Civil Rights Adjudication Training for
Designated Administrators (DAs) in the
Texas A&M University System

July 2023

NOTICE:

This training material is provided for public review in accordance with federal law. The material may be utilized only for non-commercial educational and training purposes with the user assuming all risk for utilization of any content herein. Commercial utilization of this material is prohibited.
Civil Rights Adjudication Training

**For this training...**
1. Assumes no previous knowledge on content areas
2. Presentation is text heavy and intended to serve as a reference document after the training
3. The presenter is not providing legal advice; the presenter is a compliance officer and is offering compliance guidance
4. Training intended to be complemented by local training provided by the Title IX Coordinator, EO Officer, and/or student conduct officers
5. Please note that the material being addressed in this program 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.

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Civil Rights Adjudication Training

**Agenda**
1. System Regulation 08.01.01
   a) Overview of Civil Rights Complaint Resolution Processes
2. Role of the Designated Administrator
3. Due Process
4. Standards of Evidence
5. Reading an Investigation Report
6. Analyzing Evidence and Credibility
7. Deliberations and the Decision
8. Sanctioning

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Introduction of Post-Test

We are providing a test that we will be utilizing to test your knowledge following the training program. Please keep this document at hand throughout the training and make notes as needed.

Instructions for completing the post-test will be provided at the end of the training program. In order to serve as a Designated Administrator in the civil rights process, you must score at least an 80% on the post-test.

System Regulation 08.01.01 and the Adjudicatory Process

08.01.01 Civil Rights Compliance

Revised July 7, 2023 (Effective August 14, 2020)
Next Scheduled Review: July 7, 2025
Click to view Revision History.

Regulation Summary

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.
Section 4.2.9 – Types (“Pools”) of Cases

- Title IX (4.2.10)
- Sex-based Misconduct (4.2.11)
- Other Civil Rights (4.2.12)

(a) When a complaint involves allegations of misconduct that involve both sex-based allegations (1 and/or 2 above) and allegations of other civil rights violations (3 above), the process shall be conducted under the requirements established for sex-based offenses (1 or 2 above). Sex-based complaints include those complaints based on sex, sexual orientation, and/or gender identity.
System Regulation 08.01.01

Section 4.2.9 – Types ("Pools") of Cases

1. Title IX (4.2.10)
2. Sex-based Misconduct (4.2.11)
3. Other Civil Rights (4.2.12)

(b) In addition to reviewing complaints against students for civil rights violations, members are expected to review allegations for possible violations of codes of student conduct and professional expectations of employees.

(c) When unprofessional behavior by an employee that does not rise to the level of a violation of this regulation is discovered during the civil rights investigation and adjudication process, the information will be forwarded to the employee’s supervisor.
Section 4.2.9 – Types (“Pools”) of Cases

1. Title IX (4.2.10)
2. Sex-based Misconduct (4.2.11)
3. Other Civil Rights (4.2.12)

(d) When possible violations of the code of student conduct by a student that do not rise to the level of a civil rights violation are discovered during the civil rights investigation process, and where there are no civil rights charges brought forward as a result of the investigation, the information will be forwarded for review to the student conduct process.

(e) When possible violations of the code of student conduct by a student that do not rise to the level of a civil rights violation are discovered during the civil rights investigation process, and where there is also going to be an adjudication of the civil rights violation (through a formal hearing, or through informal resolution methods that result in a finding and sanction), the case will be consolidated into one adjudication conducted under the processes described in 4.2.9(a).
Civil Rights Adjudication Training

Civil Rights Adjudication Training

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# Civil Rights Adjudication Training

