

STANDARD ADMINISTRATIVE PROCEDURE

08.01.01.M1.02 Investigation and Resolution of Complaints Against Faculty Members for Illegal Discrimination, Sexual Harassment, or Related Retaliation Charges

Approved January 20, 2012

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Next scheduled review: September 20, 2021

Standard Administrative Procedure Statement

In accordance with System regulation 08.01.01, this standard administrative procedure is intended to create a process for investigating and resolving complaints alleging illegal discrimination, sexual harassment and/or related retaliation filed by students, staff, other faculty members, or third parties against faculty members.

Procedures and Responsibilities

1. RESPONSIBILITY OF THE OFFICE OF THE DEAN OF FACULTIES

The Office of the Dean of Faculties is the responsible office for receiving, handling and investigating complaints of illegal discrimination, sexual harassment and/or related retaliation against a faculty member. An employee, student or third party may file a complaint with the Office of the Dean of Faculties as indicated below.

2. PROCEDURES FOR FILING COMPLAINTS WITH THE OFFICE OF THE DEAN OF FACULTIES

2.1 An employee's or student's complaint or appeal alleging illegal discrimination, sexual harassment and/or related retaliation in connection with discipline and/or

dismissal should be filed within ten (10) business days of the action that caused the complaint or it may be deemed untimely filed and dismissed. An employee's or student's complaint or appeal alleging illegal discrimination, sexual harassment and/or related retaliation unrelated to discipline and/or dismissal should be filed within ninety (90) calendar days of the most recent incident or it may be deemed untimely filed and dismissed.

- 2.2 The Office of the Dean of Faculties will promptly notify the System Ethics and Compliance Office (SECO) of the receipt of a complaint of illegal discrimination, sexual harassment and/or related retaliation against a faculty member. In addition, when required, the Office of the Dean of Faculties will also notify the University's Title IX Coordinator or designee.
- 2.3 The Office of the Dean of Faculties will offer to the affected parties' interim protections and remedial actions as needed in accordance with section 4.2.3 of Regulation 08.01.01.
- 2.4 Within five (5) business days of receipt of a complaint, the Office of the Dean of Faculties will conduct a preliminary review of the complaint to assess if there is sufficient information to proceed with an investigation of the complaint. If it is determined that the information is insufficient, the Office of the Dean of Faculties will proceed as indicated in section 4.2.1 of Regulation 08.01.01.
- 2.5 The Office of the Dean of Faculties will provide the Complainant with notice of his/her right to file a separate complaint with any local, state or federal civil rights office, including the U.S. Equal Employment Opportunity Commission, the Texas Workforce Commission's Civil Rights Division and the U.S. Department of Education's Office of Civil Rights, at any time prior to, during or after the investigation and resolution of the complaint.
- 2.6 If a complaint filed by a student against a faculty member alleges illegal discrimination, sexual harassment and/or related retaliation arising from a specific academic matter including, but not limited to, attendance, grading, accommodations, examinations, and changes in curriculum, the Office of the Dean of Faculties will decide which procedure to utilize in accordance with applicable student rules and procedures and this procedure.

3. ACADEMIC CIVIL RIGHTS INVESTIGATION COMMITTEE (ACRIC)

- 3.1 The ACRIC is a standing committee of faculty members appointed by the deans of the colleges, schools, libraries, and branch campuses and the Dean of Faculties.

Each dean will appoint a minimum of three (3) faculty members. Distance campuses will appoint a minimum of three (3) faculty members selected from different departments when possible. All appointed faculty members must be willing, able and available to serve for two (2) years on the ACRIC. In addition, the Dean of Faculties will appoint six (6) or more additional faculty members to serve on the ACRIC for the same period of time.

- 3.2 ACRIC members are charged with the duty and responsibility of investigating complaints against a faculty member involving alleged civil rights violations. A member's two (2) year appointment will commence on September 1st and shall end on August 31st two years later. ACRIC members may be reappointed by their respective deans to serve for additional terms. If an ARIC member is not able to complete his/her term, the respective dean will appoint another member to serve the remainder of the term.
- 3.3 ACRIC members are subject to challenge for conflict of interest by the Complainant or Respondent. The Dean of Faculties will rule on the validity of any challenge and such decision shall be final. (Note: Such challenges must relate to the ability of a member to render an unbiased investigation. The mere existence of prior interactions between an ACRIC member and other individuals involved in the complaint does not necessarily constitute bias.)
- 3.4 ACRIC members will receive training on civil rights matters and the conduct of investigations. This training is mandatory for all ACRIC members prior to their conducting an investigation.

