



## STANDARD ADMINISTRATIVE PROCEDURE

### 08.01.01.M1.01 Investigation and Resolution of Allegations of Prohibited Conduct Against Students, Employees, and Third Parties

*Approved January 23, 2013*

*Revised August 6, 2019*

*Next scheduled review: August 6, 2024*

#### SAP Statement

The purpose of this SAP is to identify the procedures the University will use when responding to reports or complaints of Prohibited Conduct against students, employees, or third parties.

#### Definitions

The definitions from *TAMU Rule 08.01.01.M1*, including the definition of “Prohibited Conduct,” are incorporated by reference as if fully set forth herein.

#### Procedures and Responsibilities

##### 1. ROLES AND RESPONSIBILITIES

- 1.1 The **Department of Civil Rights and Equity Investigations (CREI)** has been designated to receive and investigate all reports alleging Prohibited Conduct against Students, Employees, and Third Parties. CREI is responsible for appointing the Investigative Authority.

Reports that a Student, Employee or a Third Party has engaged in Prohibited Conduct should be made to CREI by contacting the **Assistant Vice President and Title IX Officer**, Medical Sciences Library, 202 Olsen Blvd, Suite 007, College Station, TX 77843. Reports may also be made by calling (979) 458-8407 or emailing [civilrights@tamu.edu](mailto:civilrights@tamu.edu). The Assistant Vice President and Title IX

Officer's responsibilities include (1) overseeing the process of responding to allegations of Prohibited Conduct and (2) identifying and addressing any patterns or systemic problems that arise from the review of such complaints.

- 1.2 The **Investigative Authority (IA)** is one or more trained individuals appointed to conduct a formal investigation to discover and examine the facts related to an allegation. The IA may also draw conclusions as to whether, based on the preponderance of the evidence, an allegation is substantiated, unsubstantiated, or that there is insufficient information to substantiate. The IA may also draw conclusions as to whether or not any other regulations, codes, policies, rules or SAPS were violated.
- 1.3 The **Designated Administrator (DA)** reviews the Investigation Report, the documentary evidence, and any other relevant information and renders a written decision of responsibility based on the preponderance of the evidence as to 1) whether the conduct alleged occurred; and 2) whether each allegation has been substantiated, unsubstantiated, or that there is insufficient information to substantiate that Respondent violated [\*Texas A&M System Regulation 08.01.01\*](#). The DA may also render a written decision as to whether other regulations, codes, policies, rules or SAPS were violated. If violation(s) are found, the DA may issue sanctions.
  - 1.3.1 The University's Chief Risk, Ethics, and Compliance Officer will appoint a **Hearing Officer** to be the DA for all allegations against students.
  - 1.3.2 The University's Chief Risk, Ethics, and Compliance Officer will appoint an individual to be the DA for all allegations against non-faculty Employees and Third Parties, except that the Chancellor or designee will serve as the DA for complaints against the Texas A&M President and for any employee who reports directly to the President.
  - 1.3.3 **The Dean of Faculties and Associate Provost** or designee will be the DA for all allegations against Faculty Employees, except that the President or designee will be the DA for allegations made against the Dean of Faculties and Associate Provost.
- 1.4 If the Complainant or the Respondent appeals the DA's decision, the **Appellate Authority (AA)** will review the Investigation Report, The DA's decision, the documentary evidence, and any other relevant information and render a written decision on the appeal.

1.4.1 Appeals of decisions based on allegations against Students:

The AA for appeals of decisions based on allegations against students is the University Disciplinary Appeals Panel (UDAP) and the appeal will follow the procedure outlined in *Section 6* below and [Student Rule 58](#). UDAP may refer the appeal to the Dean of Student Life or designee.

1.4.2 Appeals of decisions based on allegations against Non-faculty Employees and Third Parties:

The AA for Non-faculty Employees and Third Parties will be the Vice President for the Division of Human Resources and Organizational Effectiveness or designee. The appeal will follow the procedure outlined below in *Section 6* below and [Texas A&M SAP 32.02.02.M0.02](#).

1.4.3 Appeals of decisions based on allegations against Faculty:

The AA for Faculty Employees will be:

- 1) The **University Committee on Faculty Disciplinary Appeals (UCFD)** who will render an advisory opinion regarding the appeal to the Provost and Executive Vice President; and,
- 2) The Provost and Executive Vice President will render a final decision.

The appeal will follow the procedure outlined in *Section 6* below and in *University Rule 12, Faculty*.

1.5 All persons serving as DAs, AAs, and IAs, will receive annual training regarding the University's rules and procedures and the handling of civil rights investigations, including Title IX investigations. The IA will receive additional annual training in regards to conducting fair and impartial investigations, including trauma-informed investigation techniques and due process protections.

1.6 All persons serving as DAs, AAs, and IA's will be impartial and free of conflicts of interest. Parties who are concerned about the impartiality of an individual serving in one of these roles should submit their concerns, in writing, to the Chief Risk Ethics and Compliance Officer, who may designate alternative individuals to fulfill any of these roles. If the concern is in relation to the Chief Risk Ethics and Compliance Officer serving in one of the capacities, the Executive Vice President for Finance and Operations and CFO will have the option of designating a replacement.

