

Civil Rights Decision-Maker Training

System Ethics and Compliance Office





Introductions

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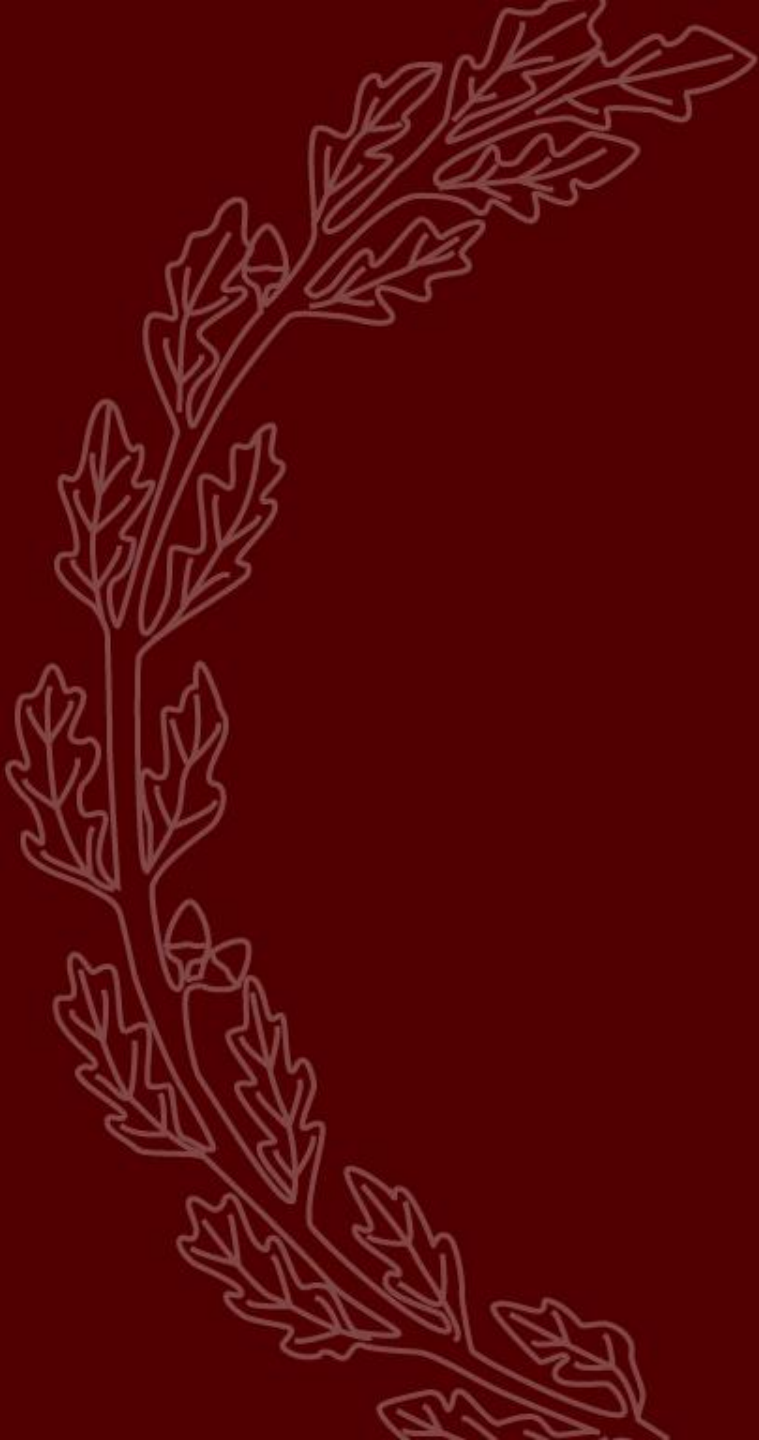
THE
TEXAS A&M
UNIVERSITY
SYSTEM

Session Guidelines

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

Introductions

- Pair up with a person you don't know and share the following:
 - Name
 - Position and years with the institution
 - Favorite Movie



Section I

Role of the Decision-Maker

Serving Impartially

Standards of Evidence

Preponderance Standard

Role of the Decision-Maker

- Remain objective, neutral, and unbiased
- Disclose any potential conflict of interest
- Recognize that confidentiality is critical
- Review written materials at least two days before the hearing, noting areas for questioning
- Identify the facts that support what happened
- Determine findings based on preponderance of evidence standard
- Understand the content in the 08.01.01 Regulation and the training material
- Make credibility determinations based on facts, not assumptions or bias
- Consider sanctions only after a finding is made
- Develop sanctions to educate, develop, repair harm, and protect the community
- Have updated FERPA agreements and maintain those standards when accessing records

Role of the Decision-Maker: Limitations

- The decisions are limited to the following:
 - Relevant information to the event(s) in question
 - No speculation regarding past or future events
 - Information provided in the investigation report, exhibits, and when applicable, live formal hearing
- The only exception is prior relevant history, which is taken into consideration during sanctioning.

Serving Impartially

- Do not rely on sex stereotypes when approaching allegations, witnesses, complainants, respondents, or Formal Complaints.
- Investigations and adjudications must be impartial.
- Remain objective throughout your role in the process.
- Avoid generalizing individuals based on prior prejudices involving sex, sex stereotypes, or status in the process.



Serving Impartially: Bias Activity

See handout

Serving Impartially: Bias

The Department of Education has defined bias as occurring in the following situations:

- Treating a party differently based on the party's sex or stereotypes about how men or women behave with respect to sexual violence.
- Ignoring, blaming, or punishing a complainant or respondent due to stereotype about either.

Serving Impartially: Avoiding Bias

Any determination of credibility made by the Decision- Maker cannot be based solely on an individual's status as a:

- Complainant;
- Respondent; or
- Witness

Serving Impartially: Conflict of Interest

- Individuals serving as Title IX Coordinator, Title IX Investigator and Decision-Makers must not have a conflict of interest or bias:
 - For or against complainants or respondents generally; or
 - For or against an individual Complainant or Respondent.
- Examples:
 - Personal relationship
 - Professional relationship
 - Shared membership
 - Perceived conflict of interest or bias

Serving Impartially: Avoid Prejudgment

Title IX Coordinator, Title IX Investigator and any Decision-Makers cannot:

- Pass judgment on the allegations presented by either party or witnesses; or
- Jump to any conclusions without a full investigation / review of the relevant facts from all parties involved.
- Necessitates a broad prohibition of sex stereotypes
- Decisions must be based on individualized facts, and not on stereotypical notions of what “men” and “women”, “Complainants” and “Respondents” do or not do.

