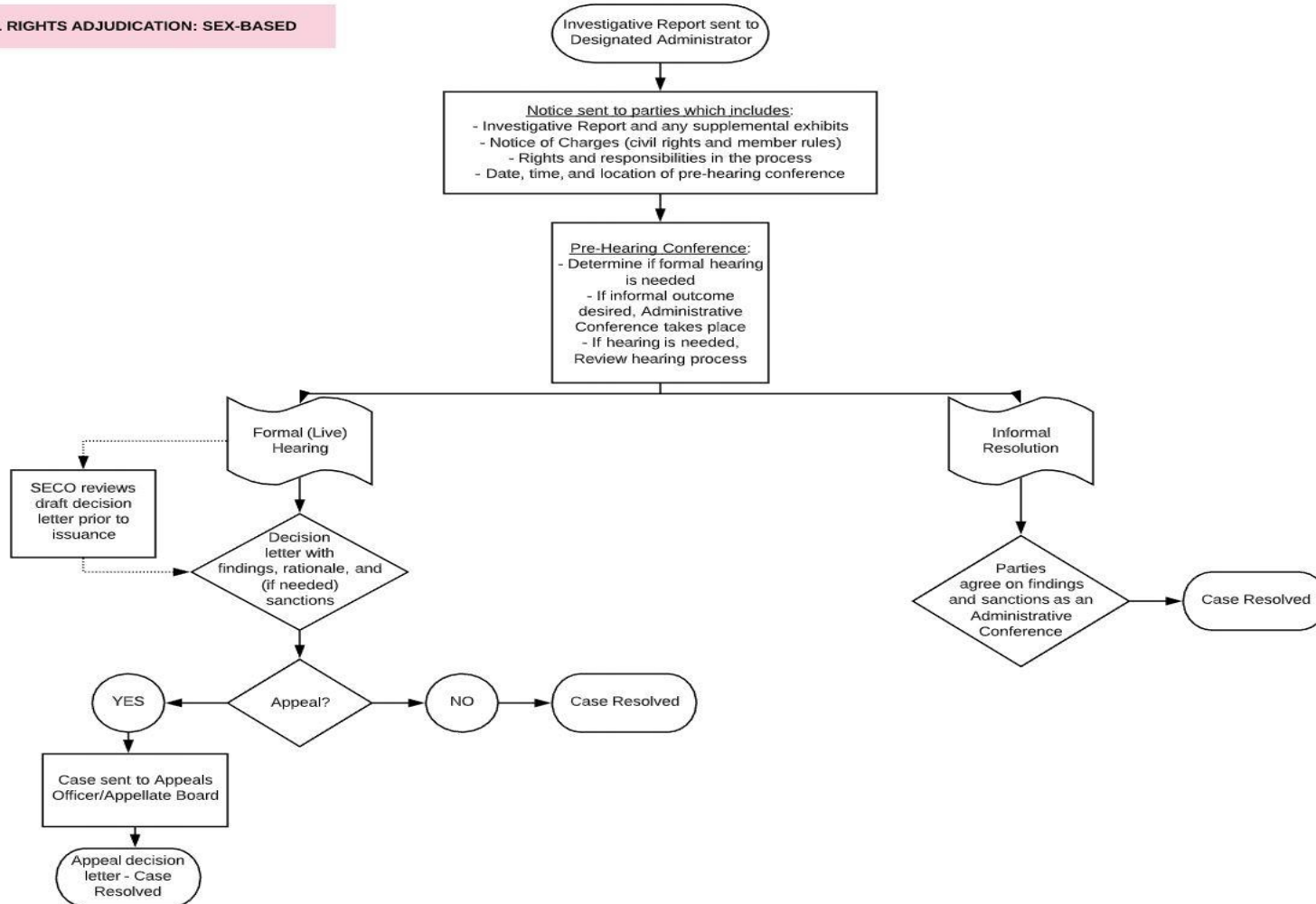
At any point, there may be a revisiting of Supportive Measures or a request for an emergency removal (student) or suspension with/without pay/reassignment (employee)



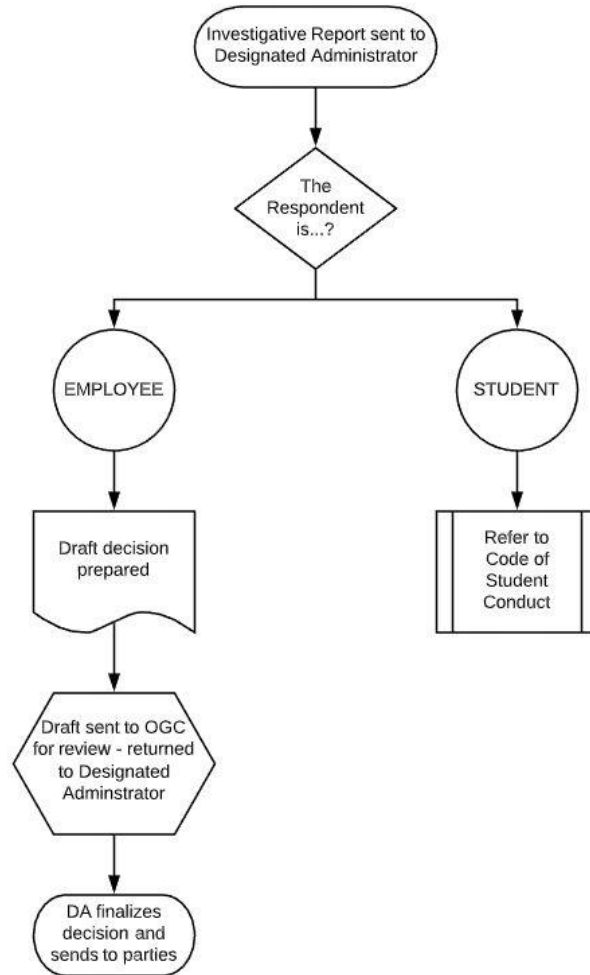
\* For sex-based cases, written responses are taken from parties; in non sex-based cases, questions for parties and/or witnesses are taken from the parties