## 2. PROCEDURES FOR INITIAL REVIEW AND PRELIMINARY ASSESSMENT OF REPORTS AND/ OR COMPLAINTS

2.1 CREI will conduct an initial review of all reports and/or complaints of alleged Prohibited Conduct that are received by the University against Students, Employees, or Third-Party Respondents. The purpose of the review is to: 1) assess the safety and well-being of the Complainant, the Respondent, and the community, and 2) to determine whether a potential violation of [Texas A&M System Regulation 08.01.01](#) or other University rule, SAP, code or policy could have occurred. As part of the review, CREI will take the following steps:

Within five (5) business days of receiving a report or complaint, or as soon as reasonably practicable thereafter, CREI will attempt to meet with the Complainant to obtain more information about the allegations and to assess the safety and well-being of the Complainant, the Respondent and the community. CREI will:

- Inform the Complainant about their [rights, resources, and options](#), including options for medical treatment, counseling, and other support services. Provide the Complainant with written information about University and community resources that individuals who experience Prohibited Conduct are entitled to receive regardless of whether they choose to pursue informal, formal, or criminal remedies.
- Inform the Complainant of their right to file a complaint with law enforcement (if applicable) in addition to filing a complaint with CREI. Inform the Complainant of their right to decline to contact law enforcement. Offer to assist the Complainant with notifying law enforcement if desired.
- Inform the Complainant of their right to file a complaint with state and federal agencies.
- In coordination and consultation with other University officials, offer the Complainant the opportunity to request interim supports, academic adjustments, and protective measures, as applicable. See 2.2 below.
- If applicable, advise the Complainant about the importance of preserving evidence that could assist in the investigation.
- Inform the Complainant about formal resolution under this SAP and solicit the Complainant's preferred method for resolving the matter.
- Inform the Complainant about the University's prohibition against retaliation.
- Offer to assist the Complainant in submitting a written complaint that details the nature and circumstances of the allegations, including the names of the Complainant(s) and the Respondent(s), if so inclined.
- If applicable, inform the Complainant of the right to use a pseudonym in University documents related to the complaint. See Section 3.2 below.

- Determine whether the Complainant is a minor, elderly, or disabled and, if required, contact the appropriate agency in accordance with Texas law.
- Consider whether requesting an interim suspension or interim restriction (for Student Respondents) or an interim administrative action such as a leave of absence (for Employees) would enhance the safety and well-being of the Complainant, the Respondent, or the University community. See *Section 8*.
- Report de-identified statistics in accordance with University policies for Clery Compliance purposes, if required.

2.2 The University offers a range of support services, academic adjustments, and protective measures to employees, students, and third parties. The purpose of these measures is to:

- 1) facilitate continued access to University employment, academic programs, and University activities;
- 2) stop and prevent the reoccurrence of Prohibited Conduct;
- 3) support the Complainant and the Respondent during the investigation and resolution process.

Contacts for obtaining information about counseling, medical, mental health, victim advocacy, visa and immigration information, impact of a leave of absence on student financial aid, and other services available to Complainants and Respondents (on campus and in the community) are available here:

[Rights, Resources, and Options for Complainants](#)  
[Rights, Resources, and Options for Respondents](#)

Support services, academic adjustments, and protective measures may be available to both Complainants and Respondents on a temporary or permanent basis, subject to periodic review. These measures may include, but are not limited to: no-contact directives, academic accommodations (e.g., dropping a class or postponing a due date, for example), work schedule or location changes, transportation modifications, residential moves, and leaves of absence. These measures may be available regardless of whether a Complainant pursues a formal or informal remedy under this SAP. The University will maintain the privacy of a person receiving support services, academic adjustments, or protective measures provided under this SAP to the extent practicable and will promptly address any violation of the protective measures.

Additionally, the University will notify the parties that options such as protective orders and criminal trespass warnings may be available through law enforcement agencies and the judicial system.

If a Complainant, Respondent, or other member of the University community has obtained a protective order, civil no-contact order, restraining order, or similar order from an appropriate court against another member of the University community, a copy of the order should be provided to the Chief Risk, Ethics, and Compliance Officer. In conjunction with the University Police Department (UPD) and other University officials, the Chief Risk, Ethics, and Compliance Officer will take all reasonable actions authorized by law to implement the order. For more information about how to obtain a protective order in the state of Texas, please consult: <https://guides.sll.texas.gov/legal-forms/protective-orders>.

The University will provide reasonable interim, remedial, and protective measures to Third Parties as appropriate and available, taking into account the role of the Third Party and the nature of any contractual relationship with the University.

2.3 Complainant may request a formal resolution of allegations of Prohibited Conduct or may request “no resolution” of the allegations of Prohibited Conduct.

2.3.1 The allegations will be considered for investigation pursuant to the procedures set forth in *Section 3* below. CREI reserves the right to resolve a complaint through no resolution rather than a formal investigation if the allegation does not rise to the level of Prohibited Conduct.

2.3.2 If the Complainant requests that no resolution of the allegations occur, the University will seek to honor the request whenever possible without impeding the University’s ability to enhance the safety and security of the Complainant and the University community. CREI will consider the following factors when evaluating such requests:

- All of the known circumstances, including any corroborating evidence;
- The nature and scope of the alleged conduct, including whether the reported behavior involves the use of a weapon;
- The respective ages and roles of the Complainant and Respondent;
- Whether there have been other reports of Prohibited Conduct or other misconduct by the Respondent;
- Whether the report reveals a pattern of misconduct related to prohibited conduct (e.g. via illicit use of drugs or alcohol) at a given location or by a particular group;

- Fairness considerations for both the Complainant and the Respondent;
- Whether the University possesses other means to obtain relevant information and evidence;
- The University's obligation to provide a safe and non-discriminatory environment;
- Any admissions of responsibility by the Respondent, if any; and,
- The impact of honoring the request on the Complainant and the University Community, including the risk of additional violence.

2.3.3 If the University is able to honor the Complainant's request for no resolution, the University may close the matter with no action taken, or the University may proceed, with other appropriate steps, including investigation and disciplinary action against the Respondent for violations of other rules, SAPS, regulations, policies or codes, if applicable.

