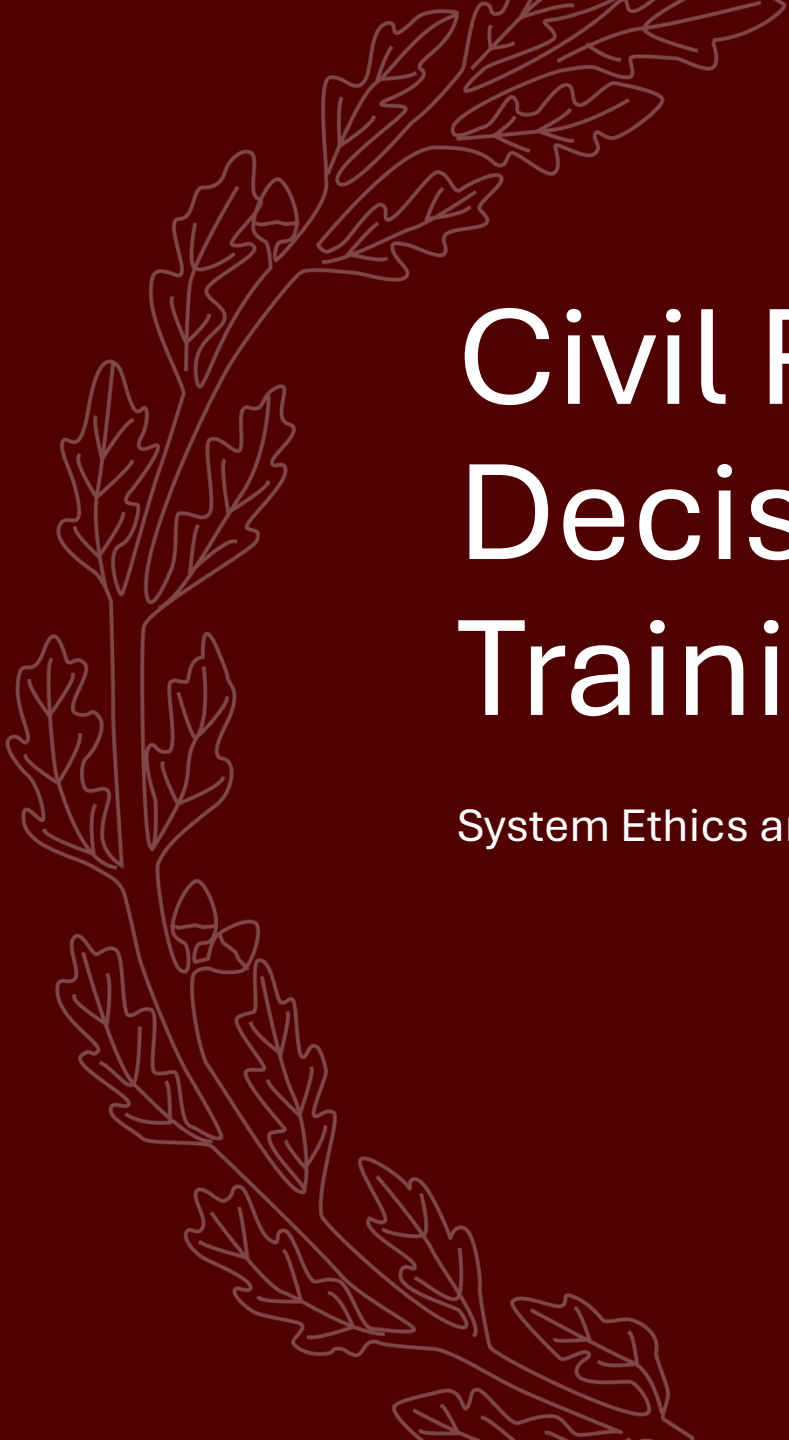




Civil Rights Decision-Maker Training

System Ethics and Compliance Office

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Introductions

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Employees

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Learning Objectives

- Describe the adjudication process for cases involving alleged Civil Rights violations as outlined in System Regulation 08.01.01.
- Explain the role and limitations of a decision-maker in the hearing process, including authority, responsibilities, and procedural boundaries.
- Develop and apply relevant, unbiased, and procedurally appropriate questions during the hearing process.
- Critically analyze the evidence related to alleged violations.
- Develop findings based on fact and the preponderance standard that supports the rationale for appropriate sanctions aligned with the A&M System regulation.