Serving Impartially: Best Practices to Avoid Prejudgment

- Any and all stereotypes about men and women must be left behind (whether from past Title IX proceedings or personal experiences).
- Approach each allegations with neutrality at the outset.
- Treat both parties equally and provide an equal opportunity to present evidence, witnesses, and their versions of events.

What Are Standards of Evidence?

Standard	Definition	Used In
Beyond a Reasonable Doubt	Highest standard; no reasonable doubt remains of the defendant's guilt	Criminal cases
Clear and Convincing Evidence	Highly probable or reasonably certain; more than a preponderance	Civil fraud, administrative
Preponderance of the Evidence	More likely than not (>50%)	Texas A&M System 08.01.01, conduct

Preponderance of the Evidence

- Preponderance of the Evidence- What is more likely than not to be true, based on the totality of the available evidence. (08.01.01)
- Lower burden of proof than "beyond a reasonable doubt."
- Balances fairness, due process, and the educational mission



Preponderance of the Evidence

Black's law dictionary calls preponderance **50% plus a feather**; so in a complaint where the evidence is even, any slight evidence leaning towards one side is enough.

Also, when there is no evidence the complainant is lying and no evidence to support why a complainant would be motivated to invent a story or distort the details, that **could** be enough.



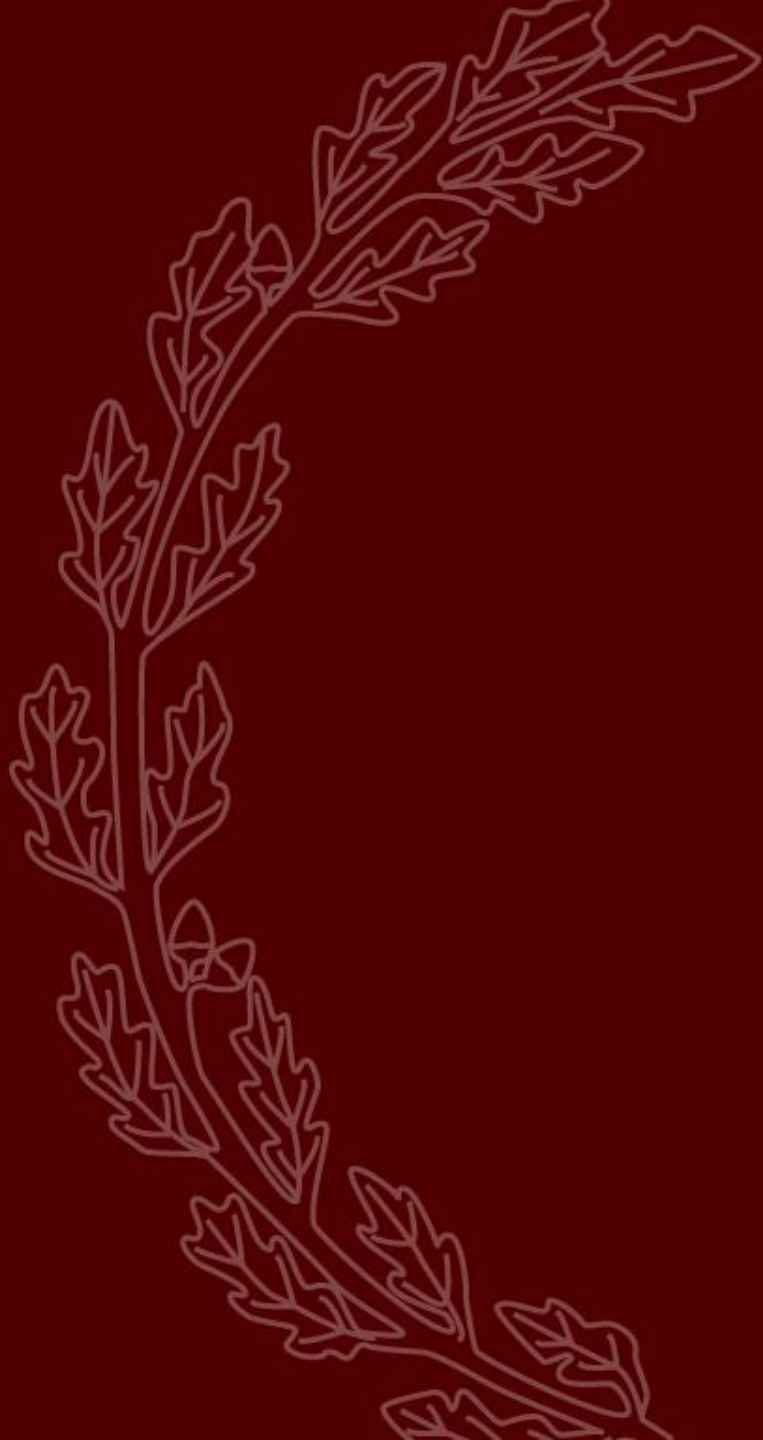
Preponderance of the Evidence

- Decision-makers weigh all relevant evidence presented.
- Does not require absolute certainty - just that one side's story is more convincing.
- Equal evaluation of credibility, consistency, and corroboration.
- If you believe there's a 51% chance the respondent committed the alleged misconduct based on the evidence, that meets the standard.

Example: Applying Preponderance of the Evidence Standard

- Neighbor reports smell of marijuana
- Resident Advisor independently confirms smell
- Resident opens door and there is a smoke haze in the room that smells like marijuana
- Resident's smoke detector covered
- Resident claims they were taking a shower; shower is dry
- Ashes in the bathroom on the floor and sink; towel rolled up behind the door

Do we believe more likely than not that the resident
was smoking in the room?