<table>
<thead>
<tr>
<th>RULE # (28.04)</th>
<th>SEX-BASED/RE/MISCONDUCT (25.01)</th>
<th>OTHER CIVIL RIGHTS (28.04)</th>
<th>STUDENT CONDUCT / EMPLOYEE PROGRAM (28.05)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title IX Violation</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Procedures</td>
<td>Formal Complaint</td>
<td>Report/Complaint</td>
<td>Report/Complaint</td>
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<tr>
<td>Standard of Evidence</td>
<td>Preponderance</td>
<td>Preponderance</td>
<td>Preponderance</td>
</tr>
<tr>
<td>Informal Resolution Allowed?</td>
<td>Yes – with DEO approval</td>
<td>Yes – with DEO approval</td>
<td>Yes – with DEO approval</td>
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<tr>
<td>Role of Investigative Authority</td>
<td>Collect and report incriminating and exculpatory evidence</td>
<td>Collect and report incriminating and exculpatory evidence</td>
<td>Collect and report incriminating and exculpatory evidence; consults the appropriate System Regulation</td>
</tr>
<tr>
<td>Adjudication</td>
<td>Formal (Live) Hearing</td>
<td>Formal (Live) Hearing</td>
<td>Written Review</td>
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<tr>
<td>Adjudicator</td>
<td>Hearing Officer or Hearing Panel (if role of DA)</td>
<td>Hearing Officer or Hearing Panel (if role of DA)</td>
<td>Designated Administration</td>
</tr>
<tr>
<td>Advisor or Advisor?</td>
<td>Yes – provided by Member for formal hearing if an advisor is present</td>
<td>Yes – provided by Member for formal hearing if an advisor is present</td>
<td></td>
</tr>
<tr>
<td>Rule of Advisor</td>
<td>Consent and communication and Support</td>
<td>Consent and communication and Support</td>
<td>Support</td>
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<tr>
<td>For a Finding...</td>
<td>Sentence and Punishment and Objective Evidence (DOO OR OCR) OR Qual Pro (OFO complete responsibility only)</td>
<td>Sentence and Punishment and Objective Evidence (DOO OR OCR) OR Qual Pro (OFO complete responsibility only)</td>
<td>Sentence and Punishment and Objective Evidence (DOO OR OCR) OR Qual Pro (OFO complete responsibility only)</td>
</tr>
<tr>
<td>Appeal?</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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</table>

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8/1/2023

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17

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18
The role of the adjudicatory (hearing) process is:
• to review all the inculpatory and exculpatory evidence that is available,
• to see and hear the information presented, and
• to allow the parties to present information and to challenge information.

The role of the deliberations process is:
• to reflect on both the information provided and your assessment of the credibility of the parties in determining what took place,
• to utilize your determination of what took place to assess whether the civil rights regulation and/or member rules were violated, and
• when determining that violations have taken place, to develop and impose sanctions that promote growth and development, repair harm caused, and protect the broader safety interests of the community.
"Hear the case before you decide it."

- Judge Alfred P. Murrah, (b1904-d1975, U.S. Court of Appeals for the Tenth Circuit and Director of the Federal Judicial Center)

The Role of the Adjudicatory Process (Hearings and Deliberations)

The successful hearing official:

- reviews all written information at least two days in advance of the hearing and notes areas for exploration and questioning,
- understands that their primary initial focus is to determine what happened,
- understands they can only determine what happened by considering all of the available evidence,
- relies only on the facts and information in evidence, and does not allow information outside of the hearing to factor into a determination,
- reaches credibility determinations based on observable facts and not on hunches or suspicions,
- never considers sanctioning or the implications of sanctions until a finding has been rendered, and
- creates sanctions that are intentional, designed for education and development, seek to repair harm, and to protect the members of the broader institutional community.
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The Designated Administrator

Six Critical Qualities of the DA

- Detached/Objective with respect to subject matter
- Impartial/Unbiased when it comes to the parties involved
- Only considers facts that are in evidence; recognizing that what is considered “in evidence” may change up through the end of the hearing
- Understands issues of relevance with respect to questions and evidence
- Reaches a finding of fact before considering potential sanctions
- Imposes sanctions proportionate to the violation that are designed to educate, repair harm, and protect the community
The Designated Administrator

Critical Skills / Knowledge Base of the DA

- Reading
- Interpreting information
- Standards of evidence
- Types of evidence
- Credibility determinations
- Deliberations
- The finding of fact
- Sanctioning
Due Process

Who has authority over you… how many jurisdictions do you live in? (POLL)

- International Law
- Federal Law
- State Law
- County/Municipalities
- Professional
- Personal
Due Process

Do all of these jurisdictions provide the same due process elements if there is a conflict? (POLL)

NO --- they do not, but why not?

Due Process

Due process is the process that is due to us based on:

- The nature of the relationship
- The rights or privileges at stake

The greater the potential loss of rights, the higher amount of process that is due.
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Due Process

- President James Madison (Dem-Rep., 4th President)
  - Authored the 5th Amendment to the U.S. Constitution; ratified in 1791
  - 5th Amendment requires due process of law in order for the government to deprive an individual of life, liberty, or property
  - 5th Am. prohibits self-incrimination and double jeopardy in criminal proceedings
  - 5th Amendment protections date back to the Magna Carta (1215)

- Senator Jacob Howard (Rep., Michigan)
  - Worked closely with President Lincoln on passage of 13th Amendment to abolish slavery
  - Served on Joint Committee on Reconstruction
  - Drafted the 14th Amendment, which requires equal protection under the law for all persons born or naturalized in the United States; ratified in 1868
  - Reversed (USSC) Dred Scott decision that black persons were not citizens
  - Due process clause guarantees substantive and procedural process in state legal proceedings (14th Amendment is primary source of due process in higher education)
  - Privileges or Immunities Clause protects individual state citizenship from interference by other states

Due Process in Higher Education (students)

Can we impose the death penalty on our community members? NO
Can we imprison our community members? NO
Can we deprive our community members of substantial property???