4. INVESTIGATION OF COMPLAINTS

- 4.1 Upon receipt of a complaint in accordance with section 2 above, the Office of the Dean of Faculties shall notify the Respondent(s) that a complaint has been filed, shall indicate the basis of the alleged complaint, shall disclose the identity of the Complainant (unless the Complainant has requested to remain anonymous), and shall notify the Respondent(s) that retaliatory action of any kind against the Complainant, a witness or other person participating in the investigation is prohibited.
- 4.2 If the Dean of Faculties and/or the Provost and Executive Vice President are the subject of the complaint, the Dean of Faculties and/or the Provost and Executive Vice President should not participate in the process. The Dean of Faculties and/or the Provost and Executive Vice President may choose to recuse him- or herself if they perceive a conflict of interest with respect to the Complainant or Respondent.

If the Complainant or Respondent can evidence a conflict of interest on the part of the Dean of Faculties and/or the Provost and Executive Vice President, the Dean of Faculties and/or the Provost and Executive Vice President should not participate in the process. (Note: Such challenges must relate to the ability of the Dean of Faculties and/or the Provost and Executive Vice President to render an unbiased recommendation or decision, respectively. The mere existence of prior interactions between the Complainant or Respondent and the Dean of Faculties and/or the Provost and Executive Vice President does not necessarily constitute bias.)

- 4.3 At any point in the process, the Respondent may be suspended with pay, reassigned, and/or placed in another type of temporary status pending completion of the investigation and final resolution of the allegations.
- 4.4 The Office of the Dean of Faculties will appoint from the ACRIC a team of two (2) to investigate the allegations in the complaint (the Investigative Authority (IA)). However, depending on the circumstances, the Office of the Dean of Faculties may appoint an ad hoc member in addition to the two IA already appointed, or appoint an ad hoc member as one of the two IA team members.
- 4.5 The IA shall be supported by the Office of the Dean of Faculties or designee. This support will be limited to ensuring that the investigation is conducted in accordance with the processes and procedures set forth in the regulations, rules and this procedure.
- 4.6 The IA is responsible for all administrative activities required to conduct the investigation. These include, but are not limited to, informing the parties of extensions of time or other delays affecting the investigation, contacting supervisors regarding their subordinates' time away from work to participate in the investigative process, making reports to university officials, and other responsibilities necessary to properly conduct the investigation.
- 4.7 The information shared with the IA by all parties to the complaint is considered private but not confidential. The IA will, to the extent permitted by law, protect the privacy of the information received prior to, during, and as a result of the investigation. To the extent possible, the investigation will be conducted in a manner that protects the privacy of all parties involved.
- 4.8 The IA will review the complaint and conduct the investigation within thirty (30) business days from the receipt of the complaint, except that extensions may be obtained by the IA to complete their investigation depending on the circumstances.

Circumstances that warrant an extension may include, but are not limited to, the following:

- Temporary unavailability of the Complainant, Respondent or witnesses,
- Delays in issuance and/or receipt of information to or from the IA,
- Temporary unavailability of the investigator(s) due to illness, family needs or professional commitments,
- New allegations, new evidence, new witnesses or any other fact or circumstance that would require further investigation.

All requests for extensions must be justified in writing and shall be sent by the IA to the Office of the Dean of Faculties for review and approval by the Dean of Faculties.

- 4.9 Parties to the complaint have the right to legal counsel or other advisor of their choice during the interview(s) with the IA. Counsel's or advisor's participation during the interview will be limited to the role of an observer. However, counsel or advisor may request a break from the interview to advise the party.
- 4.10 Prior to interviewing the Respondent(s), the IA shall provide Respondent(s) with written notice of the facts and the specific allegations. In addition, the Office of the Dean of Faculties will provide the Respondent and the Respondent's legal counsel, if any, the opportunity to visually examine a redacted copy of the complaint. The review will take place at the Office of the Dean of Faculties. Prior to the examination of the redacted copy of the complaint, the Respondent will be asked to sign an admonishment statement containing the following conditions: the Respondent and/or the Respondent's legal counsel (1) may not to remove the complaint from the room provided for its review; (2) may not to share or disclose any of the content of the complaint other than to the Respondent's legal counsel, unless disclosure is required by law or in the course of the Respondent's interview(s) with or providing information to the IA; (3) may not retaliate against the Complainant, anyone who may be implicated in the complaint, or anyone participating in the investigation; (4) may not to take any pictures, make any photocopies, or otherwise use any device to make a reproduction of the image or verbal recording of the narrative of the complaint. All of the foregoing is to protect the privacy of the information received prior to, during, and as a result of the investigation and to protect the integrity of the investigation process.
- 4.11 In general, the IA should strive to interview the Complainant first, followed by the Respondent. Witnesses identified by the Complainant and Respondent should then be interviewed, along with any additional witnesses deemed necessary by the IA. All attempts to schedule interviews with any of the parties, including all witnesses, should be documented.