Section II

System Regulation 08.01.01

Sex-based vs. Non-Sex
Based

Investigation Process

System Regulation 08.01.01: Summary

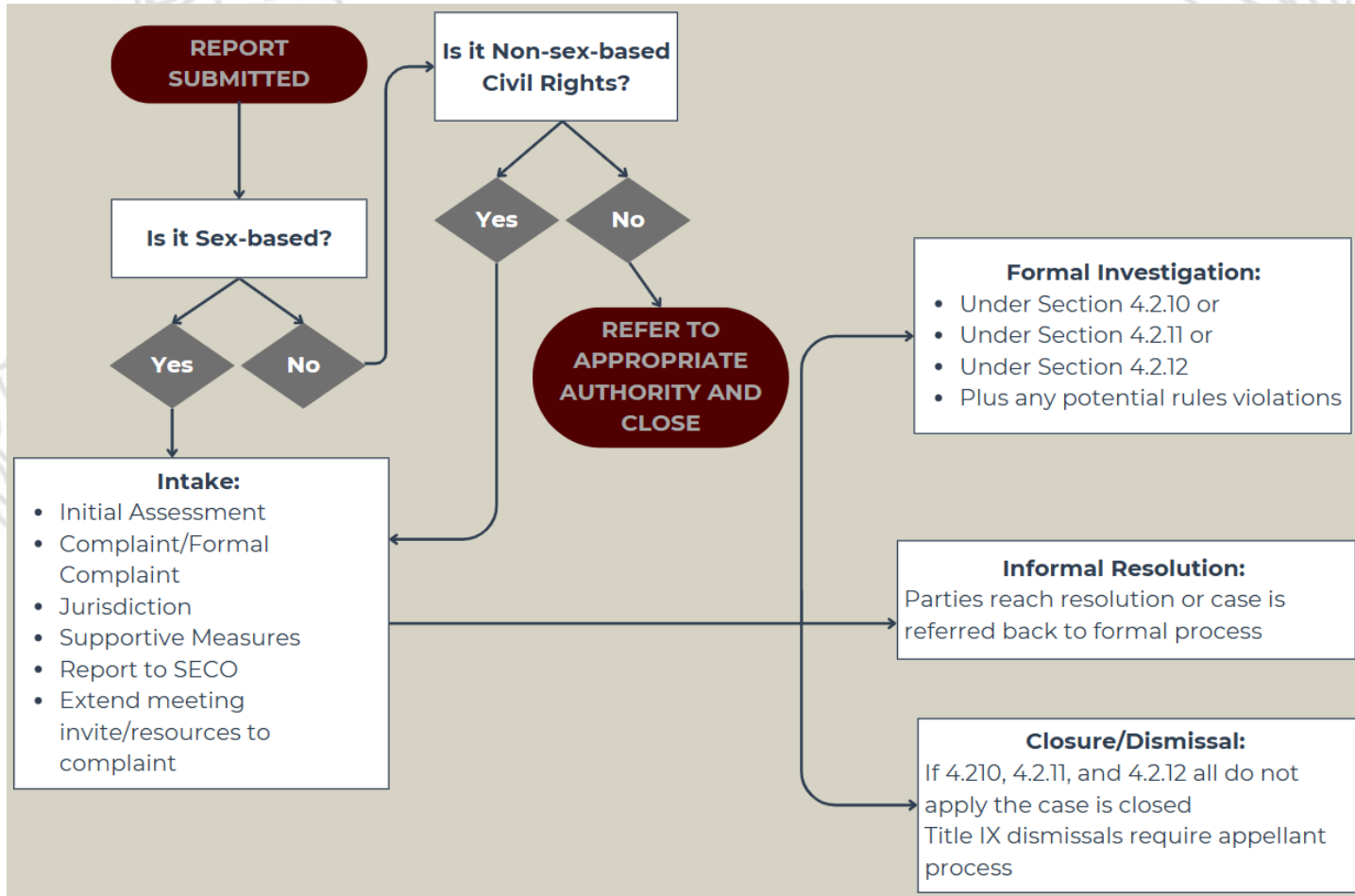
- The Texas A&M University System (System) will provide equal opportunity to all employees, students, applicants for employment and admission, and the public. This regulations provides guidance to each member in complying with local, state and federal civil rights laws and regulations (laws) and related system policy.

Note: Be sure to visit your institution's website for specifics related to rules and/or procedures.

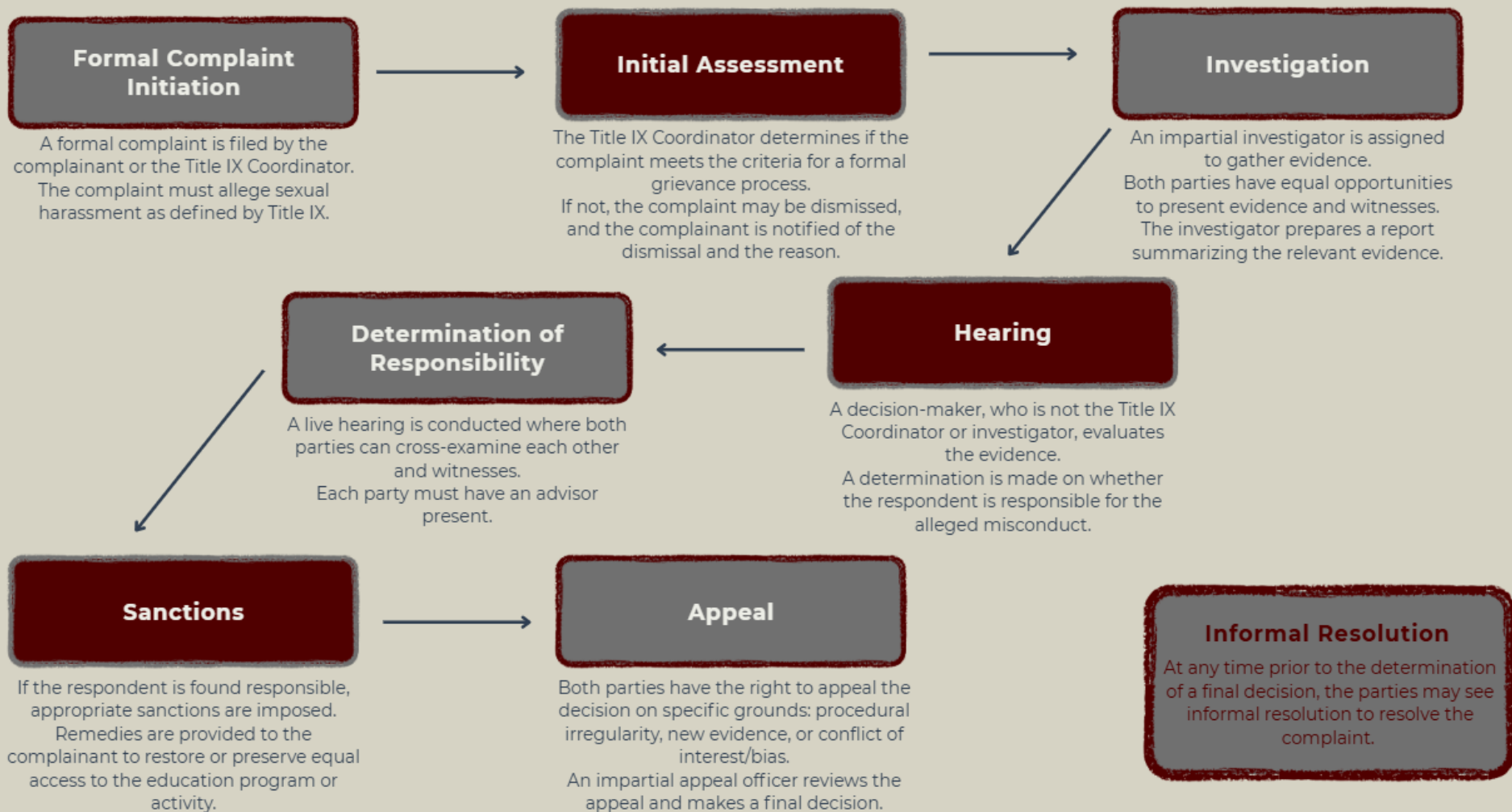
System Regulation: Violations

See Training Guide section "Policy Violations"