## CIVIL RIGHTS ADJUDICATION: SEX-BASED

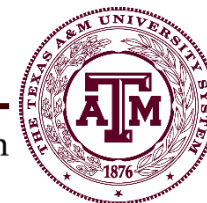


## CIVIL RIGHTS ADJUDICATION: NON SEX-BASED



# Title IX and System Regulation 08.01.01

	<u>TITLE IX (4.2.10)</u>	<u>SEX-BASED MISCONDUCT (4.2.11)</u>	<u>OTHER CIVIL RIGHTS (4.2.12)</u>	<u>STUDENT CONDUCT / EMPLOYEE PROFESSIONALISM</u>
Supportive Measures	Yes	Yes	Yes	Yes
Requires	Formal Complaint	Report/Complaint	Report/Complaint	Awareness and Evidence
Standard of Evidence	Preponderance	Preponderance	Preponderance	Preponderance
Informal Resolution Allowed?	Yes – with SECO approval	Yes – with SECO approval	Yes – with SECO approval	Yes
Role of Investigative Authority	Collect and report inculpatory and exculpatory evidence	Collect and report inculpatory and exculpatory evidence	Collect and report inculpatory and exculpatory evidence; conclude if allegations are substantiated but not if 08.01.01 or member rules were violated	Refer to Member Rules and appropriate System Regulation
Adjudication	Formal (Live) Hearing	Formal (Live) Hearing	Written Review	Refer to Member Rules and appropriate System Regulation
Adjudicator	Hearing Officer or Hearing Panel (in role of DA)	Hearing Officer or Hearing Panel (in role of DA)	Designated Administrator	Refer to Member Rules and appropriate System Regulation
Allowed an Advisor?	Yes – provided by Member for formal hearing if no advisor is present	Yes – provided by member for formal hearing if no advisor is present	Yes	Yes
Role of Advisor	Cross-examination and Support	Cross-examination and Support	Support	Support
For a Finding...	Severe <u>and</u> Pervasive <u>and</u> Objectively Offensive (SPOO) <b>OR</b> Quid Pro Quo (employee respondents only)	Severe <u>or</u> Persistent <u>or</u> Pervasive <u>and</u> Objectively Offensive (hostile environment) <b>OR</b> Quid Pro Quo	Severe <u>or</u> Persistent <u>or</u> Pervasive <u>and</u> Objectively Offensive	Did it take place? Does it violate the published rule/expectation?
Appeal?	Yes	Yes	No	Refer to Member Rules and appropriate System Regulation



## It takes a village...

How many member personnel can be involved in the process?



	Sex-based	Non sex-based
Civil Rights Officer	1	1
Title IX Dismissal Appeal Officer	0-1	0
“Show Cause” Hearing Officer	0-1	0
Investigators	1-2	1-2
Pre-hearing Facilitator	1	0
Informal Facilitators	0-2	0-2
Hearing Officer/Panel	1-3	1-3
Hearing Panel Advisor	0-1	0-1
Advisors for Parties	0-2	0
Appellate Officer/Panel	1-3	1-3
<b>Total Unique Individuals</b>	<b>5-17</b>	<b>4-12</b>

*This does not reflect people providing supportive measures to the parties, members of the behavioral risk assessment team, or System Office staff (SECO and OGC).*



Visualizing the Process – Questions?

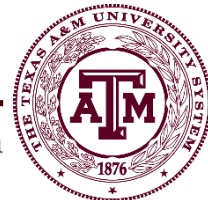


***Let's take a five minute break.....***



## System Regulation 08.01.01 – Major Changes by Section – Section 4

Amended 4.1.5 - SECO is designated to receive, review, investigate, and adjudicate complaints against the chancellor, a member Chief Executive Officer (CEO), an employee who reports directly to a CEO or the chancellor, **or a Title IX Coordinator**. The chancellor or designee will serve as the designated administrator in complaints against a member CEO or an employee who reports directly to a CEO. The chair of the Board of Regents or designee will serve as the designated administrator in complaints against the chancellor or an employee who reports directly to the chancellor.



