Title IX and TAMU System Regulation 08.01.01

Fall 2020 Update
HR Liaisons
Understanding 08.01.01 “by the bucket”

What has actually changed?

Update on Mandatory Reporting and Consensual Relationship Rules
Understanding the System Regulation “by the bucket”
All Civil Rights Claims***

*** Allegations of discrimination or harassment based on a protected class: race, color, sex, national origin, disability, veteran’s status, genetic information, religion, sexual orientation or sexual identity
Level of Due Process Required By System Regulation Depends on the Bucket

- **Sexual Harassment/TIX**
  - Sexual Assault -- Rape, Fondling, Incest, Statutory Rape
  - Stalking based on sex
  - Dating/Domestic Violence
  - Quid Pro Quo
  - Sex-based Discrimination (i.e. failure to promote, pay inequities)
  - NEW Sexual Harassment -- Unwelcome conduct that is Severe, Persistent AND Objectively Offensive

- **Sex-based Misconduct**
  - Sexual Exploitation
  - OLD Sexual Harassment -- Unwelcome Conduct that is Severe, Persistent, OR Pervasive
  - Any of above SH/TIX behaviors if no TIX jurisdiction

- **Other Protect Class Discrimination**
  - Discrimination or harassment based on any protected class, except for sex
**Jurisdiction**

To take jurisdiction of a complaint as Sexual Harassment/TIX:

- TAMU must have actual knowledge
- TAMU must have a formal complaint filed by the Complainant or the Title IX Coordinator
- The alleged behavior/conduct must have occurred against a person while in the United States
- At the time the formal complaint was filed, the complainant was participating or attempting to participate in a TAMU’s educational program or activity.
- The alleged conduct meets the definition of sexual harassment/TIX -- Sexual Assault, Stalking based on Sex, Dating/Domestic Violence, Quid Pro Quo, Sex-based Discrimination, New Sexual Harassment

- TAMU will take jurisdiction of any of above SH/TIX behaviors if it falls out of the bucket for lack of jurisdiction; or
- It is sexual exploitation, or “old” sexual harassment as long as:
  (a) The conduct occurred on University grounds or other property owned or controlled by the University; or
  (b) The conduct occurred in the context of a University employment or education program or activity; or
  (c) The conduct created a hostile environment for Students, Employees, or Third Parties while on campus or while participating in a University activity.
Due Process

Sexual Harassment/TIX

New Federal Regulations require a high level of due process, including right of cross examination, appointed advisors, etc...

Sex-based Misconduct

TAMU System Rule 08.01.01 gives these cases exactly the same high level of due process, including right of cross examination, appointed advisors, etc...
What has actually changed?
Multiple Ways to Resolve a Sex-Based Complaint

- Live Hearing: Faculty, Staff, and Students
- Informal Resolution:
  - Not available when penetration or D/DV
  - Only by agreement
- Dismiss or Refer: Conduct not Civil Rights Inappropriate Conduct
Live Hearings

• Live hearings are required in ALL Sexual Harassment/TIX cases and Sex-based Misconduct cases.

• At the hearing, the investigator will present the facts discovered during the investigation. This includes inculpatory and exculpatory evidence.

• Both the Complainant and Respondent will have the opportunity to tell their side of the story and will be subject to cross-examination.

• The Hearing Officer will receive all the information at the hearing, but will not announce a decision. The parties will receive a Decision Letter approximately 1 week later with the decision on responsibility and sanctions (if applicable).
Advisors

• A party has the right to select their own advisor. There are no limits on who may be selected.

• TAMU must supply an advisor free of charge to any party (faculty/staff/student/3rd party) who does not have one during a TIX or sex-based misconduct hearing. The advisor conducts cross examination and provides guidance to the party.

• A party may not opt to not have an advisor – if a party “fires” their advisor, another advisor will be appointed.

