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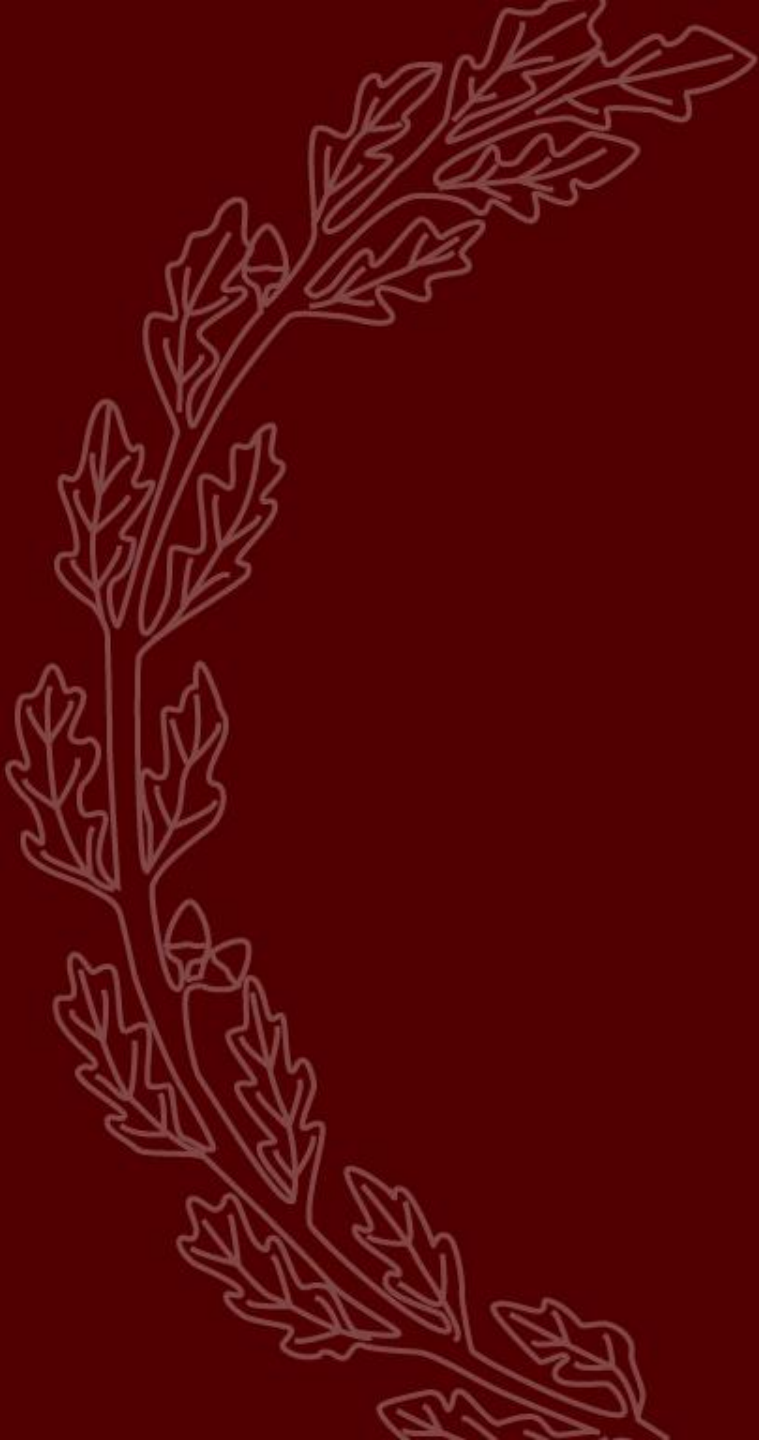
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THE
TEXAS A&M
UNIVERSITY
SYSTEM

Civil Rights Appellate Authority Training

System Ethics and Compliance Office





Introductions

Rebecca Tuerk, Ed.D.

Director of Civil Rights Compliance
for Employees

Marcy Louis, Ph.D.