If the University determines that the Complainant's request cannot be honored, the Complainant will be notified of the decision, and CREI will take appropriate actions, including but not limited to: (1) offering support services or academic adjustments and imposing protective measures; and (2) initiating a formal investigation.

2.4 Within five (5) business days of the receipt of a report, or as soon as practicable thereafter, CREI may consult with the Texas A&M University System Office of General Counsel (OGC) as needed and make a preliminary determination about whether to conduct a formal investigation of the allegations. The preliminary determination may include, but is not limited to, the following:

- (a) An assessment of whether there is sufficient known or obtainable information to proceed with an investigation of the complaint;
- (b) An assessment of whether the allegations are baseless;
- (c) An assessment of whether the allegations, if true, would constitute Prohibited Conduct; and/or
- (d) An assessment of whether a Complainant's request for no resolution may be honored.

If it is determined that there is insufficient information to proceed with an investigation; or that the allegations are baseless; or, that the allegations, if true, would not constitute Prohibited Conduct; or that an investigation will not occur due

to Complainant's request for no resolution, CREI may, after consultation with OGC:

- a. Dismiss the complaint; or
- b. may refer the report to a different office at the University who may review the conduct and take disciplinary action against the Respondent for violations of other University rules, codes, regulations, policies, or SAPS, if applicable.

2.5 If a complaint alleges conduct that may be Prohibited Conduct as well as a violation of one or more rules, SAPs, regulations, codes, or policies, CREI will consult with other University Officials, as appropriate, and coordinate procedures to utilize to resolve the allegations in addition to those required by this SAP. CREI may elect to resolve all the allegations in one proceeding under this SAP, or CREI may elect to refer one or more of the allegations to other university administrators for resolution apart from this SAP.

### 3. FORMAL INVESTIGATION OF COMPLAINTS

3.1 Once it has been determined that the University will proceed with a formal investigation, CREI will appoint the Investigative Authority (IA). The IA may include one or more appropriately trained investigators.

3.2 Within two (2) business days of the IA's appointment, the Assistant Vice President and Title IX Officer (or designee) shall simultaneously notify the Complainant(s) and Respondent(s) in writing of the commencement of the investigation. The notice will include: (1) the identity (or pseudonym, if requested and applicable) of the Complainant and the Respondent; (2) the date, time (if known), location, and nature of the alleged misconduct; (3) the regulation(s), policies(s), rules(s), SAP(s) or code(s) alleged to have been violated and a copy of this SAP; (4) the identity of and contact information for the IA; (5) the identity of the DA and AA; (6) an explanation of the prohibition against retaliation; (7) an instruction to the parties to preserve any potentially relevant evidence in any format; (8) information about the University's process for challenging the neutrality or bias of the IA, DA, or AA; and (9) a redacted copy of the written complaint, if any, with appropriate admonishments about privacy. If the Complainant has requested that a pseudonym be used in the University's paperwork, the Respondent will be verbally notified of the Complainant's name at the Respondent's intake meeting. The Notice will also include an assurance that the parties will be kept apprised of the status of the investigation and resolution process and provide a contact person for the party to contact for periodic update.



- 3.3 If the Respondent is an employee, the Assistant Vice President and Title IX Officer (or designee) shall also notify, in writing, the Respondent's department head that CREI is investigating an allegation that the Respondent has engaged in conduct that may be a violation of [Texas A&M System Regulation 08.01.01](#) or other University rules, SAPS, codes, or policies.
- 3.4 The IA will review the complaint, conduct a prompt, fair, thorough and impartial investigation, and provide a draft investigative report for OGC review within approximately thirty (30) business days from the issuance of the Notice of Investigation. Circumstances may warrant extensions to this timeframe.
- 3.5 Abuse of the investigation and resolution process is subject to disciplinary action up to and including dismissal or separation from the University. Examples of abuse of process include, but are not limited to:
- Failure to appear at a meeting, interview, hearing, or conference as set forth in a Notice issued by CREI
  - Falsification, distortion, destruction, or misrepresentation of evidence or information
  - Disruption or interference with the orderly conduct of an investigation, interview, meeting, hearing or conference
  - Intentionally initiating or causing to be initiated a false report
  - Attempting to discourage an individual's proper participation in, or use of, the investigation and resolution process, disciplinary process, or legal process
  - Attempting to influence the impartiality of the IA, AA, or DA prior to, and/or during the course of, the investigation and resolution process
  - Verbal or physical intimidation, and/or retaliation of any party to the investigation and resolution process prior to, during, and/or afterwards.
  - Failure to abide by the terms of University administered sanctions.
  - Influencing or attempting to influence another person to commit an abuse of the investigation and resolution process
  - Failure to cooperate fully with the IA (applies to employees only)

Students, Employees, and Third Parties who are found responsible for abuse of the investigation and resolution process are subject to the sanctions outlined in *Section 5* of this SAP.

- 3.6 During the investigation, the Complainant and the Respondent will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions to be asked of the other party. Questions for the other party will be asked by and at

the discretion of the IA. The IA will meet separately with the Complainant, the Respondent, and any witnesses, and will gather other relevant and available evidence and information. The IA may also consult medical, forensic, technological, or other experts when expertise is needed in order to achieve an understanding of the issues under investigation.

- 3.7 Witnesses must have observed the acts in question or have information relevant to the incident in order to participate in the process. A witness cannot participate solely to speak about an individual's character. However, a Respondent may provide letters or other written testimonials to the investigator that include information about Respondent's character, which will be provided to the DA after a decision on responsibility has been made but before sanctions (if any) are considered.
- 3.8 When the University is made aware that there is a concurrent criminal investigation, CREI may inform the law enforcement agency that a University investigation is also in progress; ascertain the status of the criminal investigation; and, determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation.