## System Regulation 08.01.01 – Major Changes by Section – Section 4

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

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



### System Regulation 08.01.01 – Major Changes by Section – Section 4

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



## System Regulation 08.01.01 – Major Changes by Section – Section 4

Amended 4.2.4 - The member should offer the complainant(s), the respondent(s) and other affected individuals **supportive measures** (see Definitions). In all sex-based complaints, the Title IX Coordinator or designee must promptly contact the parties to discuss the availability of supportive measures, consider the parties' wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. Members must maintain the privacy of any supportive measures provided to the complainant or respondent to the extent that maintaining such privacy would not impair the ability of the member to provide supportive measures. The Title IX Coordinator or designee is responsible for coordinating the effective implementation of supportive measures. Failure to comply with the terms of supportive measures such as mutual no contact restrictions may be considered a separate violation of system policies and regulations and member rules and procedures. In cases in which a student complainant and student respondent are enrolled in the same course, either student may elect to drop the course without any academic penalty.



### System Regulation 08.01.01 – Major Changes by Section – Section 4

Amended 4.2.6 – The investigative authority will review each complaint, interview witnesses (if applicable), review relevant documentation, and provide an initial draft report of their investigation to OGC for review within 30 business days. OGC will coordinate with SECO and provide its review to the investigative authority within ten (10) business days. The investigative authority will have five (5) business days to create a final draft report and share that document electronically with both the complainant and the respondent. The complainant and respondent will have ten (10) business days to review the report and submit written commentary to the investigative authority. The investigative authority will then have five (5) additional business days to prepare a final report for review by OGC and SECO, who will have five (5) business days to provide feedback. The latter review provided by OGC and SECO may be waived by mutual agreement between the member and OGC/SECO if no substantive changes were made following the initial review. The final report shall be submitted directly to the designated administrator.



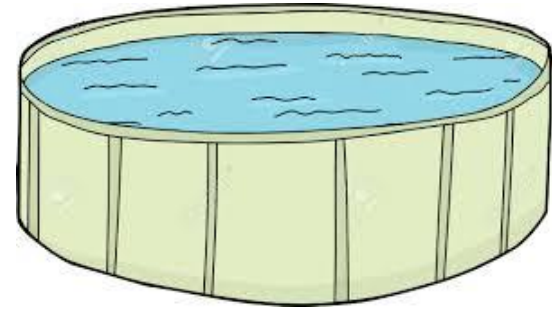
System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.9 – Types (“Pools”) of Cases

Title IX (4.2.10)

Sex-based Misconduct (4.2.11)

Other Civil Rights (4.2.12)



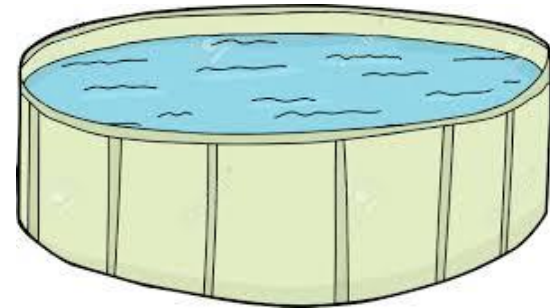


## System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.9 – Types (“Pools”) of Cases

Is it a **Title IX** complaint (4.2.10)?

It is considered a Title IX (TIX) complaint if there is a formal complaint that alleges sexual harassment, sexual assault, and/or dating violence, domestic violence, and stalking based on sex, and does not meet one or more of the criteria for mandatory dismissals (and possibly discretionary dismissals).



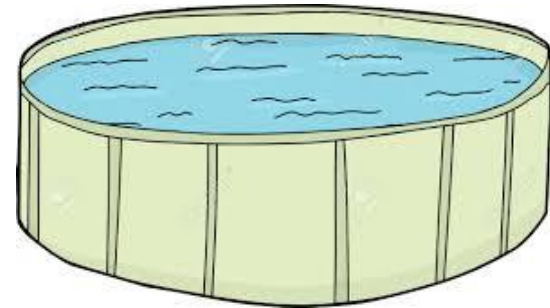
## System Regulation 08.01.01 – Major Changes by Section – Section 4

### Added 4.2.9 – Types (“Buckets”) of Cases

Is it a **Title IX** complaint?

#### Mandatory Dismissals:

- Case would need meet definition of sexual harassment if proved
- Did not occur in member’s education program or activity
- Did not occur in the United States



#### Discretionary Dismissals:

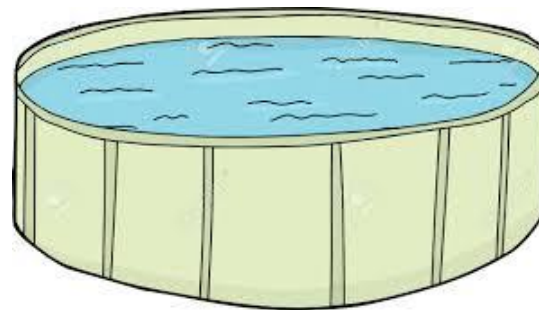
- Complainant wishes to withdraw complaint (noted in writing)
- Respondent no longer enrolled/employed with member
- Member is unable to collect sufficient evidence
- Complainant’s identity is not known
- When same allegations have already been investigated and adjudicated

## System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.9 – Types (“Buckets”) of Cases

Is it a **Sex-based Misconduct** complaint (4.2.11)?

It is considered a Sex-based Misconduct complaint if there is a formal complaint that alleges sexual harassment, sexual assault, and/or dating violence, domestic violence, and stalking based on sex and is dismissed for any reason from the Title IX pool.