Disclaimers

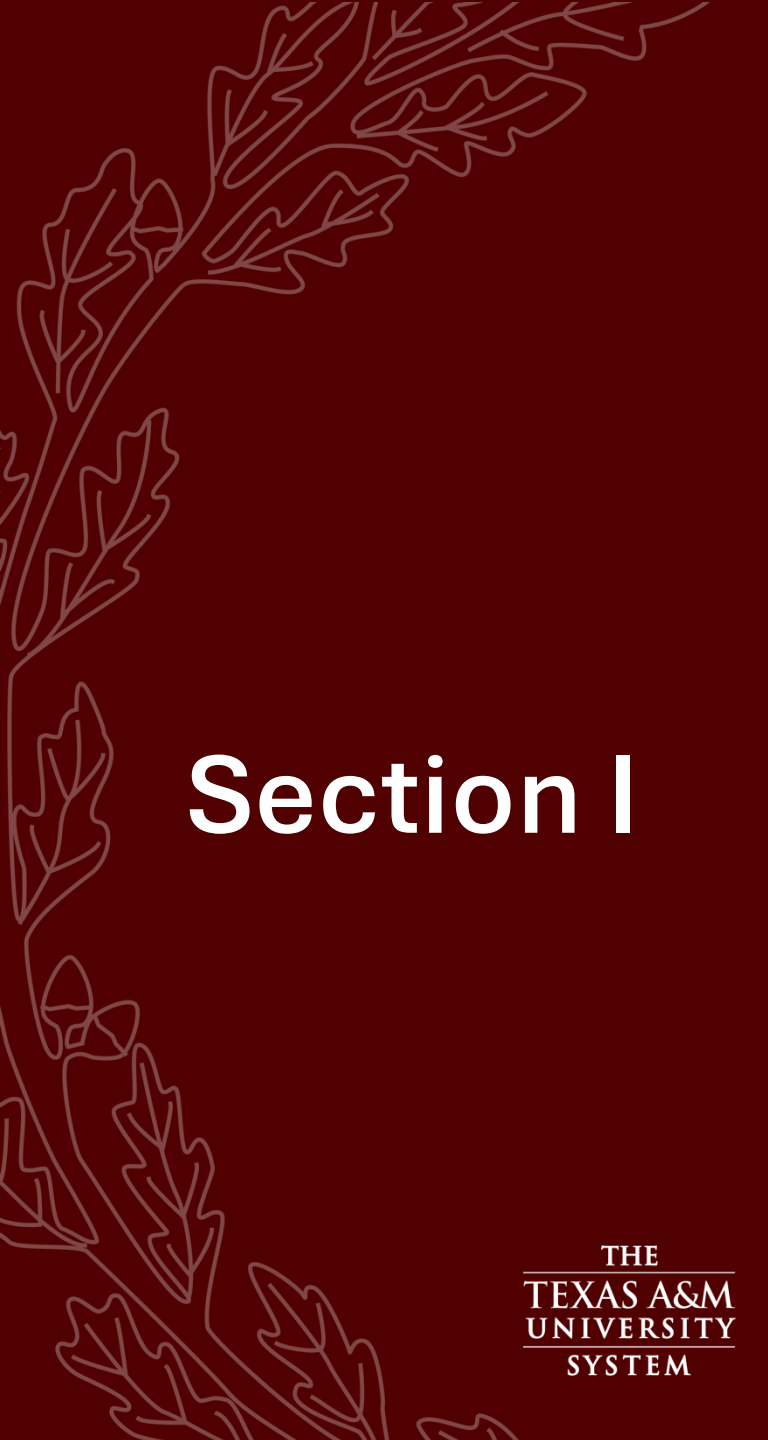
- This training will cover sensitive and potentially disturbing topics related to Title IX, such as sexual harassment, sexual assault, dating violence, and stalking. Feel free to step away as needed. Counseling support can be accessed by contacting your Employee Assistance Program.
- This training is for informational and educational purposes only and does not constitute legal advice.