At the request of law enforcement, the University may temporarily defer part or all of the investigation until after the initial evidence-gathering phase of the law enforcement investigation is complete. The IA will communicate with the parties (as appropriate) about the law enforcement agency's request; the University's obligations and supportive resources; procedural options; anticipated timing; and the implementation of any necessary interim measures for the safety and well-being of all affected individuals.

- 3.9 Standards for the resolution of criminal allegations are different than the standards for resolution of a violation of [Texas A&M System Regulation 08.01.01](#) and/or any other University policy, rule, SAP, or code; therefore, the University will not base its decisions under this SAP on any law enforcement determination and/or the outcomes of any criminal proceedings.
- 3.10 The IA has the sole discretion to determine the relevance of evidence and whether it should be included in or excluded from the Investigation Report. If applicable, the Hearing Officer has the sole discretion to determine the relevance of evidence and whether it should be heard at a live hearing. The Rules of Evidence do not apply in a live hearing.

- 3.11 With respect to allegations of Prohibited Conduct based on sex or gender: the sexual history of the Complainant or Respondent is generally irrelevant and will not be used to prove character or reputation. Sexual history of the parties may be relevant in limited circumstances, such as when it aids in determining the manner and nature of prior communications of consent between the parties.
- 3.12 CREI is responsible for all administrative actions required to conduct the investigation. These include, but are not limited to, informing the parties of extensions or other delays affecting the investigation, contacting supervisors or faculty regarding their employees' or students' time away from work or class to participate in the investigative process, making reports to university administrators, and other responsibilities necessary to properly conduct the investigation.
- 3.13 To the extent possible, the investigation will be conducted in a manner that protects the privacy of all parties involved. While the University cannot guarantee complete privacy, information collected during the investigation will be communicated only to the parties and those with a need to know in order to fulfill the purposes of University policies and to comply with applicable laws.
- 3.14 Both the Complainant and the Respondent have the right to choose an advisor to be present at any time in which the party participates in the investigation and resolution process, including the filing of the complaint, the interview with the IA, and all other meetings related to the investigation and resolution of the complaint. The advisor may be any person selected by a party, including legal counsel, except that the advisor may not be another party or a witness in the case. The advisor's participation will be limited to the role of an observer, although the advisor may request a break at any point to give advice to a party. An advisor can be barred from being present during the process if, in the judgment of the IA, the DA, the AA, or the Assistant Vice President and Title IX Officer, the advisor attempts to directly address the IA, DA or AA, advocate on behalf of a party, or is otherwise disruptive. Any fees charged by the advisor are the responsibility of the individual who selected the advisor.
- 3.15 At the conclusion of the investigation, the IA will prepare a Draft Investigation Report summarizing the relevant information gathered and outlining any relevant contested and uncontested information. The Draft Investigation Report will not include any conclusions as to whether allegations are substantiated, unsubstantiated or that there is insufficient information to substantiate.

The Complainant and the Respondent will be notified that the Draft Investigation Report is complete and will be given five (5) business days to review the Draft Investigation Report and submit a written response to the IA. CREI may extend the time to review the Draft Investigation Report upon request for good cause. If one party is granted an extension of time to review the report, an equal amount of additional time will be granted to all other parties.

In cases that include allegations against a Student Respondent, the exhibits to the Draft Investigation Report may be reviewed by the parties upon request. In cases that include allegations against an Employee or Third Party Respondent, all parties may review the Exhibits to the Investigation Report without making a request.

Involved parties have the opportunity to review and respond to the Draft Investigation Report by: (1) providing written comment or feedback; (2) submitting additional evidence or information; (3) identifying additional witnesses or requesting the collection of other information by the Investigative Authority; and/or (4) suggesting questions to be asked (at the discretion of the IA) of the other party(ies). A party's written response, if any, will be shared with all other parties and incorporated in the investigation report as an exhibit. If a party knows, or through the exercise of reasonable diligence, should know, of information or evidence that was not provided to the investigator during the investigation, the party must provide such information or, if the party does not have access to the information, a description of such evidence to the IA during the review and respond period or such evidence will not be considered, absent good cause, in the determination of responsibility for a violation of a regulation, rule, SAP, code or policy.

- 3.16 At the conclusion of the review and respond period, the IA will determine if any new or relevant information was provided by one or both of the parties. If necessary, the IA may pursue additional investigative steps and/or amend the Investigation Report. If the amended Investigation Report contains any material or substantial changes, the Complainant and Respondent will be given five (5) business days to review the amended Investigation Report and submit a written response as set forth above. The opportunity to review and respond to an amended Investigation Report will be extended to the Complainant and Respondent until the IA determines that no material or substantial changes were made to the Draft Investigation Report.

The IA may add a conclusion for each allegation to the Investigation Report after the final review and response period concludes. The conclusion will be:

substantiated, unsubstantiated, or insufficient information to substantiate based on the evidence and information in the report. In addition, the IA may add a conclusion as to whether [Texas A&M System Regulation 08.01.01](#) was violated, and, if appropriate, the IA may make a conclusion as to whether other regulations, policies, rules, SAPS, or codes were violated. The IA will use the preponderance of the evidence standard (i.e., more likely than not) in making conclusions. The IA will not make any recommendations or conclusions with respect to sanctions. The conclusions of the IA are merely advisory and are not the final decision with respect to responsibility.