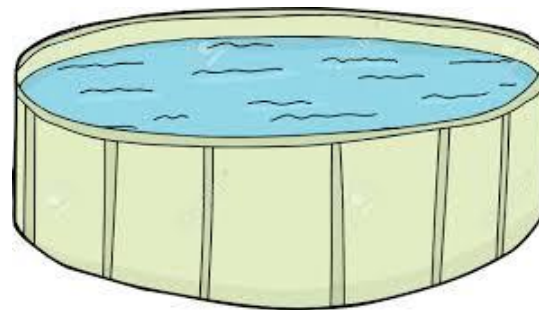


System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.9 – Types (“Buckets”) of Cases

Is it an “Other Civil Rights” complaint (4.2.12)?

It is considered an Other Civil Rights complaint if there is a complaint that alleges discrimination on the basis of race, color, religion, national origin, age, disability, genetic information, and/or veteran status and does not involve allegations of sex-based misconduct.



## System Regulation 08.01.01 – Major Changes by Section – Section 4

### Added 4.2.10 (f) – Title IX Cases

(f) – Upon a dismissal required or permitted pursuant to (d) and (e) above, the member must promptly send written notice of the dismissal and the reason(s) therefore simultaneously to the parties. The parties must be given the opportunity to appeal a dismissal to the member designated appellate authority. Appeals processes will be established by each member in consultation with OGC and SECO.



## System Regulation 08.01.01 – Major Changes by Section – Section 4

### Added 4.2.10 (h) – Title IX Cases

- (h) Members must provide a notice of allegations in cases involving sex-based violations which include sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice who may be, but is not required to be, an attorney, and that they may inspect and review evidence. The written notice must also inform the parties that they are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process. If, in the course of an investigation, the member decides to investigate allegations about the complainant or respondent that were not included in the original notice, the member must provide notice of the additional allegations to the parties whose identities are known.



## System Regulation 08.01.01 – Major Changes by Section – Section 4

With respect to advisors...

- If parties do not otherwise have advisors, we must appoint an advisor for (at least) a formal hearing (for the purpose of cross-examination)
- You may (but are not required to) provide process advisors from the outset of the process
- Parties are allowed one advisor (with few exceptions)
- Parties are allowed an advisor of their choice – there is nothing we can do if parties select advisors with wildly varying degrees of expertise or someone who is also a witness
- Although parties may select an advisor of their choice, we do not plan our meeting schedule around the advisor. While we may move a meeting a day or two, we will not be kept from moving forward by a busy advisor. In general, permit advisors to ask process questions but never to volunteer content or provide representation (other than conducting cross examination). Advisors should be made well aware of the terms of their attendance in advance, and then provided with one warning if they act outside of established rules. After that, they can and should be dismissed from the process. A new advisor must then be selected by the party or appointed by the member.



## System Regulation 08.01.01 – Major Changes by Section – Section 4

With respect to advisors...

- We are considering a number of “menu” options for appointing advisors.

At present, this includes:

- a) Use of a pool of (trained) volunteer advisors from staff and faculty
- b) Utilization of designated administrators, appellate officials, and/or investigators otherwise not involved/aware of the case
- c) Use of Texas attorneys on a pro bono basis
- d) Use of law students to provide advisement and cross examination services (seminar being taught this fall)





## System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.10 (m - p)

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

(n) At any time prior to the adjudication of a formal complaint, the parties may seek informal resolution to resolve the complaint. Informal resolution is described in 4.6.



## System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.10 (m - p)

(o) Administrative conferences - If the complainant, respondent, and member all agree on both the findings associated with the allegations and the sanctions to be imposed, a designated administrator may reach a written resolution of the complaint without a hearing, provided any sanctions imposed are in compliance with the sanctioning requirements noted in 4.5.5. The pre-hearing conference may serve as the administrative conference. Administrative conferences are considered a form of informal resolution (see 4.6).



## System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.10 (m - p)

(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.



### System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.10 (m - p)

- ii. Hearings will be closed to the public. Members must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. Physical access to the recording or transcript must be provided upon request for the purpose of preparing an appeal following the hearing.
  
- iii. A complainant and a respondent at a hearing must have an advisor with them. In cases in which a party does not have an advisor, the university will provide a trained advisor to assist them in the hearing process. Training requirements for university advisors are outlined in the Training Requirements (see 1.9).



### System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.10 (m - p)

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.



### System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.10 (m - p)

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.



### System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.10 (m - p)

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. If a complainant, respondent, or witness is not in attendance at a live hearing, the hearing officer or hearing panel cannot rely on the previously submitted statements of the absent party in reaching a determination, but may utilize all other evidence, including witnesses who interacted with the absent party, but not hearsay testimony of what the absent party told that individual. A complainant, respondent, or witness statement can also not be utilized in a determination if that person refuses to submit to cross-examination at a live hearing.



### System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.10 (m - p)

viii. 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.

ix. 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.

x. 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.





## System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.10 (m - p)

xi. 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.