System Regulation: Intake Process



Sex-Based Misconduct at a Glance



Non-Sex Based Cases

- Complaints against an **employee** respondent
 - No hearing required per 08.01.01
 - Decision-Maker reviews the Investigation Report
 - Decision-Maker drafts a decision within 5 business days to SECO
- Complaints against a **student** respondent
 - Investigation Report will be used as directed in the university's student conduct rules



Day 2: Housekeeping

Investigation Process: Timeline

Investigative Authority Completes Initial Draft Report	30 business days
Report Review by SECO/OGC	10 business days
Investigative Authority Completes Final Draft Report	5 business days
Party Review Final Draft Report	10 business days
Investigative Authority Completes Final Investigative Report	5 business days
Final Report Review by SECO/OGC	5 business days
Total (excludes extension request)	65 business days

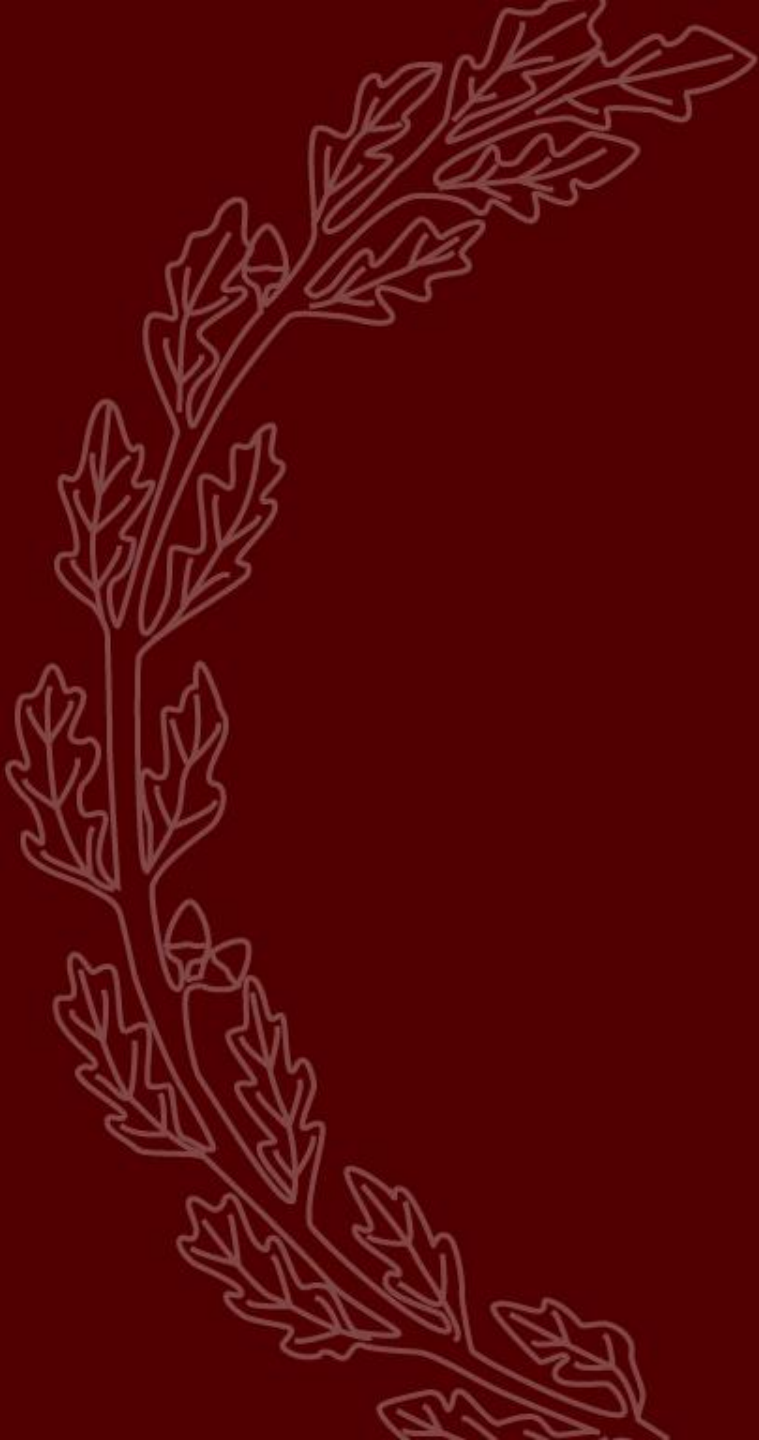
See System Regulation 08.01.01 Section 4.2.6

Investigation Process: Report Content

REPORT: ALL evidence relevant to the complaint (inculpatory and exculpatory)

EXHIBITS: ALL EVIDENCE relevant to the complaint and ALL EVIDENCE directly related to the complaint that the investigator(s) determines is relevant

COMMENTS: At time, there will be comments added that are neither relevant or related to the complaint but may provide context or fill in gaps.



Section III

Before the hearing

During the hearing

After the hearing

Decision-Maker Timeline

Decision-Maker draft decision following the hearing	2 business days
Decision review by SECO/OGC	3 business days
Issue decision letter to parties	3 business days
Total (excludes extension request)	8 business days

See system regulation 08.01.01 section 4.2.10(p)x

Note: The decision letter is sent simultaneously to the complainant and respondent.