Within five (5) business days after the final review and respond period concludes, CREI will forward the Investigation Report, as amended with conclusions (if applicable), along with the documentary evidence and any other relevant information, to the Office of General Counsel (OGC). OGC will conduct a legal review in accordance with *Section 4.2.5 of System Regulation 08.01.01*. OGC will provide its legal review to the IA within ten (10) business days. After receiving the legal review, the IA will have five (5) business days to finalize the Investigative Report. The Assistant Vice President and Title IX Officer (or designee) will submit the final report directly to the DA for decision-making. In cases that involve a student Respondent, all parties will receive an electronic copy of the Final Investigation Report (which does not include conclusions or exhibits) at the time the report is sent to the DA. Exhibits may be reviewed upon request in CREI's office.

#### 4. THE DESIGNATED ADMINISTRATOR'S DECISION

- 4.1 The Respondent is presumed to not have engaged in Prohibited Conduct until the DA finds that there is sufficient evidence based on a preponderance of the evidence to find that Respondent has violated [Texas A&M System Regulation 08.01.01](#) or [Texas A&M Rule 08.01.01.M1 Prohibited Conduct: Discrimination, Harassment, Complicity, and Related Retaliation based on a Protected Characteristic](#).

#### **Procedures Governing 1) Non-separable Allegations against Students,<sup>1</sup> and 2) All Allegations against Employees and Third Parties**

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<sup>1</sup> A "non-separable allegation" is an allegation that a student engaged in conduct that 1) does not carry a possible sanction of suspension or expulsion as per the [Texas A&M Student Sanctioning Matrix](#), OR 2) has been determined by the Assistant Vice President and Title IX Officer to not be serious enough that, if true, a possible sanction of suspension or expulsion would be appropriate.

- 4.2 A decision by the DA of responsibility does not constitute an employment action with respect to faculty and non-faculty employees. Any sanction, imposed as a result of a substantiated finding, will constitute an employment action.
- 4.3 The DA will (1) review the unredacted Final Investigation Report, the documentary evidence, and any other relevant information; and, (2) draft a decision based on the preponderance of the evidence as to a) whether the alleged conduct occurred; and b) whether each allegation is substantiated, unsubstantiated, or there is insufficient information to substantiate that the Respondent violated System Regulation 08.01.01. The DA may also decide whether the Respondent has violated any other System regulations or University rules, SAPS, codes and policies. If any violations of [Texas A&M System Regulation 08.01.01](#) are substantiated, the draft decision will include sanctions. The draft decision may also include sanctions for substantiated violations of regulations, rules, SAPS, codes, and policies. Sanctions should be determined in accordance with *Section 5* below.

In the decision, the DA will state the rationale for the decision and the sanctions, if any. The decision will also include an explanation of how the University weighted the evidence as well as how the standard of proof was applied. The final decision will include instructions for appealing the decision and/or sanctions.

If the DA has substantial doubts about the thoroughness, fairness, and/or impartiality of the investigation, the DA may refer the matter back to the IA with further instructions, which could include the appointment of a different IA.

- 4.4 Within five (5) business days of the DA's receipt of the Final Investigation Report, the DA will forward its draft decision to OGC. Within five (5) business days of OGC's receipt of the draft decision, OGC will conduct a legal review in accordance with *Section 4.4.1 of System Regulation 08.01.01* and consult, as needed, with respect to sanctioning. Once the DA receives OGC's legal review, the DA will then have five (5) business days to finalize the decision and 1) forward Notice of the DA's decision simultaneously to the parties and the IA as set forth in *Section 4.7* below; and 2) in cases that involve an employee Respondent, simultaneously notify the parties of their right to review a copy of the Final Investigation Report, with conclusions and the exhibits, after receiving admonishments as to privacy and retaliation.
- 4.5 The Final Investigation Report will be redacted in accordance with state and/or federal law before the parties' review.

## Procedures Governing Separable Allegations<sup>2</sup> against Students

- 4.6 The DA will (1) review the unredacted Final Investigation Report, the documentary evidence, and any other relevant information; and, (2) conduct a live hearing to allow the parties to present witnesses, evidence or information, and to cross-examine the other parties or witnesses by submitting written questions to the DA (questions will be asked by and at the discretion of the DA). Thereafter, the DA will announce a decision, based on the preponderance of the evidence, as to whether or not the alleged conduct occurred; and b) whether it is substantiated, unsubstantiated, or there is insufficient information to substantiate that the Respondent violated [Texas A&M System Regulation 08.01.01](#). The DA may also announce a decision as to whether Respondent violated any other University regulation, code, policy, SAP or rule. .

If the DA determines that any regulations, policies, rules, SAPs, or codes have been violated, the DA will conduct a second hearing on sanctions immediately following the first hearing. The DA will receive information about the factors listed in *Section 5.1* below and accept any impact or mitigation statements as well as any information about the Respondent's character.

Thereafter, the DA will notify the parties in writing of the decision on responsibility and sanctions as set forth in *Section 4.7* below. The final decision will include information about appealing the decision.

The decision of the DA will include how the University weighted the evidence and the information contained within the Investigation Report. The DA will also state how the standard of proof was applied.

- 4.7 With respect to an allegation involving Prohibited Conduct based on sexual harassment, sexual assault, sexual exploitation, dating abuse/violence, domestic abuse/violence, or stalking based on sex or gender, the DA will simultaneously notify the parties, the IA, and any other University official with a need to know of the decision on the allegation and/or sanctions, except when doing so would violate state or federal law (e.g., Family Educational Rights and Privacy Act). The DA will also notify the parties that they can review the Final Investigation Report, with conclusions and exhibits, in CREI's office.

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<sup>2</sup> A "separable allegation" is an allegation that 1) a student Respondent engaged in Prohibited Conduct or other violation of System regulations or University policies that carries a possible sanction of suspension or expulsion as per the [Texas A&M Student Sanctioning Matrix](#), or 2) the Assistant Vice President and Title IX Officer has determined to be serious enough, if true, a sanction of suspension or expulsion would be appropriate.