- 4.12 The IA will prepare a formal written report summarizing the evidence considered, including testimony, and provide conclusions related to each allegation as follows: substantiated, unsubstantiated, or insufficient evidence to substantiate. The IA will use the preponderance of the evidence standard (the conduct more likely than not occurred) to reach their conclusions regarding the allegations.

The report must be addressed to the Dean of Faculties and should contain the level of detail appropriate for the investigation conducted. The report may contain some or all of the following, depending on the nature of the complaint and/or investigation: (1) listing of the Complainant's allegations; (2) the Complainant's requested relief; (3) description of relevant documentation reviewed by the IA, which may be attached as numbered Exhibits to the report; (4) a list of witnesses interviewed; (5) an analysis of each allegation containing the statements made during the interviews by the Complainant, the Respondent(s) and the witnesses; (6) credibility analyses; and (7) conclusions and rationale.

- 4.13 A draft of the report shall be delivered by the IA to the Office of the Dean of Faculties for submission to the Office of General Counsel (OGC) for legal review in accordance with section 4.2.5 of System Regulation 08.01.01. OGC will provide its legal review within ten (10) business days. After receipt of the legal review, the IA will have five (5) business days to finalize the report and submit it to the Dean of Faculties for his/her review and decision.

5. DECISIONS AND SANCTIONS

- 5.1 In accordance with section 4.3 and 4.4 of System Regulation 08.01.01, the Dean of Faculties will render a decision in writing on the merits of the complaint, including the imposition of any sanction(s), unless the imposition of sanctions is otherwise delegated to another administrative authority by the Dean of Faculties. The Dean of Faculties' decision and sanction(s) constitute an employment action.

- 5.2 The Dean of Faculties will render a decision within five (5) business days after he/she receives the IA report and exhibits, unless circumstances require additional time. The decision of the Dean of Faculties shall be provided by the Office of the Dean of Faculties on the same day to the Complainant, the Respondent, the IA, and the Respondents' Dean.

6. APPEAL OF FINDINGS

- 6.1 Findings may be appealed by the Complainant and/or the Respondent within ten (10) business days from the date of the receipt of the decision, but only on the following bases, as applicable:
- (a) A procedural error or omission that significantly impacted the outcome; or
 - (b) New evidence, unknown or unavailable during the investigation that could have significantly impacted the outcome.
- 6.2 The appeal must be received by the Office of the Dean of Faculties within the indicated timeframe. The Office of the Dean of Faculties will forward the appeal to the Provost and Executive Vice President after the ten (10) business days indicated in section 6.1 have concluded, and will notify both parties that the finding(s) have been appealed. The Provost and Executive Vice President will decide on the appeal within fifteen (15) business days from the date of receipt, unless circumstances require additional time. The decision of the Provost and Executive Vice President with regard to the appeal of the finding(s) will be final. The final decision will be provided to the Office of the Dean of Faculties, who will provide the decision to the Complainant, the Respondent, the IA, and the Respondent's Dean within five (5) business days.
- 6.3 The Provost and Executive Vice President's decision on the appeal may reverse or affirm the Dean of Faculties' decision as to the finding(s), or may remand the matter to the IA for further investigation. If the appeal is based on section 6.1(b) the Provost and Executive Vice President may, but is not required to, ask the non-appealing party for any additional evidence or testimony before deciding on the appeal. If the Provost and Executive Vice President reverses the Dean of Faculties' decision, the Provost and Executive Vice President will issue a new decision which will be final. If the Provost and Executive Vice President affirms the Dean of Faculties' decision, the Dean of Faculties' decision will be final. If the decision of the Provost and Executive Vice President is to remand the matter to IA, the IA will address any alleged procedural errors or omissions, and consider any new evidence, as applicable. The IA will submit a report addendum and submit it to the Dean of Faculties for a new decision, which will be communicated to the parties in accordance to section 5.2. The new decision of the Dean of Faculties on the findings may be appealed by the parties.
- 6.4 If the Complainant appeals the findings and the sanctions, the Provost and Executive Vice President shall decide on the appeal of the sanctions as set forth in section 7.3.3 below only after a decision has been rendered on the appeal of the findings.