## System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.10 (m - p)

xii. Decision letters must include:

1. The identification of the allegations;
2. A description of the procedural steps taken from the receipt of a formal complaint through determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held if any;
3. Findings of fact supporting the determination;
4. Conclusion regarding the application of the member's conduct standards to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the member imposes on the respondent, and whether remedies designed to restore or preserve equal access to the member's education program or activity will be provided by the member to the complainant, and;
6. The member's procedures and permissible bases for the complainant and respondent to appeal.



### System Regulation 08.01.01 – Major Changes by Section – Section 4

Added 4.2.10 (m - p)

xiii. If for any reason there is reasonable cause for a member to delay the issuance of the decision letter, this will be communicated to the parties by the designated administrator or designee.

xiv. If a student respondent withdraws or graduates from a member university pending the resolution of a complaint, the process will continue and, the member university will not issue a transcript on behalf of the student until the conclusion of the process.

xv. Member universities, upon request by another postsecondary educational institution, must provide to the requesting institution any determination that a student violated the member university's code of conduct by committing sexual harassment, sexual assault, sex-based misconduct, and/or dating violence, domestic violence, and/or stalking based on sex.



## System Regulation 08.01.01 – Major Changes by Section – Section 4

### Best Practices in Hearings (will be included in Hearing Script):

- The Investigator (or lead investigator writing the report) should be called to every formal hearing and should be expected to sit through the entire live hearing (not deliberations) to outline the investigatory process, address any challenges to the report, and for the investigator to question all inconsistencies from the report that might be stated at the hearing
  
- The order of questioning for all parties should be:
  - Hearing Officer/Hearing Panel (coordinated by the Chair in case of a panel)
  - Investigator (for questions related to consistency with the report)
  - Opposing Party
  - For Witnesses, Complainants should have an opportunity to conduct cross examination ahead of the respondent, unless the witness has been presented by the respondent

### System Regulation 08.01.01 – Major Changes by Section – Section 4.4 (Sanctions)

Added 4.4.1 – Disciplinary sanctions or other actions that are not supportive measures **may not be imposed on respondents prior to a determination of responsibility** except in cases meeting the requirements for removal on an emergency basis. **Remedies, which may be disciplinary or punitive in nature and may burden the respondent, must be designed to restore or preserve the complainant’s equal access** to the member’s education program or activity. Members must describe or list the range of possible disciplinary sanctions and remedies that the member may implement following any determination of responsibility for any discrimination finding in their member rule.

**KEY: NO** interim measures may be imposed that are not supportive (e.g., athletics, student organizations/activities) – ALL desired interim actions anywhere within the institution must be cleared through the Title IX Coordinator, who may be able to work with staff to secure voluntary self-measures for the interim of the investigations and adjudication process.



### System Regulation 08.01.01 – Major Changes by Section – Section 4.4 (Sanctions)

Important note on 4.4.2 (original language)

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.

**However**, in 4.2.10 (p, xii) sex-based cases require that decisions from the designated administrator/hearing officer/hearing panel include a finding and a sanction (when there is a violation). This takes precedence over 4.4.2. Therefore, in sex-based cases the designated administrator (hearing officer or hearing panel) is to impose sanctions as well as issue a finding. Further, because parties are notified of the finding by letter, there should be no separate “sanctioning phase” to a hearing. The hearing officer or panel needs to collect sufficient information from the parties to both issue a finding of fact and to impose sanctions without any additional participation of the parties.



### System Regulation 08.01.01 – Major Changes by Section – Section 4.4 (Sanctions)

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



### System Regulation 08.01.01 – Major Changes by Section – Section 4.5 (Appeals, Sex-based)

Amended 4.5.1 (grounds of appeal) –

- (a) a procedural irregularity that affected the outcome;
- (b) new evidence, not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome; the new evidence must be provided at the time of appeal with the appropriate member appeals form.
- (c) the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome.
- (d) the appropriateness or severity of the sanctions.





### System Regulation 08.01.01 – Major Changes by Section – Section 4.5 (Appeals, Sex-based)

Added 4.5.6 (outcomes of appeal) –

Limited authority of appellate officers/panels to the following actions:

- (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.

\* Note that sanctions are expected to comply with sanctioning requirements outlined in the regulation, barring significant mitigating factors that must be disclosed in any finding by an appellate officer or appeals panel.



### System Regulation 08.01.01 – Additional notes for employee respondent cases

Amended 4.2.1 (d) –

An **unredacted** version of the complaint will be given to an employee respondent(s) and their advisor, if applicable, with admonishments regarding privacy.

Maintained 4.3.4 (re-numbered) –

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.

Amended 4.4.8 –

When an employee is found to have sexually harassed **or engaged in sex-based misconduct (as defined by this regulation) (of)** another member of the university or agency community, the sanction will be termination of employment.



### System Regulation 08.01.01 – Major Changes by Section – Section 4.6 (Informal Resolution)

Added new Section 4.6 on Informal Resolution –

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

(a) Informal resolution is a voluntary process. No party may be compelled to participate in informal resolution. The system member, in consultation with SECO, must agree to allow an informal resolution to move forward and must obtain the parties' voluntary, written consent to the informal resolution process.

(b) Prior to an informal resolution, the parties will be provided with: (a) written notice of the allegations; (b) the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, and; (c) the consequences of withdrawing from the informal process and resuming the formal process, and including the records that will be maintained or could be shared.