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

Quick Introductions

- Name
- Institution



Section I

- Role of the Decision-Maker
- Serving Impartially
- Standards of Evidence
- Preponderance Standard

Role of the Decision-Maker

Determine whether allegations of misconduct constitute a violation of System Regulation 08.01.01.

This determination should be based on the evidence provided utilizing the preponderance of the evidence standard.

Role of the Decision-Maker: Responsibilities

- Maintain confidentiality
- Serve impartially
- Adequately prepare for the hearing (if applicable)
- Understand and properly apply the preponderance of the evidence standard
- Make decisions based on the elements of the defined misconduct

Maintain Confidentiality

- Critical to the integrity of the process
- Know and adhere to confidentiality requirements regarding student and employee records (e.g., FERPA)

Serving Impartially

- Be free of any conflict of interest or bias for or against complainants or respondents generally or the individual complainant(s) or respondent(s) in the case before you
 - Immediately disclose any potential conflict of interest or bias
 - Be aware of the **appearance** of conflict of interest or bias—if in doubt, disclose
- Biases can be explicit (conscious) or implicit(subconscious)—impartiality requires the ability to **recognize and set aside** any bias
- Decision-Makers must at all times throughout the adjudication process remain **objective, neutral, and unbiased**



Serving Impartially: Bias Activity

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See handout

What Are Standards of Evidence?

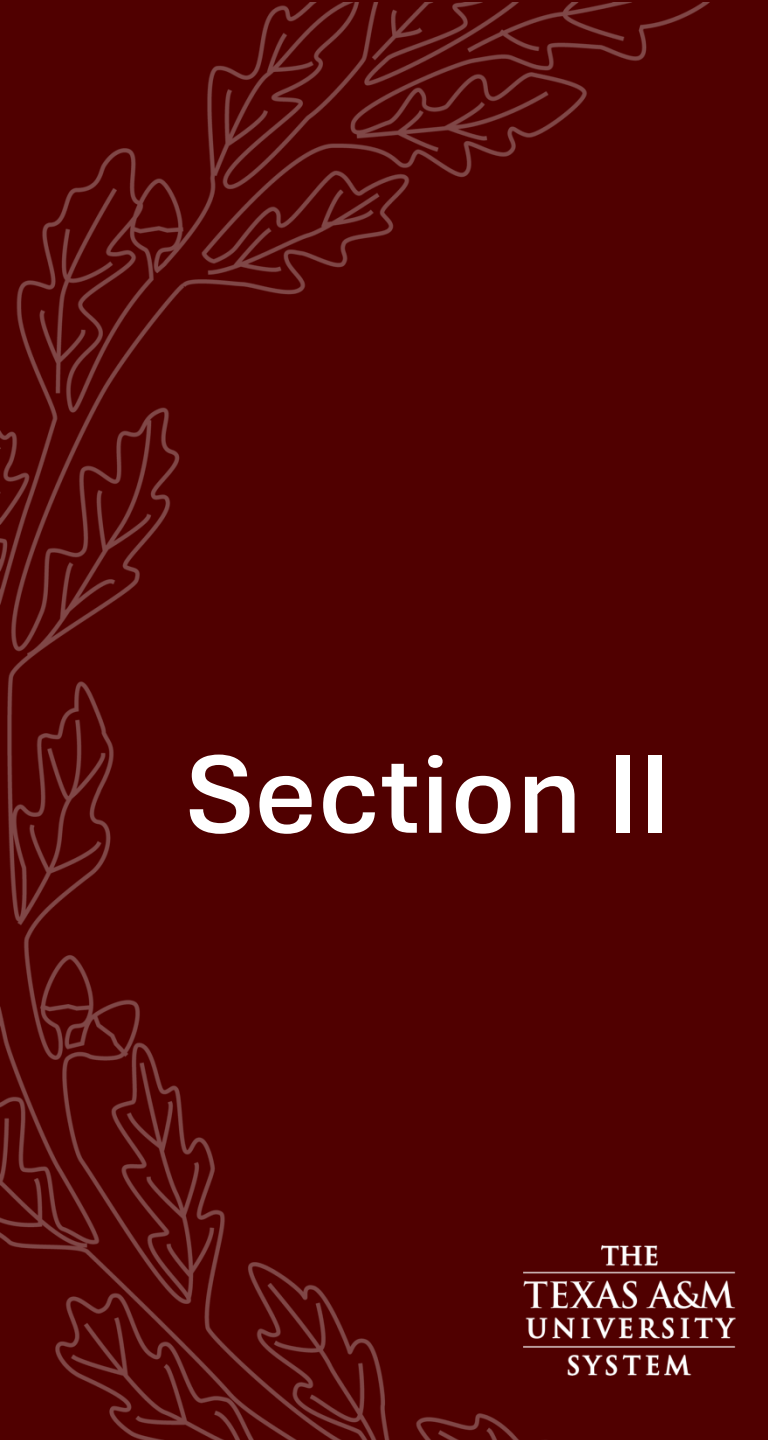
Standard	Definition	Used In
Beyond a Reasonable Doubt	Highest standard; no reasonable doubt remains of the defendant's guilt	Criminal cases
Clear and Convincing Evidence	Highly probable or reasonably certain; more than a preponderance	Civil fraud, administrative
Preponderance of the Evidence	More likely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