Before the Hearing

- Read report no less than two days prior to writing a decision
- Review to:
 - Understand the **nature** of the complaint
 - Understand the **alleged policy violation(s)**
 - Understand the **timeline** of the event(s)
 - Understand the specific **allegations** made against the respondent(s)
 - Understand the **inculpatory evidence** collected in the investigation
 - Evidence that **does** support the allegation (e.g., the respondent admitted to touching the complainant without consent.)
 - Understand the **exculpatory evidence** collected in the investigation
 - Evidence that **does not** support the allegation (e.g., video testimony shows the respondent was not in the room when the alleged sexual assault occurred.)
- Review exhibits to understand the information presented

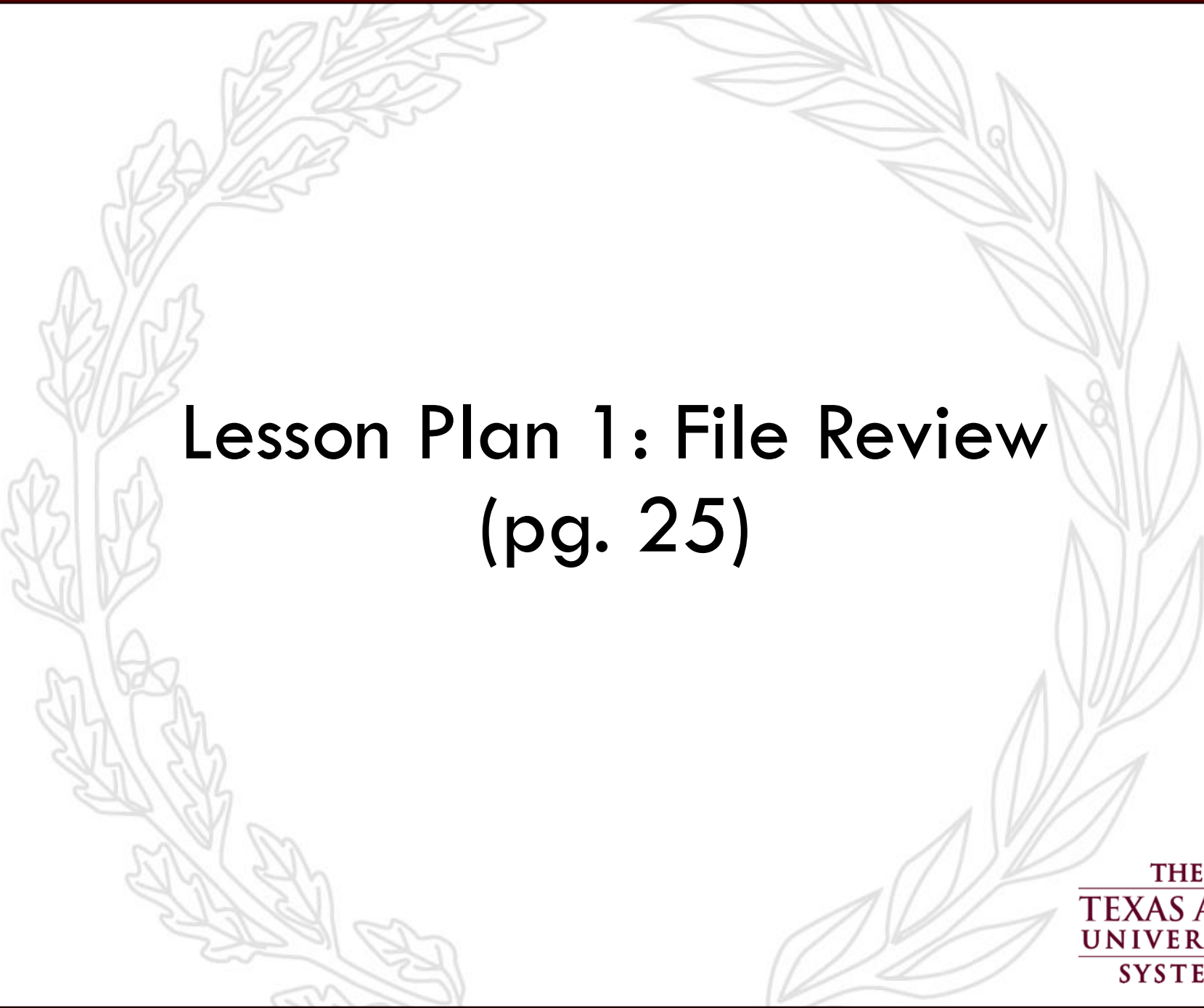
Before the Hearing

Types of Evidence:

- **Direct** - statements from witnesses who either directly or indirectly knew about the behaviors in question.
- **Documents** - video recordings, audio recordings, pictures, digital messages, work logs, WorkDay information, etc...
- **Hearsay** - actions or observations attributed to other people.
- **Expert** - Actions and/or evidence that are subject to review, analysis, and the interpretation of someone that has sufficient formal education, practical knowledge, skill, and training to allow a reasonable person to regard that person as an expert in that subject matter.

Questions to Consider

- ☐ Have I checked my personal bias?
- ☐ Do I understand what happened in the case?
- ☐ What are the alleged violations that have occurred? What does each violation mean?
- ☐ What behaviors were disruptive to the community (e.g., residence hall, workplace, campus, local community, etc...)
- ☐ What is the sequence of events?
- ☐ Who did what during the situation?
- ☐ Do I have a clear understanding of the relevant facts?
- ☐ What questions need to be asked to determine if a violation occurred?
- ☐ Do I understand the hearing framework and my role?



Lesson Plan 1: File Review (pg. 25)

During the Hearing: Questioning

To determine if any violation(s) occurred, we must first determine what happened... this requires us to have a complete understanding of the event(s) that took place.

The investigation report gives you ~70-90% of what you need, but through questioning you gain a complete understanding of what occurred.

- Types of questions:
 - Open-ended questions provide- outline of events, the party's perspective, the why, and the effect.
 - Closed-ended- Specific details (who, what, when, where, and how) and corroborate statements and actions.
- Tips for effective questioning:
 - Listen to the answers!
 - Don't ask leading questions
 - Don't ask multiple choice questions
 - Avoid multiple part questions/ping-pong match
 - Use silence
 - Be aware of your (and their) verbal/nonverbal behavior
 - Ask **RELEVANT** questions

Relevance of Questions & Evidence

Only relevant cross-examination questions may be asked. Before a complainant, respondent, or witness answers, the chair must determine the question's relevance and explain any exclusion.

- **Suggested Process:**

- Ask the question.
- The chair assesses relevance.
- The participant is instructed to answer or not.
- If excluded, a brief rationale is provided.

- **Rape Shield Provision:**

Questions about a complainant's sexual predisposition or prior sexual behavior are generally irrelevant, except when:

- Offered to show someone else committed the alleged conduct, or
- Involving specific prior incidents with the respondent to prove consent.

To Allow or Not to Allow

Question from the Respondent's Advisor to the Complainant:

How does someone see an erected penis through pants! You had to be staring at it constantly, as my pants are not tight fitting. How long have you been looking at my penis through my pants?