### System Regulation 08.01.01 – Major Changes by Section – Section 4.6 (Informal Resolution)

Added new Section 4.6 on Informal Resolution –

- (c) Once a party agrees to participate in informal resolution, they may withdraw from the process at any time prior to a final agreement and resume the formal grievance process. Information shared in the informal resolution process may not be introduced into the formal process without independent evidence.
- (d) Once a final agreement is established through informal resolution, the complaint may not return to the formal complaint process unless one or both parties fails to abide by any conditions established in the agreement.
- (e) Informal resolution options include mediation, restorative conferences, shuttle facilitation, and other forms of facilitated dialogue. Each member must work in consultation with SECO in developing informal resolution programs and the conditions for their use.



### System Regulation 08.01.01 – Major Changes by Section – Section 4.6 (Informal Resolution)

Added new Section 4.6 on Informal Resolution –

(f) Mediation may not be used to resolve complaints of rape, statutory rape, dating violence, domestic violence, or any case in which imminent threats of harm may exist.

(g) Members may not offer an informal resolution process in sex-based complaints unless a formal complaint is filed and may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.



Section 4 – Questions?

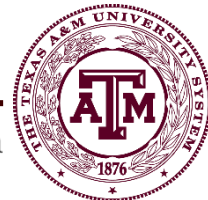


Scenarios



### Scenario #1:

Natalie is a new System Title IX Coordinator (TIXC) who meets with a student complainant on a Monday morning. The student discloses that they were sexually assaulted over the weekend by a friend at the respondent's off-campus apartment. The complainant believes that a date rape drug was used because the complainant did not drink "all that much" and the complainant blacked out during the assault. The complainant states they were initially afraid to come forward because they share a class with the respondent, and the respondent is a well-known athlete on campus, but some friends convinced them to come forward because the respondent poses a risk to others, since two of the complainant's friends indicated the respondent had previously attempted to pressure each of them into having sex. The complainant asks for an investigation, and Natalie assures the complainant that this will be a Title IX case that will be immediately moved to an investigation, and that Natalie will immediately impose a no-contact restriction on the respondent, have the respondent removed from the shared class, and will have the respondent removed from their athletic team pending the outcome of the investigation. Relieved, the complainant thanks Natalie and leaves her office.





## Scenario #1:

Questions (please note your answers and reasons for each answer):

1. Should Natalie have promised that this would be handled as a “Title IX” case?
2. Should Natalie have said that she would issue a no-contact order against the respondent?
3. Can/Should Natalie have the respondent removed from class?
4. Can/Should Natalie have the respondent removed from their athletic team for the duration of the investigations and adjudicatory processes?



### Scenario #1:

Questions (please note your answers and reasons for each answer):

1. Should Natalie have promised that this would be handled as a “Title IX” case?

**No.** We need additional information about the off-campus apartment. Unless it is owned or controlled by the university or an organization officially recognized by the university, the case would be considered outside of the scope of an educational program or activity and would be dismissed as a Title IX case (with an appeal allowed for this decision). The case would then be heard as a “Sex Based Misconduct” case under 08.01.01 and not a “Title IX case.” This has little if any practical effect for the parties, but we should be exact in our language and transparent with our processes.



### Scenario #1:

Questions (please note your answers and reasons for each answer):

2. Should Natalie have said that she would issue a no-contact order against the respondent?

**No.** Any no contact order issued at this point in the process should be a mutual no contact order until the point at which there is a finding against the respondent. Additionally, while it is allowable for TIXCs to issue no contact orders, it is not consistent with our current recommended guidance, which is that all student no contact orders should generally come from the institution's student conduct office at the request or recommendation of the TIXC. Student conduct offices should generally defer to the judgment of the TIXC on these requests. We seek to keep the TIXC out of any written decisions/authorizations that could lead parties to question the perception of neutrality on the part of the TIXC.

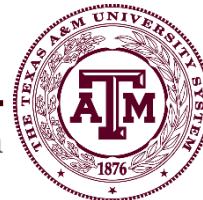


### Scenario #1:

Questions (please note your answers and reasons for each answer):

3. Can/Should Natalie have the respondent removed from class?

**No.** This action would be considered a remedy (sanction) being imposed prior to the finding of responsibility. And although this is likely not going to be handled as a Title IX case and we would be free from federal mandates, as a System we are extending the same due process protections to parties in sex-based misconduct the same due process rights we extend in Title IX cases. Further, although a TIXC can recommend, encourage, or negotiate supportive academic measures, faculty, department chairs, and academic administrators are the officials who should carry them out.



## Scenario #1:

Questions (please note your answers and reasons for each answer):

4. Can/Should Natalie have the respondent removed from their athletic team for the duration of the investigations and adjudicatory processes?

**No.** As noted in the previous question, such an action would be considered a remedy (sanction) being imposed prior to the finding of responsibility. Similarly, neither the coach nor the Athletic Director may impose any measures that could be perceived as punitive by the respondent. It is advisable that Athletic Department personnel, in consultation with the TIXC, can meet with the student athlete to determine if the respondent will voluntarily alter their status for travel, competition, practices, and/or meetings.



### Scenario #1:

For athletics and other areas, you may (in consultation with your TIXC) explore a temporary self-removal from athletics/other activities. Note the self-removal would need to protect any privileges enjoyed by the student, including scholarships.