- 6.5 If the Respondent appeals the findings and the sanctions, the appeal of the sanctions will be forwarded to the appropriate body, as specified in section 7.2.1 and 7.2.2, after the Provost and Executive Vice President has made a decision with regard to the appeal of the findings.
- 6.6 If an appeal is sought by both parties within the time frame specified in section 6.1, the Provost and Executive Vice President will review both appeals and will decide accordingly.
- 6.7 Appeals of the findings must be received by the Office of the Dean of Faculties within the applicable timeframe specified in section 6.1 above. Otherwise, the findings will become final.

7. APPEAL OF SANCTIONS

- 7.1 Any sanction(s) imposed by the Dean of Faculties or delegated authority pursuant to this process constitutes an employment action.
- 7.2 The sanction(s) may be appealed by the Respondent within the timeframes set forth in section 7.2.1 and 7.2.2 below. The specified timeframe for the appeal of the sanctions by the Respondent starts the latter of (a) ten (10) business days from the date of the receipt of the Dean of Faculties decision under section 5.2; or (b) if Complainant appeals the sanctions under section 7.3, the date of receipt of the Provost and Executive Vice President decision on the appeal of the Complainant but only if such decision imposes new sanctions that are different from the ones imposed in the Dean of Faculties decision; or (c) if Complainant appeals the findings under section 6.1, the date of receipt of the Provost and Executive Vice President decision on the appeal of Complaint but only if such decision imposes new sanctions that are different from the ones imposed in the Dean of Faculties decision. If Respondent does not file an appeal within the applicable timeframe, the sanction(s) imposed will become final.
 - 7.2.1 If the sanction(s) relates to the dismissal of a faculty member for cause, the sanction(s) may be appealed by the Respondent to the Committee on Academic Freedom, Responsibility, and Tenure (CAFRT) in accordance with section 8 of University Rule 12.01.99.M2, which includes specified timeframes. The findings of CAFRT will be in accordance with section 8 of University Rule 12.01.99.M2.
 - 7.2.2 If the sanction(s) do not relate to dismissal of a faculty member for cause, the sanction(s) may be appealed by the Respondent to the University

Grievance Committee (UGC) in accordance with University Rule 12.99.99.M2. Respondent must file an appeal to the UGC with the Dean of Faculties office within ten (10) business days from the date the sanction notification is received. This time-frame starts as specified in section 7.2. The findings of the UGC will be limited to determining whether or not the sanction(s) imposed is reasonable, not whether or not the findings regarding the complaint was justified.

- 7.3 The Complainant may appeal the sanction(s) imposed on the Respondent to the Provost and Executive Vice President. The Complainant may only base the appeal on the appropriateness or severity of the sanction(s). The appeal must be filed with the Office of the Dean of Faculties within ten (10) business days from the date of the receipt of the decision imposing the sanctions. If Complainant does not file an appeal within the applicable timeframe, the sanction(s) imposed will become final as to the Complainant.
- 7.3.1 Upon receipt of the sanction appeal, the Office of the Dean of Faculties will forward the appeal to the Provost and Executive Vice President. The Provost and Executive Vice President will render a decision within fifteen (15) business days after receiving the appeal from the Office of the Dean of Faculties, unless circumstances require additional time.
- 7.3.2 Upon receipt of the Complainant's appeal, the Office of the Dean of Faculties will immediately notify the Respondent that an appeal of the sanction(s) has been filed by the Complainant.
- 7.3.3 Upon review of the appeal, the Provost and Executive Vice President may uphold the sanction(s) imposed, reverse the sanction(s) imposed and issue new sanction(s), or reverse the sanction(s) imposed and issue no sanction(s). The decision of the Provost and Executive Vice President on the appeal of the sanction(s) by the Complainant shall be final as to the Complainant. The final decision will be provided to the Office of the Dean of Faculties, who will provide the decision to the Complainant, the Respondent, the IA, and the Respondent's Dean within five (5) business days.

Related Statutes Policies, Regulations and Rules

Supplements [System Regulation 08.01.01, Civil Rights Compliance and University Rule 08.01.01.M1, Civil Rights Compliance](#)

Supplements System Policies and Regulations
<http://policies.tamus.edu>

Supplements University Rules and SAPs
<http://rules-saps.tamu.edu>

Contact Office

OFFICE OF RESPONSIBILITY: [Dean of Faculties and Associate Provost](#)