Did you not ask for my help with making sure you got a job post-graduation? Don't you know that is why I was putting you on my projects!

To Allow or Not to Allow

Question from the Complainant's Advisor to the Respondent?

Why did you lie in the investigation report about touching my breast and saying you only pointed at the coffee spot?

Please explain how you accidentally brushed my thigh so many times?

Questions to Consider

- ☐ Did the respondent/complainant share anything that is inconsistent with what is in the report?
- ☐ Did the respondent/complainant fill in any missing parts of the narrative?
- ☐ What information do you need to determine if the respondents is responsible or not responsible for the alleged violation?
- ☐ Did the respondent take responsibility for any of their actions/behaviors?
- ☐ Do you know why the incident happened?
- ☐ Is what the party sharing credible? Why or why not?

After the Hearing: Deliberation

- 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, including a summary of what happened.
- In determining whether a violation occurred, use the preponderance of the evidence standard.
- If a violation is found, proceed to sanctioning. Note: Sanctioning is never to be considered prior to the establishment of a finding of fact.

After the Hearing (continues)

The 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)
- provide sufficient information to allow either party to appeal, as well as assist an appeals administrator/panel in understanding your conclusions
- be written towards both/all parties; do not personalize
- be appropriate for view by the complainant, respondent, OGC/SECO, social media, parents, etc...
- not serve as an opportunity to lecture parties, rather it is rooted in the facts that substantiate the decision.

See Training Guide "Hearing- Finding of Fact"

Decision Letter: Finding of Fact

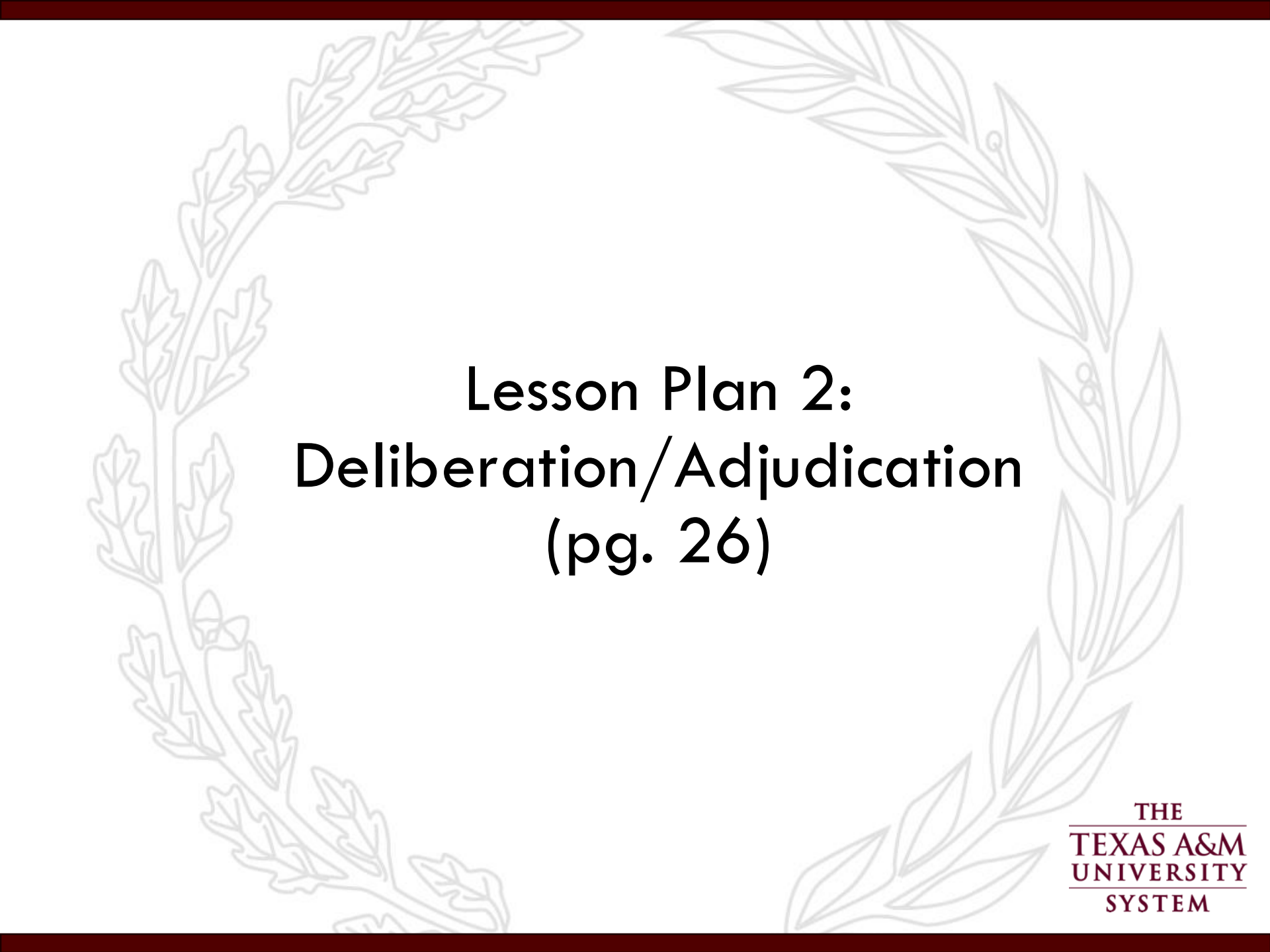
- In general, when writing the Finding of Fact, it should include three basic parts:
 - a restatement of what the complainant alleged the respondent did;
 - a summary of the inculpatory and exculpatory facts from the investigation and/or hearing that are relevant to the allegations; and
 - an explanation of how those facts intersect with the definition of the policy, based on a preponderance of the evidence, leading to a finding of either 'In Violation' or 'Not in Violation'.

Decision Letter: Totality of Circumstances

Determine whether the facts meet the threshold of the violation, including, but not limited to (review definition):

- the degree to which the conduct interfered with the complainant's educational or work environment;
- the type, frequency, and duration of the conduct;
- whether the alleged harasser singled out the affected individual;
- whether the alleged harasser knew the complained-of conduct was unwelcome;
- whether the conduct was physically threatening;
- whether the conduct was humiliating;
- the effect of the conduct on the individual's mental or emotional state; and
- whether the speech or conduct deserves the protections of academic freedom or the First Amendment.

08.01.01 Preponderance of the Evidence- What is more likely than not to be true, based on the totality of the available evidence.