If the allegations involve Prohibited Conduct other than sexual harassment, sexual assault, sexual exploitation, dating abuse/violence, domestic abuse/violence, stalking, or related retaliation, the DA will simultaneously notify: (1) the Complainant that an investigation of the allegations was conducted and the matter has been resolved appropriately; and (2) the Respondent, the IA, and any other University official with a need to know, of the decision and/or sanctions. The DA will also notify the parties that they can review the Investigation Report with conclusions (if applicable) and exhibits in CREI's office.

## 5. SANCTIONING

5.1 In determining the appropriate sanctions, many factors may be considered, including but not limited to:

- The expressed wishes of the Complainant(s);
- The nature of the Prohibited Conduct;
- The impact of the conduct on the Complainant(s);
- The impact of the conduct on the University community and the need to protect the safety of the University community;
- Prior disciplinary history of the Respondent;
- Whether the Respondent has accepted responsibility for the conduct;
- The necessity of any specific action in order to eliminate the Prohibited Conduct, prevent its recurrence, and remedy its effects on the Complainant(s) or other University community members; and/or
- Any other mitigating, aggravating, or compelling circumstances.

### SANCTIONING FOR EMPLOYEES

5.2 If an employee is found to have sexually harassed<sup>3</sup> another member of the university or agency community, the sanction will be termination of employment.

If an employee is found to have engaged in Prohibited Conduct other than sexual harassment, the DA may assign appropriate sanction(s) which may have educational, restorative, punitive, and rehabilitative components. Examples of sanctions may include, but are not limited to, written warning or reprimand, required training and/or attendance at counseling, "no contact" restrictions, probation, suspension, and termination.

If the employee is found responsible for violating any other rule, policy, SAP, code, or regulation, the DA may assign appropriate sanction(s) or may refer the sanctioning to any other appropriate university administrator.

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<sup>3</sup> Sexual Harassment is defined in [Texas A&M System Regulation 08.01.01](#).



## SANCTIONING FOR STUDENTS

- 5.3 If a student is found responsible for sexual harassment, sexual assault, domestic abuse/violence, dating abuse/violence, stalking based on sex or gender, or sexual exploitation, the student will be sanctioned in accordance with [the Student Title IX Cumulative Sanctioning Matrix](#).

If a student is found responsible for engaging in any other form of Prohibited Conduct, or if the student is found responsible for violating any other University Rule or System regulation, the DA will assign appropriate sanctions which may have educational, restorative, and rehabilitative components.

Student Sanctions include:

- 5.3.1 *Expulsion*: Separation of the student from the University whereby the student is not eligible for readmission to this University.
- 5.3.2 *Suspension*: Separation of the student from the University for a definite period of time. The student is not guaranteed readmission at the end of such period of time, but is guaranteed a review of the case and a decision regarding eligibility for readmission. The suspension takes effect when the appeal for the offense is exhausted, waived or time limit has passed. Suspensions may be implemented in one of two ways: immediate implementation of suspension or deferred implementation of suspension. The sanction of suspension may be placed in deferred status. If the student is found in violation of any University rule during the time of deferred suspension, the suspension takes effect immediately without further review. Additional student conduct sanctions appropriate to the new violation also may be applied. A student who has been issued a deferred suspension sanction is deemed “not in good standing” with the University.

**Not in good standing:** A student who is not in good standing is subject to the following restrictions:

- Ineligibility to hold an office in any student organization recognized by the University or to hold any elected or appointed office of the University.
- Ineligibility to represent the University in any way, including representing the University at any official function, intercollegiate athletics or any forms of intercollegiate competition or representation. This includes events taking place both on and off of the University campus.
- Ineligibility to receive a University administered scholarship when the length of the period of not in good standing is greater than one semester. Some scholarships adhere to more strict guidelines, and, therefore, ineligibility may result from a lesser length of not in good standing. This sanction implies a serious offense and must be uniformly applied by the office administering the scholarship upon notification by CREI.

- Additional restrictions or conditions also may be imposed, depending on the nature and seriousness of the misconduct.

At the end of the suspension period, the student is eligible for reenrollment. Actual admission to the University will be determined by the academic rules in place at the time of application for reenrollment.

- 5.3.3. *Conduct Probation*: An official warning that the student’s conduct is in violation of Texas A&M University regulations, policies, rules, codes, or SAPs, but is not sufficiently serious to warrant expulsion or suspension. A student on conduct probation is deemed “not in good standing” with the University. If there is a finding of responsibility for subsequent violations of the University’s regulations, policies, rules, codes, or SAPS during this period of time, more severe sanctions may be administered.
- 5.3.4. *Conduct Review*: An official warning that the student’s conduct is in violation of Texas A&M University regulations, policies, rules, codes, or SAPs, but is not sufficiently serious to warrant expulsion, suspension, or conduct probation. A student on conduct review shall have their conduct under review for a specified period of time. This sanction may require regular meetings with an appropriate official to ascertain and evaluate compliance with student rules. Additional restrictions or conditions also may be imposed, depending on the nature and seriousness of the misconduct. Students placed on this sanction remain in good standing with the University. If there is a finding of responsibility for subsequent violations of regulations, policies, rules, codes, or SAPs during this period of time, more severe sanctions may be administered.
- 5.3.5. *Restrictions*: The withdrawal of specified privileges for a definite period of time, but without the additional stipulations contained in the imposition of a sanction which results in a student being not in good standing. The restrictions involved will be clearly defined.
- 5.3.6. *Restitution*: A payment for financial injury to an innocent party in cases involving theft, destruction of property or deception. The assessed costs to be paid may be in addition to receipt of any of the above sanctions.
- 5.3.7. *Community/University Service*: A student may be offered an opportunity to complete a specified number of hours of Community/University Service. The type of Community/University Service must be approved by the Respondent’s CREI Case Manager.
- 5.3.8. *Educational Requirements*: A provision to complete a specific educational requirement. Such educational requirements may include, but are not limited to, completion of an alcohol education workshop, a diversity awareness workshop, essays, reports, reflective writing assignments, etc.