Separate rights from privileges…

Once we extend a privilege, revoking it may require due process, most especially when we are altering the relationship between the individual and the institution
Standards of Evidence

Beyond a Reasonable Doubt...

Meaning: No other logical explanation can be derived from the facts except that the defendant committed the crime for which they are charged, thereby overcoming the presumption that a person is innocent until proven guilty.

~ 90-99% certainty

Where do we use this in society, and why?

Do we use this in the 08.01.01 process? If so, where?

Clear and Convincing Evidence...

Meaning: The party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true.

~ 67-75% certainty

Where do we use this in society, and why?

Do we use this in the 08.01.01 process? If so, where?
Standards of Evidence

Preponderance of the Evidence...

Meaning: What is more likely than not to be true, based on probable truth or accuracy. There is neither a presumption of guilt, nor a presumption of innocence.

50.1% + certainty

Where do we use this in society, and why?

Do we use this in the 08.01.01 process? If so, where?

Substantial Evidence (Probable Cause)...

Meaning: Reasonable grounds for making a search, making an arrest, or pressing a charge.

~ 40% + certainty

Where do we use this in society, and why?

Do we use this in the 08.01.01 process? If so, where?
Standards of Evidence

Reasonable Suspicion (Notice)...

Meaning: Specific facts (more than a “hunch” or a “scintilla” of evidence) that justify further investigation.

~ 25% + certainty

Where do we use this in society, and why?

Do we use this in the 08.01.01 process? If so, where?

Uses of Evidentiary Standards (conduct and civil rights)

1. Notice and Gate-keeping (Reasonable Suspicion)
2. Bringing a charge (Substantial Evidence)
3. Finding a violation (Preponderance of the Evidence)
4. Determining appeals (Preponderance of the Evidence, with presumption that original decision is correct)
Standards of Evidence

Uses of Evidentiary Standards (conduct and civil rights)

It is not uncommon that people express a concern that someone might be terminated from employment or suspended or expelled from a university while using “only” a preponderance of the evidence as a basis for this decision.

Do you share this concern?

Allow me to help dispel this understandable fear for those that may have it.

Is it possible that we can make a mistake when employing a preponderance of the evidence test?

Does the criminal justice system ever make mistakes employing a “beyond a reasonable doubt” standard?

All human decision-making involves the possibility of making mistakes.

Our goal is to make the best decision possible, based on the best available information that exists in evidence.

The better you do your job, the lower the risk of a mistake. This training is designed to teach each of us what our roles are in this process, and what we need to do to reduce our risk of making a mistake.
Standards of Evidence

Why do we utilize the preponderance standard?

- It is the only equitable standard, applying no undue burden on either the complainant or the respondent
- We utilize a preponderance test because it is most reflective of the educational nature of our System
- We utilize a preponderance test because it is provided for by the federal government, and used by the federal government for the purposes of civil rights enforcement
- Finally, a preponderance test is far easier to teach and train with than the clear and convincing standard, which can be a variable standard

Standards of Evidence

What does applying a preponderance test look like? Let’s apply a fact pattern -

- RA Smells Marijuana
- 2nd RA Independently Confirms Smell
- Initial Confrontation and Delay
- Open Door and Smoke in Room; towel rolled up behind door
- Bloodshot Eyes for all 4 people in room
- Claiming they were watching a movie and fell asleep; confusion on what movie
- Cold outside; fan in window blowing out
- Incense burning; can of air freshener on dresser
- Blow tube under the bed that smells of cannibis
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Reading an Investigation Report
Reading an Investigation Report

A. Read report no less than two days prior to writing a decision

B. Review for:
   i. Understanding the nature of the complaint
   ii. Understanding the timeline of the event(s)
   iii. Understanding the specific allegations made against the respondent(s)
   iv. Understanding the inculpatory evidence collected in the investigation
   v. Understanding the exculpatory evidence collected in the investigation
   vi. Understanding the investigator’s interpretation of:
       a) Disputed Facts
       b) Credibility of parties/witnesses
   vii. Reviewing exhibits as is needed to understand the information presented