Director of Civil Rights Compliance
for Students

Disclaimers

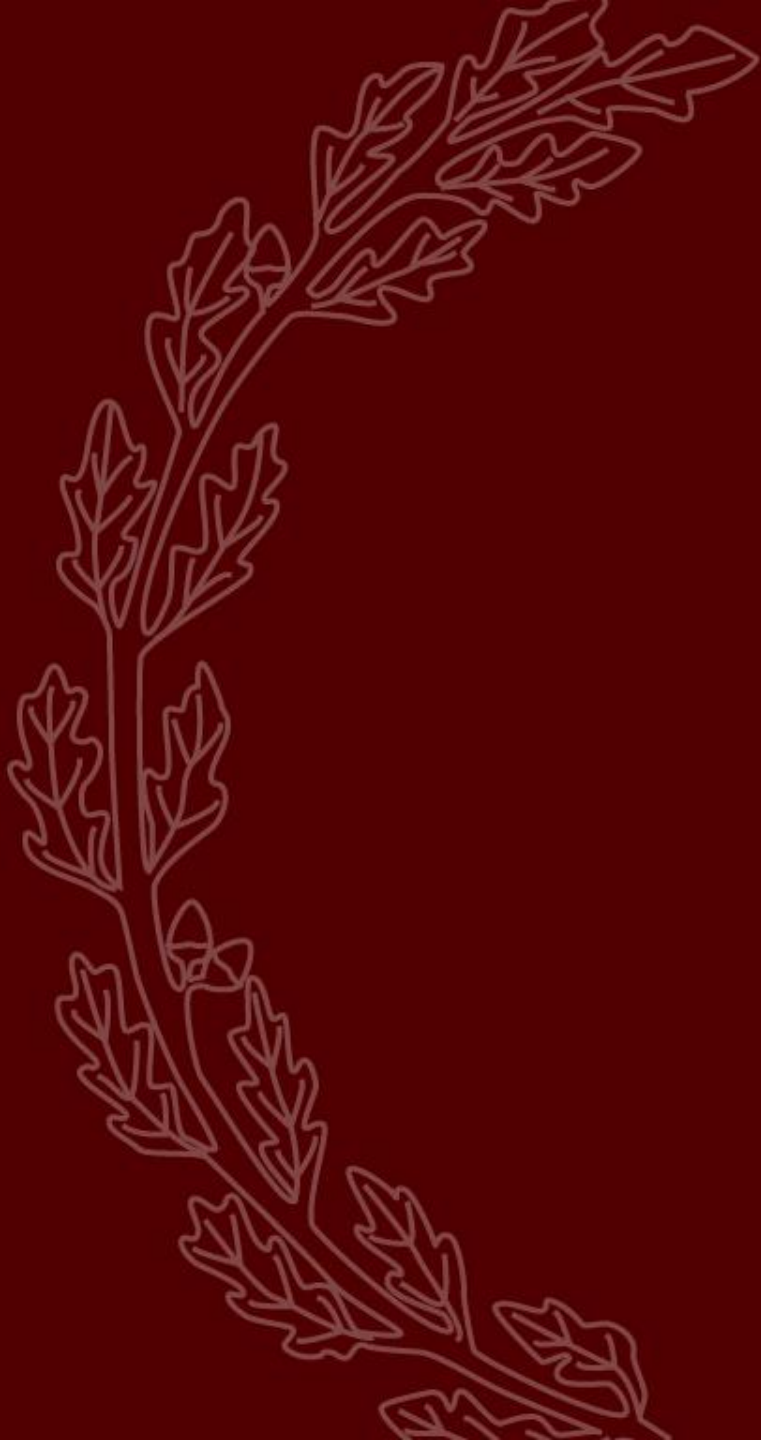
- This training will cover sensitive and potentially disturbing topics related to Title IX, such as sexual harassment, sexual assault, dating violence, and stalking. Feel free to step away as needed. Counseling support can be accessed by contacting your Employee Assistance Program.
- This training is for informational and educational purposes only and does not constitute legal advice.

Session Guidelines

- Please be present (minimize distractions)
- Please be engaged and participate
- Please take chances; “lean in” to any discomfort you may have
- Please be respectful of others
- Please maintain privacy of what is said by fellow participants
- Please ask questions as we go

Learning Objectives

- Describe the appeal process for cases involving alleged Civil Rights violations as outlined in System Regulation 08.01.01.
- Explain the role and limitations of an appellate authority in the appeal process, including authority, responsibilities, and procedural boundaries.
- Develop and apply relevant, unbiased, and procedurally appropriate questions during the appeal process.
- Identify valid grounds for appeal and follow the appropriate procedures to evaluate and determine the outcome of an appeal.
- Develop findings based on fact and the preponderance standard that supports the rationale for an appropriate appeal outcome aligned with A&M System regulation. (Appeal Decision Letter)



Section I

Background

Standards of Practice

Grounds

Rational Writing

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Texas A&M University System Regulation 08.01.01

- Purpose and Scope
 - Establishes system-wide standards for reporting, investigating, and resolving allegations of discrimination, harassment, retaliation, and complicity.
 - Ensures compliance with federal and state civil rights laws across all Texas A&M University System members.
- Applicability
 - Students, Employees, and Third Parties
- Types of Discrimination
 - Title IX/Sex-Based Misconduct
 - All other forms of discrimination based on protected classes

Allegations for Discrimination Not Based on Sex

- Any **employee** disciplined pursuant to this regulation (Section 4.5.2) may appeal that action in accordance with the respective policy/regulation:
 - 12.01 Academic Freedom, Responsibility and Tenure;
 - 32.01 Employee Complaint and Appeal Procedures;
 - 32.01.01 Complaint and Appeal Procedures for Faculty Members
 - 32.01.02 Complaint and Appeal Process for Nonfaculty Employees
- Any **student** receiving a sanction of separation (expulsion or suspension) may appeal the sanction in accordance with the member rule and/or student code of conduct.