5.3.9. *Letter of Enrollment Block*: A letter stating that the student may not reenter Texas A&M University without prior approval through the Offices of the Dean of Student Life or the Vice President for Student Affairs if enrollment has been blocked for a previous student conduct problem.

5.3.10. *Letter of Reprimand*: A letter that makes a matter of record any incident that reflects unfavorably on the student or the University.

#### 5.3.11 Campus Housing Sanctions:

The occupants of each residence hall, by majority vote, have the power to establish additional “in house” rules as approved by the Department of Residence Life. Generally, “in house” rule infractions are handled by resident life staff.

5.3.11.1 *Loss of Campus Housing Privilege*: Removal from university housing for conduct reasons.

5.3.11.2 *Deferred Loss of Campus Housing Privilege*: The sanction of Loss of Campus Housing Privilege may be placed in deferred status. If a student is found in violation of any University rule during the time of the deferred sanction, removal from housing takes effect immediately without further review. Additional student conduct sanctions appropriate to the new violation also may be taken. In addition, a student is ineligible to hold an elected or appointed office in any affiliated housing organization. This includes but is not limited to the following offices/positions: president, vice president, secretary, treasurer, RHA delegate.

5.3.11.3 *Campus Housing Probation*: An official notice that the student’s conduct is in violation of residence hall rules, University Apartments rules and/or University rules and that more stringent student conduct sanctions, including removal from housing, may result if future violations occur. In addition, a student is ineligible to hold an elected or appointed office in any affiliated housing organization. This includes but is not limited to the following offices/positions: president, vice president, secretary, treasurer, RHA delegate.

5.3.12 In addition to any of the sanctions listed in this section, members of the Corps of Cadets are subject to disciplinary action in accordance with *The Standard*.

## 6. THE APPELLATE AUTHORITY’S DECISION

6.1 Both a Complainant and a Respondent may appeal the DA's decision. The bases for appeal are limited to:

- (1) A procedural error or omission that significantly impacted the outcome;
- (2) New evidence, unknown or unavailable during the investigation that could have significantly impacted the outcome; or
- (3) The appropriateness or severity of the sanctions<sup>4</sup>.

6.2 All appeals must be in writing and must include a statement outlining the bases for appeal and any evidence which supports the appeal. Appeals must be filed within five (5) business days of the Complainant and Respondent's receipt<sup>5</sup> of the notice of the decision to be appealed. An appeal is filed when CREI receives a copy of a written appeal at [civilrights@tamu.edu](mailto:civilrights@tamu.edu).

If 1) no appeal is filed within five (5) business days of the receipt of the notice of the DA's decision; or, 2) CREI determines that the appeal does not identify one of the bases for appeal listed in *Section 6.1* above or provide credible information or evidence substantiating the identified bases for appeal, CREI will provide simultaneous notice to the parties that no valid appeal was filed and that the decision of the DA is final and the case is closed. If a timely and valid appeal is filed by either party, the other party will be notified as soon as practicable thereafter.

6.3 CREI will forward the appeal and any supporting information or evidence to the appropriate Appellate Authority (AA). The AA, in consultation with OGC, will review the appeal documents, the decision of the DA, any new evidence submitted by the parties, and the Investigation Report and exhibits. The AA will render a written decision which includes a rationale for the decision as to each of the grounds appealed. The AA will forward the appellate decision to CREI within ten (10) business days from the date of receipt of the appeal, unless circumstances require additional time. The decision of the AA will be final.

Within five (5) business days after receiving the appellate decision, CREI will provide simultaneous notice of the AA's decision as set forth in *Section 4.7* above.

6.4 The AA will render one or more of the following written decisions after reviewing a) the final investigative report, the documentary evidence and other relevant information; and b) the DA's decision on responsibility and/or sanctions:

- (1) **Affirm** the DA's decision on responsibility and/or the sanctions. There are no relevant issues of concern related to the ground(s) of the appeal, and, therefore, the decision is affirmed and final.

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<sup>4</sup> If an employee was found to have sexually harassed another member of the university or agency community, 6.1(3) is not available as a basis for appeal.

<sup>5</sup> Complainants and Respondents are deemed to have received the Notice of the Decision on the day that the Notice is emailed to the party's University email account or to any other email account that was provided to CREI by the party.

(2) **Remand** the complaint back to the DA because new evidence which was unknown or unavailable during the investigation appears to be relevant and could have significantly affected the outcome of the decision on responsibility or the sanctions. The DA will instruct the IA to review the new evidence and amend the Investigative Report, as appropriate. The IA will submit the Amended Investigative Report, without conclusions, to the parties for review and response in accordance with *Section 3.15 and 3.16* and then to the DA for a new decision in accordance with *Section 4*. The new decision of the DA may be appealed by the parties in accordance with the procedures outlined in *Section 6*.

(3) **Remand** the complaint back to the DA with an instruction to correct the procedural error or omission.

If the procedural error occurred in the investigation phase, the DA will instruct the IA to correct the procedural error or omission and amend the Investigative Report, as appropriate. The IA will then submit the Amended Investigative Report, without conclusions, to the parties for review and response in accordance with *Sections 3.15 and 3.16*, and then to the DA for a new decision in accordance with *Section 4*.