Types of Evidence
Types of Evidence

1. Direct* (first-hand, physical evidence)
2. Circumstantial* (physical evidence with inferences)
3. Documentary (reports, texts, etc.)
4. Hearsay
5. Expert
6. Character

*The U.S. Supreme Court has stated that "circumstantial evidence is intrinsically no different from testimonial [direct] evidence" (Holland v. United States, 348 U.S. 121, 75 S. Ct. 127, 99 L. Ed. 150 [1954]). Thus, the distinction between direct and circumstantial evidence has little practical effect in the presentation or admissibility of evidence.
Deliberations and the Finding of Fact

Order of deliberations:

- What happened? Develop a narrative of what you believe took place, based solely on facts in evidence, and accounting for all inculpatory and exculpatory information presented
- Make credibility determinations where conflicting information is present
- Develop a finding of fact (a summary of what happened that includes specific conclusions about behavior)
- Based on the finding of fact, is there a violation of published rules and regulations?
- If a violation is found, proceed to sanctioning. Note: Sanctioning is never to be considered prior to the establishment of a finding of fact.
Deliberations

Writing an effective finding of fact:

- Should be reasonably brief (in most cases) yet also highly specific as to what took place (one to two paragraphs, based on allegations)
- Should provide sufficient information to allow either party to appeal, as well as assist an appeals administrator/panel in understanding your conclusions
- Should be written towards both/all parties; do not personalize
- Remember your potential audiences…
  - Complainant
  - Respondent
  - GOC/SECO
  - Lawyers/advisors
  - Media/Social Media
  - Judge
  - Appellate Officer(s)
  - Parents
  - Department of Education

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Sample Finding (Fake)
After reviewing all of the information available, I have determined that Ms. Smith is in violation of the following University Rules and Regulations: Acts of Dishonesty, Threatening and Intimidation.

Findings of Fact
My specific findings are as follows:
1. You engaged in the harassment of Mr. Jones via electronic means despite being told to leave him alone, causing him to fear for his safety.
2. Your communications with Mr. Jones were of a hostile and threatening nature.
3. Your story was not credible.

Sample Finding (Actual)
After reviewing all of the information available, I have determined that Ms. Smith is in violation of the following University Rules and Regulations: Acts of Dishonesty, Threatening and Intimidation.

Findings of Fact
My specific findings are as follows:
1. Ms. Smith engaged in intentional communication with Mr. Jones via electronic means despite numerous verbal and text requests on the part of Mr. Jones for this communication to cease. After being blocked by Mr. Jones, Ms. Smith used the devices of other individuals to continue communicating with Mr. Jones. Ms. Smith’s continual refusal to abide by Mr. Jones’ wishes created an ongoing disruption to his daily life and provoked a reasonable fear for his own well-being.
2. Ms. Smith’s written communications with Mr. Jones were of a hostile and threatening nature, repeatedly referring to Mr. Jones in disparaging terms (i.e., “asshole,” “rapist,” and “faggot”). Further, the written communications included threats to Mr. Jones’ property (car) and suggestive that something physically “unfortunate” might happen to him.
3. Ms. Smith’s initial account to police was not fully accurate, and her story continued to “evolve” over time in the telling. Ms. Smith’s statements to police, investigators, and this hearing officer were inconsistent, contradictory, and sought to minimize both the frequency and nature of her ongoing contact with Mr. Jones, as well as denying the existence of any threats.
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Credibility
Credibility Assessments

The credibility of parties and witnesses can greatly influence the outcome of our complaint resolution processes, and the federal government expects us to assess the credibility of parties and witnesses in sex-based processes. But credibility is not often well-understood. Just how can someone be deemed to be credible and another person be considered not credible, or how can a person maintain credibility in one area of the investigation and lose it in another?

Credibility Factors

- Plausibility
- Relevance
- Consistency
- Bias
- False Information
- Admissions
Credibility Factors

Plausibility
Plausibility is a measure of believability and likelihood:
- Is conceivable and/or supported by corroborating evidence
- The less likely something is to be true, the greater the evidence required to establish a likely outcome
- In general (Occam’s Razor, Probability Theory, etc.), when all things are equal the simpler option is the more likely, barring sufficient evidence to the contrary
- Plausibility is more affected by the quality of the evidence rather than the quantity of it

Credibility Factors

Relevance
Relevance is a measure of whether or not the evidence is germane to the allegation(s) under review
- Is offered by someone who could reasonably have such knowledge
- Is inculpatory or exculpatory by itself, or reinforces the conditions under which inculpatory or exculpatory evidence is being evaluated
- Relates substantively to the specific allegations and/or specific pattern of behavior rather than to “like” incidents, circumstances, or people
Credibility Factors