• TAMU will likely have a pool of attorneys who have been trained as advisors. A party who does not have their own advisor will be able to select from people on the list.
Cross Examination

The advisor conducts the cross examination of the other party.

The Hearing Officer will pre-approve all questions asked by the advisor of the other party.

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If a party refuses to completely answer the cross-examination questions of the other party, The Hearing Officer cannot consider any statement of that party.
The System Regulation has a very proscribed timeline with many “check ins.”

These cases will likely take well over a semester to move through the Investigation/Hearing Process. Informal resolutions can occur more quickly.
Interim Removals
(formerly Interim Suspension or LOA)

• Employees – employees may be put on a LOA with pay (suspension with pay) or other interim status during the investigation. Employees may not appeal this decision.

• Students – students may not be interim suspended unless there is a physical danger to an individual or the community. Students may appeal this decision.

Interim Removals must be coordinated through the Title IX Office.
Supportive Measures
(formerly Interim Measures and Academic Accommodations)

- Examples: moving an employee to a different building, moving a student to a different dorm, moving test dates, no contact restrictions

Supportive Measures must be equity and not overly burdensome to one party. Supportive Measures must be coordinated through the Title IX Office.
Designated Administrator

**Accused Students/Staff:**
TAMU’s Hearing Officer will conduct the Live Hearing and decide responsibility/sanctions

**Accused Faculty:**
Dean of Faculties will conduct the Live Hearing and decide responsibility/sanctions
Title IX and Sex-based Misconduct cases have a limited right to appeal:
1) Procedural Error
2) New Evidence
3) Title Coordinator, Investigator, or Hearing Officer was biased
4) Sanctions are inappropriate (too severe or not severe enough)

Other Protected Class cases have do not have a right to appeal under TAMUS 08.01.01. However, if an employee receives discipline or is terminated, the employee could appeal the discipline/termination under the faculty rules or the staff rules related to discipline/termination.
Appeals

Accused Students:
UDAP makes the decision. This is currently a live hearing but will switch to a paper decision soon.

Accused Staff:
Dr. Jeff Risinger, Vice President for HR will decide the appeal (paper).

Accused Faculty:
Dr. Carol Fierke, Provost, will decide the appeal (paper). She may receive a recommendation from a faculty committee before making the decision.
Other Civil Rights Cases

- Basically the same timeline as TIX/Sexual Misconduct.
- No hearings
- No TAMU-provided advisors
- No sanctioning chart/mandatory termination
- Informal Resolution authorized
Mandatory Reporting and Consensual Relationship Rules
New 08.01.01 simplifies the rule so that the duty to report is (mostly) the same for all kinds of civil rights cases.
Mandatory Reporting

- Employees who experience, observe or become aware of discrimination in the course and scope of their employment must report to CREI (supervisor is not enough).
- Victims don’t have to report their own SH, SA, D/DV or Stalking.
- Employee is never required to report to supervisor or alleged Respondent.
- Report must include all known information.
- Report must be made “as soon as possible.”
- Failure to report may result in discipline, including dismissal.
- Failing to report knowingly or with intent to harm shall result in dismissal.
- Criminal Sanctions for failure to report: $4000 fine and 1 year jail.
Where to Report?

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Civil Rights and Equity Investigations (CREI)
Medical Sciences Library, Suite 007
(979) 458-8407
civilrights@tamu.edu
titleix.tamu.edu/report
Title IX is a federal law that prohibits sexual harassment, sexual violence, and discrimination on the basis of sex.
Consensual Relationships

- Amorous, romantic, sexual relationship
- Applies to ALL employees, including some graduate students
- Student workers are exempt
- All employees are prohibited from having a consensual relationship with an undergraduate student of TAMU
- All employees are prohibited from having a consensual relationship with an employee that they supervise or have authority over
- Employees may apply for a waiver– both parties must sign request
- Employee sanction for violating rule – up to and including termination
- No sanction for the undergraduate student