Preponderance of the Evidence



- The greater **weight** of the evidence
 - Established by **evidence** that has the most convincing **force** (persuasiveness)
 - Not necessarily established by the greater number of witnesses testifying to a fact
- Weighing evidence requires:
 - Objectively evaluating the **totality** of the available evidence
 - Making credibility determinations free from assumption or bias
- Evidence must be sufficient to incline an unbiased and impartial mind to one side of the issue rather than the other
- Often described as “50% plus a feather” — what is more likely than not





Section II

- System Regulation 08.01.01
- Types of Violations
- Sex-based vs. Non-Sex Based
- Investigation Process

A&M System Regulation 08.01.01

- Provides guidance for complying with local, state, and federal civil rights laws, regulations, and related System policies
- Establishes System-wide standards for receipt and processing of complaints, investigations, adjudication, and appeals in cases involving allegations of discrimination, harassment, or related retaliation based on a protected class
- Includes:
 - Definitions of terms
 - Elements of violations
 - Information about each process step from intake through appeal

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

Process Comparison

	Title IX (4.2.10) and Sex-Based Misconduct (4.2.11)	Other Civil Rights (4.2.12) Not Sex-Based
Investigator role	Collect available relevant evidence and provide investigation report to Decision Maker(s) that summarizes the evidence collected	Collect available relevant evidence and provide investigation report to Decision Maker that concludes whether alleged conduct occurred
Adjudication	Formal (live) hearing	File/Paper review (no hearing)
Adjudicator	Single DM or panel	Single DM
Advisor role	Support, guidance, and cross-examination	Support and guidance