Lesson Plan 2: Deliberation/Adjudication (pg. 26)

Decision Letter: Requirements

- The identification of the allegations;
- A description of the procedural steps taken from the receipt of a formal complaint through determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held if any;
- Findings of fact supporting the determination;
- Conclusion regarding the application of the member's conduct standards to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the member imposes on the respondent, and;
- The member's procedures and permissible bases for the complainant and respondent to appeal

See Training Guide "Hearing- Decision Letter Template"

A decorative line-art illustration of an oak leaf branch, curving from the top left towards the bottom left of the slide.

Welcome Back!

Day 3

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Day 3: Housekeeping

Vote for the 2026 Training Host Sites



Sample Sanctions/Outcomes May Include:

Students	Employees
Written Warning	Reprimand (Written Warning)
Probation	Performance Improvement Plan
Suspension*	Suspension
Expulsion*	Dismissal (Termination)
Active Sanction (i.e., Reflective Essay, Mentoring, No Contact Order, Online Module)	Required training and/or counseling

*Includes transcript notification

Sanctioning & Discipline: Employee

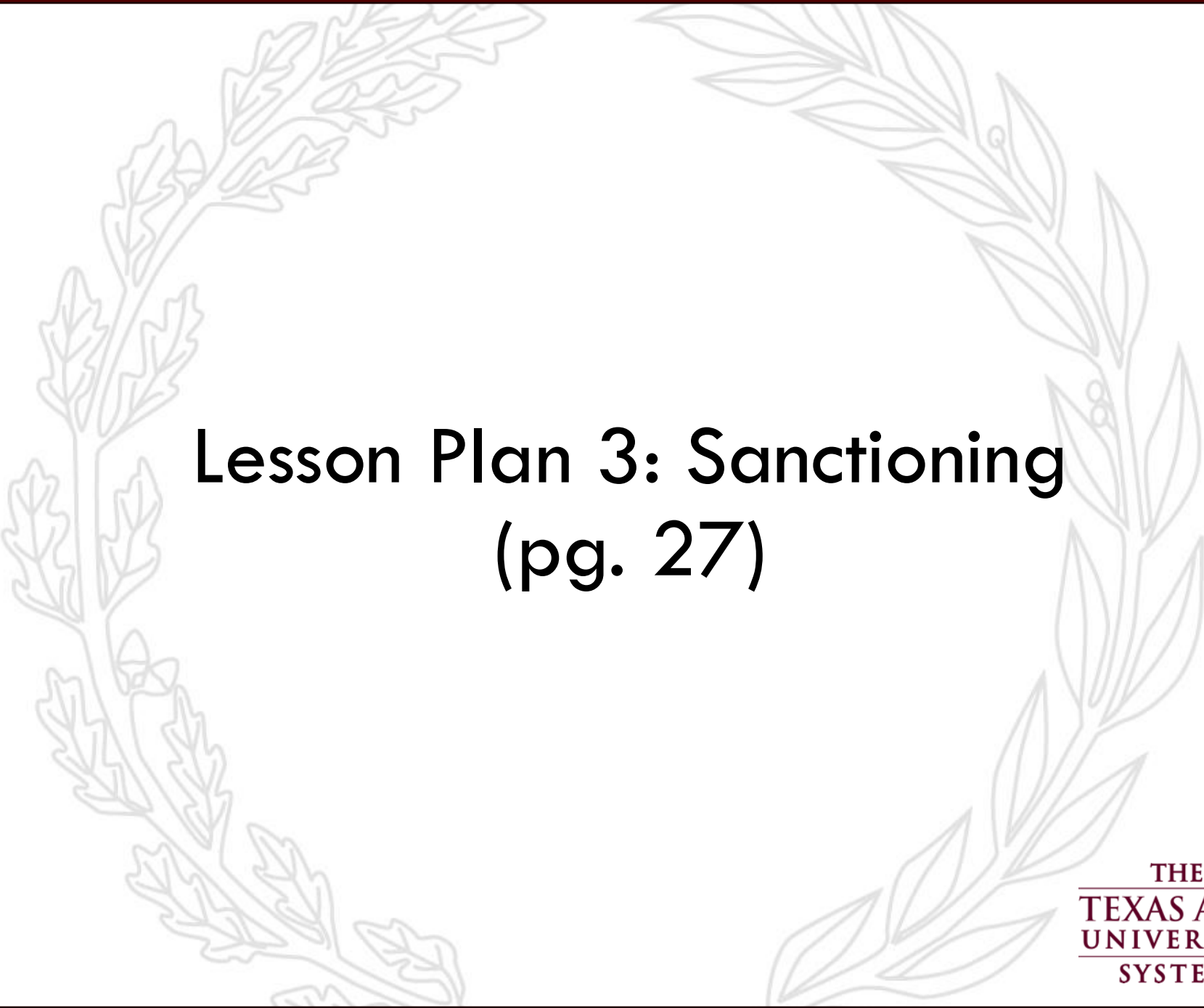
- Sanctions may have educational, restorative and rehabilitative components for employees.
- Employee sanctions may have punitive components.
 - Verbal Warning
 - Written Warning
 - Performance Improvement Plan
 - Required Training
 - Employment Dismissal (Termination)