Appeals: Standards of Practice

- Review whether or not the original decision-maker(s) review was conducted fairly and thoroughly.
- This is not a new hearing and any information outside of the scope of the appeal is not considered.
- The burden of proof shifts to the appealing party.
- The Appellate Authority cannot override the original decision-maker's judgment without cause, as specified in the grounds for appeal.
- Texas A&M University System Regulation 08.01.01 requires and outlines an appeal process for the complainant and respondent for Sexual Harassment/Sex-based Misconduct case.

Appeal: Title IX/Sex-Based Misconduct

- a **procedural irregularity** that affected the outcome;
- **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;
- 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;
- the **appropriateness or severity of the sanctions.**

Appeal Outcomes: Allegations of Sex-Based Misconduct

- Affirm the original findings and sanctions;
- Affirm the findings and modify the sanctions; or
- Remand the case to a new hearing or review.

* See system regulation 08.01.01 section 4.5.1.6

Appeal: Procedural Irregularity

Procedural Irregularity that affected the outcome of the matter

- **Material deviation** from written procedures
- Irregularity must be **material to the outcome**

Examples:

- Failure to follow written regulation/rules/procedures
- Failure to objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence
- A determination regarding what evidence was excluded as not relevant

Appeal: Procedural Irregularity

Procedural Irregularity that affected the outcome of the matter

- Questions to consider:
 - Was the error substantial enough within the adjudication process that it deprived the party of a fair decision?
 - Does the error include (but not be limited to) a substantiated bias, an arbitrary and capricious finding, a material deviation from established procedures?

Practice

The appeal states that the party was only given four days' notice of the hearing, when the regulation guarantees five days' notice.

What information do you need to determine if this caused a substantial error that would void the decision?

Appeal: New Evidence Not Reasonably Available

Evidence presented prior to the determination does not qualify as NEW evidence.

Question to consider:

- Would the new information that was unavailable to the party at the time of the hearing have substantially impacted the outcome?
- Does the appeal include the new information?
- Was the party aware of the information before the hearing and able to gain access to the information through reasonable effort?

Note: This is challenging for individuals who choose or fail to attend or participate in the hearing.

Practice

The appeal states that following the hearing they were approached by a friend who stated that they witnessed the incident but were not aware that any disciplinary proceedings were going on.

What additional information would need to be included in the appeal document for this to be considered new evidence?

If a written statement is provided and the identity of the witness can be validated, what else needs to be determined?

Conflict of Interest/Bias

The Title IX Coord., Investigator, and/or Decision Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

- All TIX personnel are responsible for self-identifying these issues
- There are multiple opportunities for parties to raise conflict/bias concerns throughout process

Appeal: Conflict of Interest/Bias

Question to consider:

- Is the appeal a generalized claim of conflict of interest or bias?
- Does the appeal state that the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents that affected the outcome?
- Does the appeal demonstrate the cause that indicates a lack of impartiality on the person or party accused?

Practice

The appeal states that the investigator told them during two separate interviews that the facts seemed to support that they were lying, and the investigator encouraged them to “come clean” to receive better consideration in the adjudicatory process. The investigator confirms that they made this comment twice, hoping to secure a confession.

Does this present a conflict of interest or bias? Why or why not?

Appeal: Appropriateness/Severity of Sanction

Question to consider:

- Does the appeal state that the sanction is not appropriate to the findings of the case?

Note: Sanctions depend on the offense, the respondent's conduct/employment history, and any mitigating or aggravating factors. They may vary, even for similar offenses, but a rationale must be included in decision letters to aid in the understanding of the decision. The A&M System establishes minimum inactive sanctions for sex-based discrimination cases, except when significant mitigating factors are present, which must be noted in the findings or appeal.

Practice

The appeal states that assigning the respondent the sanction of volunteering at a local shelter for domestic violence victims is inappropriate, given that the respondent was held responsible for dating violence, thus placing the respondent into contact with other victims of dating and domestic violence, and because the complainant regularly uses the services of the shelter, thus raising the potential of a violation of a no-contact order issued by the same hearing panel.

- Is this an appropriate or inappropriate sanction? Why or why not?
- If deemed inappropriate. What do you do?



Appeal Letter Template

Included in Materials

Rationale Writing

- State the facts that support the decision of the appeal panel/appellate authority
- Address each ground listed in the appeal
- If deviating from the precedent, provide details on why
- Present any mitigating or aggravating factors



Appeal Request Discussion

See handout

Please complete the feedback form via the QR Code.

Q&A!

Thank you for your time and attention.



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