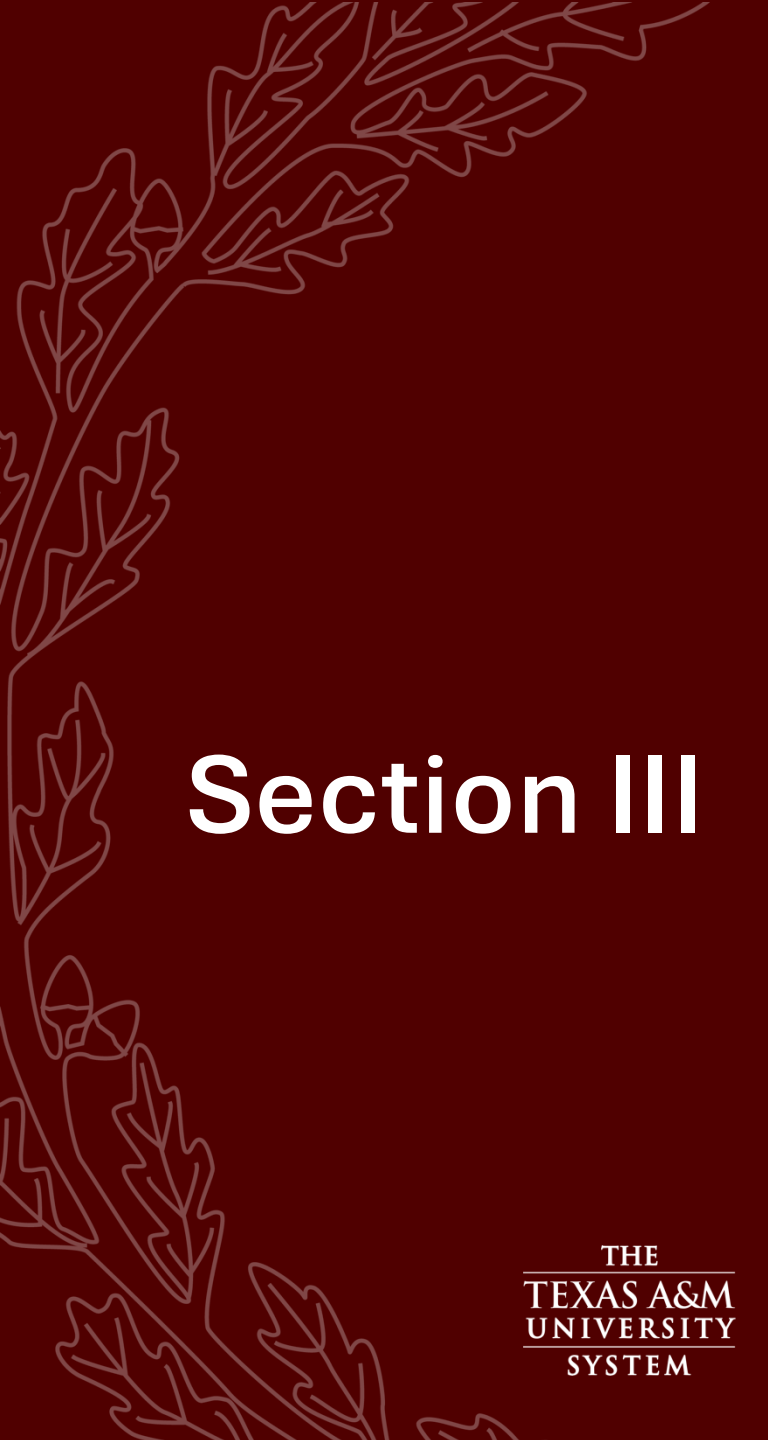
Process Comparison

	Title IX (4.2.10) and Sex-Based Misconduct (4.2.11)	Other Civil Rights (4.2.12) Not Sex-Based
Decision letter	Requirements specified in section 4.2.10(p)(xi)	Recommend following section 4.2.10(p)(xi)
Appeal	Bases provided in section 4.5.1: 1.Procedural irregularity 2.New evidence 3.Conflict of interest or bias 4.Appropriateness/severity of sanction	Process provided in section 4.5.2

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.

Note: For **Non-sex Based** cases the investigation report may include questions and answers from each party as that serves as their ability to cross-examine the other party. Also, the IA may make conclusions on alleged behaviors/actions.