Sanctioning & Discipline: Employee

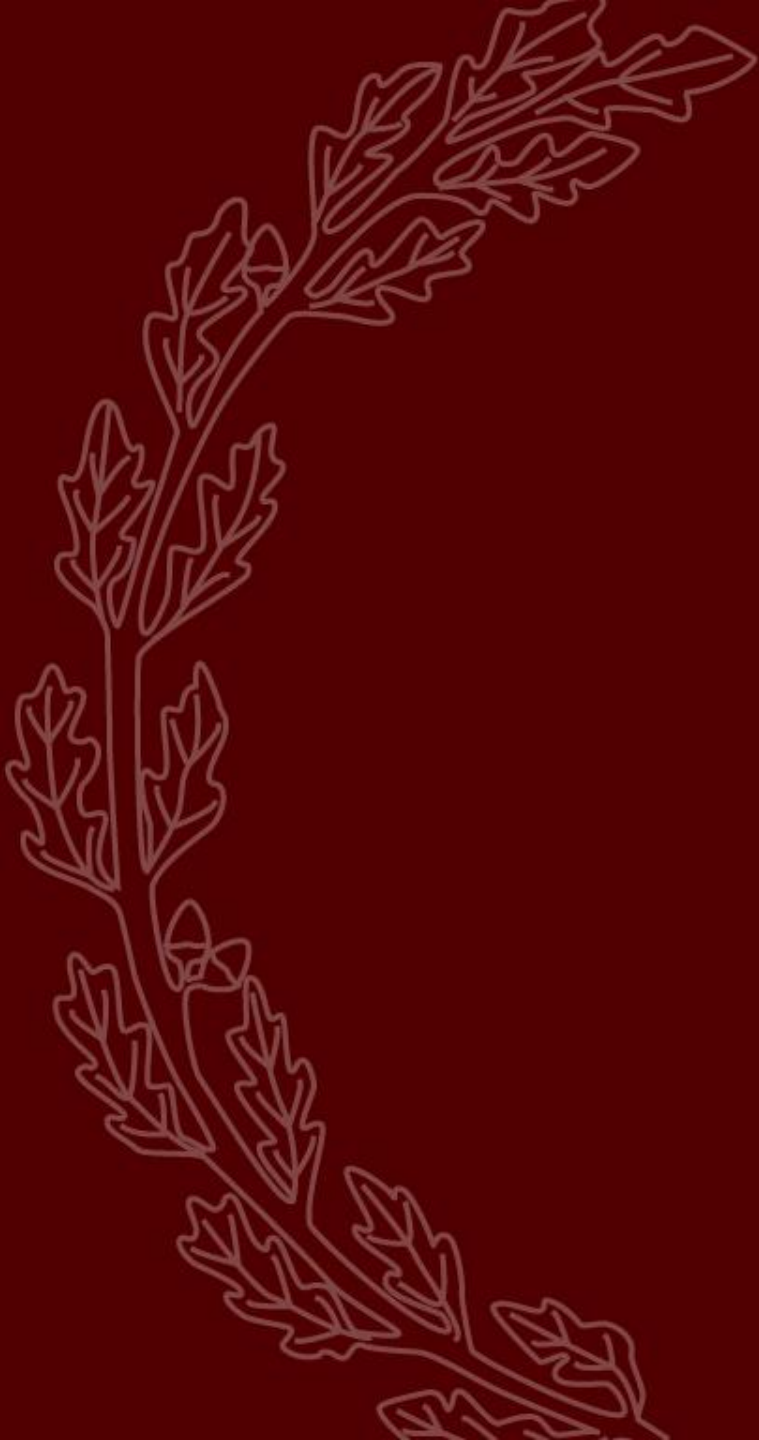
- The Decision-Maker (DM) will determine if an employee has violated 08.01.01
- If the DM substantiates sexual harassment or sex-based misconduct, per 08.01.01 the ONLY outcome is termination. (4.4.10)
- If the DM substantiates the employee has engaged in activities supporting DEI... (coming soon)
- For all other substantiated violations, the DM will submit their decision to HR and supervisor for the determination of disciplinary or curative measures.

Sanctioning & Discipline: Student

- See Training Guide section "08.01.01 Appendix A Sanctioning Matrix for Students"



Lesson Plan 3: Sanctioning (pg. 27)



Appeals

Purpose

Grounds

Rational Writing

Appeals: Purpose

- Review whether or not the original decision-maker(s) review was conducted fairly.
- This is not a new hearing and any information outside of the scope of the appeal is not considered.
- The burden of proof shifts to the appealing party.
- The appeal board (or administrator) cannot override the original decision-maker's judgment without cause, as specified in the grounds for appeal.
- Best practice is to grant one appeal proceeding for the complainant and respondent.

Appeal Grounds: Allegations of Sex-Based Misconduct

- a **procedural irregularity** that affected the outcome;
- **new evidence**, not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome. The new evidence must be provided at the time of appeal with the appropriate member appeals form;
- the Title IX Coordinator, investigator(s), or decision-maker(s) had a **conflict of interest or bias** for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome;
- the **appropriateness or severity of the sanctions**.

* See system regulation 08.01.01 section 4.5.1

Appeal Outcomes: Allegations of Sex-Based Misconduct

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

* See system regulation 08.01.01 section 4.5.1.6

Appeal Timeline

Parties' timeframe to submit an appeal	5 business days
Parties review appeal submitted	3 business days
See system regulation 08.01.01 sections 4.5.14 (employee/third party respondent) and 4.5.15 (student respondent).	

Appeal: Procedural Irregularity

- Questions to consider:

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

Practice

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

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

Practice

The appeal states that the evidence was allowed that should not have been at the hearing. Specifically, a witness who was the only person to raise a fact did not attend the hearing and allow for questions. Yet the panel included this information as part of the rationale for their decision.

- Is this problematic? Why or why not?
- What do you need to know to determine if this is a substantive error?

Appeal: New Evidence

Question to consider:

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

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

Practice

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

- What additional information would need to be included in the appeal document for this to be considered new evidence?
- If a written statement is provided and the identity of the witness can be validated, what else needs to be determined?

Practice

The appeal states that the party chose not to participate in the civil rights investigation and live hearing because of an ongoing criminal investigation. After the hearing they were notified that the criminal matter has been dismissed, so they file an appeal stating they are now willing to submit their new information.

- Is the information the party would provide "new evidence?" Why or why not?

Appeal: Conflict of Interest/Bias

Question to consider:

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

Practice

The appeal argues that one panel member shared their own sexual assault experience at a "Take Back the Night" march months before the hearing, encouraging survivors to seek support and report incidents. The appellant claims this advocacy shows the panel could not hear the case impartially.

Is this bias? Why or why not?

Practice

- The appeal states that the investigator told them during two separate interviews that the facts seemed to support they were lying, and the investigator encouraged them to “come clean” in order to receive better consideration in the adjudicatory process. The investigator confirms that they made this comment twice hoping to secure a confession.
 - Does this present a conflict of interest or bias? Why or why not?

Appeal: Appropriateness/Severity of Sanction

Questions to consider:

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

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

Practice

The appeal states that a one-year suspension from the university is disproportionate because they did not commit the offense for which they are being sanctioned.

Is this grounds for an appeal? Why or why not?

Practice

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

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

Rationale Writing

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

Completing the Appeal Letter

See Training Guide section "Appeal- Decision Letter Template"

Appeals: **Non- Sex Based Misconduct**

Any **employee** disciplined pursuant to this regulation may appeal that action in accordance with the respective policy/regulation:

- 12.01 Academic Freedom, Responsibility and Tenure;
- 32.01 Employee Complaint and Appeal Procedures;
- 32.01.01 Complaint and Appeal Procedures for Faculty Members
- 32.01.02 Complaint and Appeal Process for Nonfaculty Employees

Any **student** receiving a sanction of separation (expulsion or suspension) may appeal the sanction in accordance with the member rule and/or code of conduct.



Appeal Request Discussion

See handout

Win a Prize!

- Pick a number between 1 and 50.
- You can't pick a number that someone else has picked.

Questions