If the procedural error occurred in the resolution phase, the DA will correct the procedural error or omission and then issue a new decision in accordance with *Section 4*.

The new decision of the DA may be appealed by the parties in accordance with *Section 6* herein.

(4) **Modify**<sup>6</sup> the decision on sanctions because the sanctions given were inappropriate or disproportionate to the severity of the conduct after considering all the circumstances. The AA will impose new sanctions, which are final.

6.5 The appeal will be confined to a review of the record from the investigation and any pertinent evidence, as well as the DA's decision as related to the grounds for appeal. The appeal does not create an entitlement to a new investigation.

6.6 If an appeal is sought by both parties within the time frame specified in *Section 6.2*, the AA will review both appeals and will render decisions accordingly.

## 7. MISCELLANEOUS PROVISIONS

7.1 A Respondent's voluntary intoxication is never an excuse for or a defense to Prohibited Conduct, and it does not diminish the Respondent's responsibility to determine that the other person has given consent and has the capacity to do so.

7.2 The University will make every reasonable effort to comply with the timelines contained in this procedure. However, extensions may be obtained by the IA, DA,

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<sup>6</sup> If an employee was found to have sexually harassed another member of the university or agency community, the AA may not render a decision which MODIFIES the sanctions.

or AA, as appropriate under the circumstances. Circumstances that warrant an extension may include, but are not limited to:

- Temporary unavailability of the Complainant(s), Respondent(s) or witnesses;
- Delays in issuance and/or receipt of information to or from the IA;
- Temporary unavailability of the IA, DA, or AA due to illness, family needs or professional commitments;
- Holidays or other periods when the Complainant, Respondent, witnesses, or other University Employees may be unavailable; and/or
- New allegations, new evidence, new witnesses, or any other fact or circumstance that would require further investigation.

7.3 All requests for extensions must be justified in writing and shall be sent by the IA, DA, or AA to the Office of Risk, Ethics, and Compliance for review and approval by the Chief Risk, Ethics, and Compliance Officer or designee. CREI will simultaneously notify the Complainant and Respondent in writing of any extensions and the reason for the extensions.

7.4 The University's disclosure of information related to an investigation, the DA's decision and/or the sanctions rendered under this SAP will be governed by the provisions of the Family Educational Rights and Privacy Act (FERPA), the Texas Public Information Act (TPIA), the Texas Education Code Section 51.971, and other applicable confidentiality laws.

7.5 This SAP applies to all reports of Prohibited Conduct received by the University on or after the effective date of this SAP.

## 8. INTERIM SUSPENSIONS AND INTERIM RESTRICTIONS OF STUDENTS

8.1 A student may not be expelled or suspended prior to a decision of responsibility for Prohibited Conduct or for other violations of university rules, policies, regulations, codes, or SAP except when the Dean of Student Life believes that an interim suspension should be imposed.

Interim suspension may be imposed only to ensure the safety and well-being of members of the University community or guest, or preservation of University property; to ensure the student's own physical or emotional safety and well-being; and/or if the student poses an ongoing threat of disruption of, or interference with, the normal operations of the University.

If the Dean of Student Life issues an interim suspension, a show cause hearing will be scheduled as soon thereafter as practicable. The student will be notified in writing of this action and the reasons for the interim suspension. The notice will include the time, date, and place of a subsequent conference at which the student may show cause as to why his/her continued presence on the campus does not constitute a threat. The student may also contest whether the facts of the initial report are accurate.

- 8.2 During the interim suspension, a student may be denied access to campus housing and/or the campus (including classes) and/or all other University activities or privileges for which the student might otherwise be eligible.
- 8.3 The interim suspension does not replace the investigation and resolution process. The investigation and resolution process shall proceed as outlined in this SAP, except that the timelines referenced in this SAP shall not be followed and the allegations will be resolved as soon as possible.
- 8.4 Interim restrictions include, but are not limited to, contact restrictions; representation of the university; and/or participation in university affiliated organization meetings, events, and/or activities.

Interim restrictions may be imposed (1) when a student has been interim suspended; (2) when a determination is made to implement a transcript hold under [Texas A&M System Regulation 11.99.02](#); and/or (3) in instances when the student's participation or representation would threaten or negatively impact other students who are participating and/or representing an organization or the university. When interim restrictions are imposed, a student will be notified in writing of the specifics of the restrictions and why the restrictions are being implemented. Restrictions will remain in place through a designated time period and/or, if not indicated, until the student is notified that the restriction has ended.

## 9. INTERIM ADMINISTRATIVE ACTIONS FOR EMPLOYEES

- 9.1 In accordance with University rules and SAPS, CREI may request that an employee be placed on leave during the investigation and resolution process. CREI may also issue interim restrictions to an employee, which include, but are not limited to, contact restrictions; representation of the university; “no trespass” orders, etc. Such interim actions will remain in place as specified in the Notice to the employee or until the allegations are resolved.

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### **Related Statutes Policies, Regulations, and Rules**

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

[System Regulation 08.01.01 \*Civil Rights Compliance\*](#)

[University Rule 08.01.01.M1 \*Prohibited Conduct: Discrimination, Harassment, Complicity, and Related Retaliation based on a Protected Characteristic\*](#)

[University Rule 12.01.99.M2 \*University Statement on Academic Freedom, Responsibility, Tenure, and Promotion\*](#)

[Standard Administrative Procedure 12.99.99.M0.01 Faculty Grievances Procedures not Concerning Questions of Tenure, Dismissal or Constitutional Rights](#)

[System Regulation 32.02.02 Discipline and Dismissal of Nonfaculty Employees](#)

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

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**Contact Office**

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[Department of Civil Rights and Equity Investigations](#)