Reasons why someone might agree to a temporary self-removal:

- Less distracting for the respondent, who needs to focus on the process
- Team/group cohesion/distraction
- Potentially adverse publicity for continued participation (for the individual)
- By continuing to participate, the individual might open themselves up to protests/public vilification
- By not having the incident in the public eye, the parties may be able to otherwise reach an informal resolution
- Helping to protect team/organizational/institutional reputation

Adapted from Brett Sokolow, ATIXA



### Scenario #2:

You are a member of a hearing panel that is reviewing a case of alleged sexual assault brought against a respondent. In the investigation report and at the hearing, the investigator noted that the respondent had not been drinking, while the complainant had been consuming beer, and based on calculations for the time of the incident had a blood alcohol level between .08 and .011, while also noting that the complainant was able to walk without assistance and appeared to be functioning according to witnesses. During deliberations, one of your fellow panel members states that this level of intoxication establishes that the complainant was drunk (given that .08 is the legal limit for driving) and was therefore incapable of consenting to sexual activity.

As a panel member, do you agree or disagree with this analysis?



### Scenario #2:

**Disagree.** A blood alcohol level of between 0.08 and .11 establishes only that the person is impaired to the point that they cannot legally drive. It is in no way an indicator that the person is incapacitated to the point of being incapable of making rational decisions about consent to sexual activity and recognizing the consequences of their decision. In fact, we would expect someone at this blood alcohol level to make the very rational decision to not get behind the wheel of a car. In very general terms, we may expect to see incapacity in the area of .20, with some exceptions based on physical differences between parties (usually as low as .15 or as high as .23).





### Scenario #3:

You are a director of human resources for a System member. One of your personal friends, who works in another office, shows up in your office one day very upset and seeking your advice. The person tells you they have been cheating on their spouse with their supervisor, who is also married. Your friend says that everything was good until about two weeks ago, when their supervisor began monitoring their movements, asking them about contacts they had with others, and demanding public sexual acts that they were uncomfortable with but consented to. Your friend says the supervisor made it very clear that being cooperative would result in a good performance evaluation and a commensurate increase in salary. The supervisor also “jokingly” suggested that failing to cooperate would have “consequences.” The two are scheduled to be away at a conference together the following week and the supervisor has said that they have a lot of “fun activities” planned for the evenings. Your friend has their performance appraisal coming up in a month and is terrified of angering their supervisor. Your friend is very clear that they came to you seeking only your advice as a friend, since you are responsible for human resources but also someone they trust. They don’t want any report made or any action taken.



## Scenario #3:

1. Can/Should you act only as a friend in this instance and limit your role to advice and support until your friend decides they want to file a formal complaint?
2. Are you required to report this information? If so, to whom?
3. What federal law might be applicable to this situation?
4. What System Regulations might be applicable to this situation?
5. What might the outcomes be for:
  - a) The Supervisor?
  - b) Your friend?
  - c) You?



Scenario #3:

1. Can/Should you act only as a friend in this instance and limit your role to advice and support until your friend decides they want to file a formal complaint?

**No.** As an A&M System employee who is not deemed a confidential reporter, you must act in your professional capacity and immediately explain this to your friend. Everything that your friend shared with you must now be reported as per System Regulation 08.01.01, Section 4.1.1.



Scenario #3:

2. Are you required to report this information? If so, to whom?

**Yes.** You are a required to report the potential violation of System Regulation 08.01.01 to the Title IX Coordinator.



### Scenario #3:

3. What federal law might be applicable to this situation?

**Both Title VII and Title IX may be applicable to this situation.** Because of the new Title IX regulations passed down by the Department of Education (which are not fully consistent with Title VII), due process requirements for Title IX prevail under 08.01.01 as long as the case is not dismissed from the Title IX process. However, please again note that due process requirements for sex-based misconduct still mirror those for Title IX.

**Agencies** - please note that Section 4.2.10 (Title IX) apply to System universities only. Cases involving agency employees are processed under 4..2.11 (Sex-Based Misconduct).



Scenario #3:

4. What System Regulations might be applicable to this situation?

**As noted, both 08.01.01 and 07.05.01 may be applicable to this situation. 08.01.01 and its process requirements take precedence over 07.05.01.**



## Scenario #3:

5. What might the outcomes be for:

The Supervisor?

If found to have violated 08.01.01, the supervisor will be terminated from employment. For violating 07.05.01, disciplinary action may include any action up to and including termination of employment.



Scenario #3:

5. What might the outcomes be for:

Your friend?

If found to have violated 07.05.01, disciplinary action may include any action up to and including termination of employment.





Scenario #3:

5. What might the outcomes be for:

You (if failing to report)?

For violating reporting requirements under 08.01.01 disciplinary action may include any action up to and including termination of employment.