Consistency
Consistency is a measure of the reliability of the information and the people providing it
- Does not contradict itself over multiple tellings (major inconsistencies versus minor inconsistencies)
- Comes from a source that cannot be substantively discredited

Credibility Factors

Bias
Bias is a measure of the degree to which people’s stories may be influenced by the people involved, the subject matter involved, and/or their own experiences
- Bias of parties/witnesses for or against individuals
- Bias of parties/witnesses based on the subject matter
- Bias of parties/witnesses based on their own experiences
- Bias brought into an investigation by the investigator(s)
- Bias brought into a review by a Designated Administrator
Credibility Factors

False Information
If someone is demonstrated to have provided false information during the process, it presents a challenge to their credibility in the overall process:

- What did they provide false information about?
- Did they acknowledge providing false information?
- Why were they providing false information?
- Does this carry over into portions of their participation or can it be seen as more limited?

Credibility Factors

Admissions
If someone admits to wrongdoing, does that add to or detract from their credibility overall?

- What are they admitting to?
- Why are they admitting to it?
- Is their admission supported by the available evidence?
- Is the admission seeking to mitigate damage and consequence or does it present as a true acceptance of responsibility?
Credibility Activity

Scale of Credibility

Based solely on the information provided, please rank the following people from most credible (1) to least credible (5).

1. An underaged respondent who lies about an alcohol violation during an investigation over a sexual assault allegation.

2. A complainant making an allegation about something that happened between the complainant and respondent without any evidence or witnesses.

3. A witness unrelated to both parties who observed the incident in question.

4. A respondent who lies about their alibi for the day of the incident in question.

5. A witness for the respondent who provides evidence on their behalf.

Credibility Assessments

Initial Draft Report

- Preferred Credibility Statements:
  - The investigator found no cause to question the credibility of statements made by Doe.
  - The investigator found that Smith’s credibility was challenged by...
    - Cite Persuasiveness, Relevance, Consistency, Bias, False Information, or Admission factor(s)
  - The investigator found that Ortega’s credibility was reinforced by...
    - Cite Persuasiveness, Relevance, Consistency, Lack of Bias, Corroboration, or Admission factor(s)
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Sanctioning
Sanctioning Goals

1. Education and Development
2. Restoration (reparation of harm to individual and the academic community)
3. Balance between individual being sanctioned and the academic community

Our stated goals for sanctioning never include punishment, nor do we explicitly reference deterrence. This is not to say that sanctions we impose are not perceived as punishments, but simply that it is never our explicit intent.
Sanctioning Formula

1. Nature of the behavior +
2. Prior disciplinary history of respondent +
3. Aggravating factors +
4. Mitigating Factors = Sanction

Sanctions are the creation of learning outcomes intended for the situation and the behavior; “active” and “inactive” sanctions are then selected to achieve the intended outcomes. These intended outcomes should be communicated via the decision letter as a rationale for the sanction.

Inactive Sanctions

Inactive sanctions are official, written university responses to misconduct that generally do not require any action by the respondent. These sanctions (with the exception of suspension and expulsion) generally do not explicitly serve as teaching tools, but instead provide a baseline for sanctions for any future conduct violations.

It is important to emphasize that disciplinary suspensions should be conditional on, and reinstatement only allowed upon, successful completion of all assigned active sanctions.
Active Sanctions

Active sanctions are generally those designed to achieve learning outcomes by the student respondent by providing them with information and/or experiences that help them deepen their understanding of university expectations and cause them to reflect on the implications of their own actions.

Examples of active sanctions include:
- Assessment, treatment, and/or education for alcohol and other drug issues
- Workshops (e.g., healthy relationships, conflict management, anger management)
- Counseling assessment
- Interviews and educational essays
- Guided reflection papers

Active Sanctions in sex-based cases should generally not place the student respondent in a setting with either the complaining party or other vulnerable parties (such as a shelter or support group).

Additionally, other active sanctions can solidify interim measures and/or deter further contact between the parties, such as contact restrictions and restrictions from specific campus areas or activities (remedies).

In general, there should be (except in cases of permanent expulsion) a pairing of inactive and active sanctions that address all desired learning outcomes. All active sanctions should have written reflection components assigned to them that are then included in the student’s conduct record.
Post-Test
https://tamusofficeofit.iad1.qualtrics.com/jfe/form/SV_5BePMl4rxRIAnj0

Please complete the post-test by 5:00 pm on Friday, August 11, 2023.

If you have any questions after the conclusion of this program, please contact Rick Olshak at rolshak@tamus.edu.