Section III

- Adjudication Process
- Understanding the Evidence
- Reviewing the File
- Identify the Elements, Gaps, & Hearing Questions
- Formal Hearing
- Questioning/Questions
 - Deliberation
 - Decision Letter
- Sanctioning & Discipline

Adjudication Process

- Decision-Maker(s) receive investigation report and exhibits
- If sex-based misconduct: report summarizes evidence ➡ DM(s) conduct formal (live) hearing to make a determination regarding responsibility
- If other civil rights: report summarizes evidence and concludes whether conduct occurred ➡ DM conducts file/paper review to make a determination regarding responsibility
- Issue the decision letter to the complainant and respondent simultaneously

Understanding the Evidence

Categories of Evidence

Inculpatory- Evidence that **does** support the allegation (e.g., the respondent admitted to touching the complainant without consent.)

Exculpatory- 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.)

Understanding the Evidence

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.

All Other Civil Rights- Conclusion for Behaviors and Questions & Responses from Parties

Reviewing the File

- 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 **evidence** collected in the investigation
 - Evaluate each piece of evidence on its own merit.
 - Consider all evidence, even if it challenges your assumptions.
 - Avoid dismissing or overlooking information that doesn't fit.
 - Do not speculate or fill in gaps with assumptions.
- Review exhibits to understand the information presented

Elements

- Every violation has elements and **each element** must be proven by a preponderance of the evidence **before** a respondent can be found responsible for an alleged violation
- Identifying the elements of the alleged violation(s) is **step one** in reviewing the file and preparing for the hearing
- Know and apply terms as defined in the A&M System Regulation 08.01.01
- **Until the Decision-Maker knows the elements of the alleged violation(s), the Decision-Maker cannot know the case**

Definition: Sexual Assault (Rape)

The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Elements: Sexual Assault (Rape)

- Vaginal or anal penetration, no matter how slight
- With any body part or object; **and**
- Without the consent of the victim

-OR-

- Oral penetration, no matter how slight
- By a sex organ of another person; **and**
- Without the consent of the victim



Step 1: Reviewing the File

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Questions From the Parties

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 what you need, but through questioning you can gain a better understanding from each party's perspective.

- Types of questions:
 - **Open-ended** questions provide an 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

Questions From the Parties

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.

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Step 2: Identify Elements, Gaps, and Hearing Questions

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Question Activity

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Formal (Live) Hearing: Script

1.) Introduction of Participants

- Introductions, Ground Rules

2.) Procedural Questions

- Complainant
- Respondent

3.) Opening Statements

- Complainant
- Respondent

4.) Investigators' Testimony

- Summary of Report
- Decision-Maker(s) Questions
- Cross-Examination Questions (C Adv; R Adv)

5.) Complainant's Testimony

- Decision-Maker(s) Questions
- Cross-Examination Questions (R Adv)

6.) Witness(es') Testimony

- Decision-Maker(s) Questions
- Cross-Examination Questions (C Adv; R Adv)

7.) Respondent's Testimony

- Decision-Maker(s) Questions
- Cross-Examination Questions (C Adv)

8.) Closing Statements

- Complainant
- Respondent

9.) End of Hearing

- Deliberations



Step 3: Identify the Inculpatory & Exculpatory Evidence

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Deliberation

- Develop the findings of fact
- Through analysis apply those facts to the elements of the alleged violation(s)
- Determine whether a preponderance of the evidence supports that the alleged violation(s) occurred

Note: Sanctioning is never to be considered prior to the establishment of a finding of fact.

Decision Letter

- Explains determination regarding responsibility and sanctions, if applicable
- Requirements found in section 4.2.10(p)(xi) (sex-based)
- SECO has developed a template to help guide drafting

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 intentionally engaged in activities supporting DEI...
- For all other substantiated violations, the DM will submit their decision and recommended discipline and/or curative measures.

Sanctioning & Discipline: Student

See "08.01.01 Appendix A: Sanctioning Matrix for Students"

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Step 4: Putting Together the Facts

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Sample Decision Letter

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