- Appendices



System Ethics & Compliance Office  
THE TEXAS A&M UNIVERSITY SYSTEM



# Appendix A: Sanctioning



System Ethics & Compliance Office

THE TEXAS A&M UNIVERSITY SYSTEM

**SYSTEM REGULATION 08.01.01, APPENDIX A  
MODEL SANCTIONING MATRIX FOR SEXUAL VIOLENCE,  
SEXUAL HARASSMENT, AND SEX-BASED MISCONDUCT BY STUDENTS IN  
THE TEXAS A&M UNIVERSITY SYSTEM**



## Appendix A: Sex-Based Sanctioning

Includes:

- Sanctioning Considerations (nature of offense, prior disciplinary history, aggravating and mitigating factors)
- Inactive and Active Sanctions (and Learning Outcomes)
- Minimum Sanctions for:
  - Sex-Based Violence and/or Nonconsensual Penetration (with predation)
  - Sex-Based Violence and/or Nonconsensual Penetration (without predation)
  - Nonconsensual Sexual Contact
  - Sexual Exploitation
  - Stalking
  - Harassment or Misconduct Based on Sex

<https://assets.system.tamus.edu/files/policy/pdf/08-01-01-Appendix.pdf>



## Appendix A: Sex-Based Sanctioning

### Minimum Inactive Sanctions for:

Sex-Based Violence and/or Nonconsensual Penetration (with predation)

**Permanent Expulsion**

Sex-Based Violence and/or Nonconsensual Penetration (without predation)

**One-year (two consecutive major semesters) Suspension**

Nonconsensual Sexual Contact

**Disciplinary Probation**

Sexual Exploitation

**Disciplinary Probation**

Stalking

**Warning/Reprimand/Censure**

Harassment or Misconduct Based on Sex

**Warning/Reprimand/Censure**

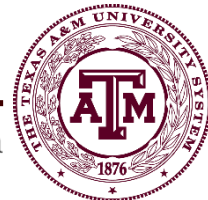
# Appendix B: Training



System Ethics & Compliance Office

THE TEXAS A&M UNIVERSITY SYSTEM

**SYSTEM REGULATION 08.01.01, APPENDIX B  
MINIMUM TRAINING REQUIREMENTS FOR CIVIL RIGHTS INVESTIGATIONS,  
ADVISEMENT, ADJUDICATION, APPEALS, AND INFORMAL RESOLUTION IN  
THE TEXAS A&M UNIVERSITY SYSTEM  
(MINIMUM TRAINING REQUIREMENTS)**



## Appendix B: Training Requirements

Includes:

- Background
- Training Providers and Materials
- Required Minimum Annual Training
  - University/Agency CEOs, Vice Presidents, Compliance Officers, Title IX Coordinators, Civil Rights Officers, Deputy Coordinators, Intake Personnel, Stakeholder Group Members, and Campus Law Enforcement Officers
  - Civil Rights Investigators
  - Designated Administrators, Hearing Panel Members, Advisors, and Appellate Officers
  - Informal Resolution Practitioners

<https://assets.system.tamus.edu/files/policy/pdf/08-01-01-Appendix-B.pdf>



System Regulation 08.01.01 – Scheduled Trainings





## Scheduled Trainings with SECO

*Please note that Title IX Coordinators must complete all of these training programs*

### 1. Adjudicator Training (for Hearing Officers, Hearing Panel Members, Advisors to Panels, Appellate Officers)

August 13, 14, 18, and 19 All sessions on Webex from 1:00 to 4:30 pm

First three sessions required for all. Fourth session required for single hearing officers and panel members who may serve as a chair person in a live hearing, as well as advisors to panels

Post-test required for all

### 2. Investigations Training

August 20 on Webex from 1:00 to 3:00 pm

Required for all investigators

Post-test required for all

## Scheduled Trainings with SECO

*Please note that Title IX Coordinators must complete all of these training programs*

### 3. Advisor Training (for Internal Member Advisors who will advise parties and/or conduct cross-examination)

August 21 on Webex from 9:00 to 11:00 am

Required for all advisors to parties

Post-test required for all

### 4. Informal Resolution Training

August 28 on Webex from 9:00 am to Noon

Required for all TIXCs – Invited are all stakeholders and those who might be involved and/or have an interest in aiding in the facilitation of informal resolutions

No Post-test requirement



## Scheduled Trainings with SECO

*Please note that Title IX Coordinators must complete all of these training programs*

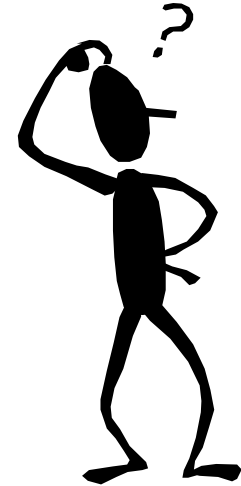
### Still to be scheduled:

1. Investigation Skills & Process Training
2. Conflict Resolution Skills and Process Training
3. Mediation Training
4. Restorative Practices Training
5. Other Facilitative Training



## Final Q&A

We will pause here for one last round of questions –  
We ask that you ask any final questions and Aubrey will  
try to make sure that each of your questions is answered.



## Post-Test

Between now and August 12, please log in to TrainTraq, where you will find you have been assigned to complete this training program.

In order to bypass the training program and proceed directly to the post-test, enter the following code:

**Ty99%82!**



*Thank  
you*



... for your participation in today's training program. We hope that the information provided today better equips you to fulfill your roles within our civil rights reporting and resolution processes.

Special thanks to [Aubrey Craft](#) for setting up this meeting, providing technical support, and facilitating our conversation.