Rule No. 08.01.01.T1 Civil Rights Compliance

New/Approved: August 16, 2016
Revised: September 20, 2019
Next Scheduled Review: September 20, 2024

Rule Statement

Tarleton State University (Tarleton or university) will provide equal opportunity to all employees, students, applicants for employment and admission, and the public. Tarleton is dedicated to ensuring compliance with local, state and federal civil rights laws and regulations (laws) and related system policies and regulations.

Reason for Rule

This rule is required by The Texas A&M University System (system) Regulation 08.01.01, Civil Rights Compliance, (system regulation) and is established as a supplement to System Policy 08.01, Civil Rights Protections and Compliance, and the system regulation. This rule establishes responsibilities and guidance, in conjunction with the system regulation, for the receipt and processing of complaints, appeals, or reports (“complaints”) of discrimination, harassment and/or related retaliation based on protected class (“discrimination”), including complaints made by employees, students and/or third parties.

Definitions

Advisor – an individual selected by each complainant and respondent to provide support and guidance throughout the investigation and resolution process. Each party is allowed one advisor. See Section 4.2.4 of the system regulation.

Complainant – the individual(s) subjected to the alleged discrimination.

Confidential – communication that cannot legally be disclosed to another person without the consent of the individual who originally provided the information, except under very limited circumstances such as allegations of elderly, disabled or child abuse; an imminent threat of injury or to the life of any person; or as required by law.

Consent – clear, voluntary and ongoing agreement to engage in a specific sexual act. Persons need not verbalize their consent to engage in a sexual act for there to be permission. Permission to engage in a sexual act may be indicated through physical actions rather than words. A person who was asleep or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or whose agreement was made under duress or by threat, coercion, or force, cannot give consent.
**Dating violence** – violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

a) The existence of such a relationship will be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
b) For the purposes of this definition:
   1) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
   2) Dating violence does not include acts covered under the definition of domestic violence. [34 CFR 668.46(a)]

**Designated administrator** – the decision-making entity specified in member rules. This may be an administrator or a hearing panel, but may not be the direct supervisor of the respondent.

**Domestic violence** – a felony or misdemeanor crime of violence committed by:

a) a current or former spouse or intimate partner of the victim;
b) a person with whom the victim shares a child in common;
c) a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
d) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
e) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred. [34 CFR 668.46(a)]

**Employee** – all personnel employed by the member including faculty, staff and students who receive compensation in either a full- or part-time capacity.

**Hostile environment** – a situation in which there is harassing conduct based on a legally protected class that is severe, persistent, or pervasive enough to create a work, educational, or campus living environment that a reasonable person would consider intimidating or abusive. The determination of whether an environment is “hostile” must be based on all of the circumstances, which may include the frequency of the conduct, the nature and severity of the conduct, whether the conduct was physically threatening or humiliating, and the mental or emotional effect of the conduct on the individual(s) subjected to the alleged harassment.

**Investigative authority** – one or more trained individuals appointed to conduct a formal inquiry to discover and examine the facts of an allegation and conclude if, based on the preponderance of the evidence, the allegation is substantiated, unsubstantiated, or if there is insufficient information.

**Predation** – an intent to engage in these acts prior to their occurrence demonstrating premeditation, planning or forethought, and is reflected in communicated intent (physical, verbal, visual, or written), threats directed at a party, attempts to incapacitate a party, attempts to isolate a party, utilizing violence, or other actions that a reasonable person would construe as a pre-meditation to engage in actions that are unwanted by/against the recipient. Committing any of these actions with an individual under the age of consent is also considered predatory.
**Private** – that which affects, characterizes, or belongs to an individual person, as opposed to the general public. With respect to this regulation, private means restricting information to those with a reasonable need to know.

**Quid pro quo sexual harassment** – “this” for “that”; i.e., unwelcome sexual advances, requests for sexual favors or other verbal, nonverbal or physical conduct of a sexual nature, the submission to or rejection of which may result in an adverse educational or employment action.

**Reporter** – an individual who observed or was made aware of an alleged violation and who provides an initial oral or written account of an alleged violation of this regulation.

**Respondent** – an individual who is alleged to have discriminated against another.

**Sexual assault** – an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program. [34 CFR 668.46(a)]

**Sexual exploitation** – a situation in which an individual(s) takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. For example, sexual exploitation could include such actions as secretly videotaping sexual activity, voyeurism, sexually-based stalking, invasion of sexual privacy, exposing one’s genitals or causing another to expose one’s genitals, and knowingly transmitting a sexually transmitted infection to another person.

**Sexual harassment** – a form of sex discrimination. Unwelcome sexual advances, requests for sexual favors or other verbal, nonverbal or physical conduct of a sexual nature constitute sexual harassment when this conduct is so severe, persistent or pervasive that it explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work or educational performance, or creates an intimidating or hostile work, educational, or campus living environment. Unwelcome means that an individual did not request or invite it and considers the conduct to be undesirable or offensive. Submission to the conduct or failure to complain does not always mean that the conduct was welcome. Sexual harassment may be quid pro quo (“this for that”) or may constitute a hostile environment. Sexual harassment includes non-consensual sexual contact, sexual assault, sexual exploitation, stalking, dating violence, and domestic violence when based on sex.

**Stalking** – engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

a) fear for the person's safety or the safety of others; or
b) suffer substantial emotional distress.

For the purposes of this definition:

a) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

b) **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
c) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. [34 CFR 668.46(a)]

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**Procedures and Responsibilities**

1. **RESPONSIBILITIES**

1.1 Pursuant to the system regulation, Tarleton’s president has the primary responsibility for ensuring compliance with civil rights laws and system policies and regulations. To ensure consistency, thoroughness and impartiality, the president hereby designates the following contact person(s) responsible for overseeing the university’s respective civil rights protections programs and ensuring compliance with civil rights laws, system policies and regulations and university rules and procedures:

- The Title IX coordinator or designee and the Department of Risk Management and Compliance will oversee civil rights protection programs involving student respondent(s), ensuring that all complaints of discrimination are promptly, thoroughly, and equitably investigated and resolved, and that follow up occurs on situations in which discrimination is found to ensure that the situation does not reoccur;

- The director of employee services or designee and the Department of Employee Services will oversee civil rights protection programs involving an employee or third party respondent(s), ensuring that all complaints of discrimination are promptly, thoroughly, and equitably investigated and resolved, and that follow up occurs on situations in which discrimination is found to ensure that the situation does not reoccur; and

- The associate vice president of academic affairs or designee will oversee civil rights programs involving Section 504 of the Rehabilitation Act of 1973 in accordance with System Regulation 08.01.02, *Civil Rights Protections for Individuals with Disabilities*, ensuring that all complaints of discrimination are promptly, thoroughly, and equitably investigated and resolved, and that follow up occurs on situations in which discrimination is found to ensure that the situation does not reoccur.

1.2 The university and its employees and students will comply with all responsibilities and requirements of civil rights laws, system policies and regulations and this rule. Failure to comply may result in disciplinary action up to and including dismissal or expulsion.

1.3 To the extent possible, the university and its employees will protect the privacy of all parties to civil rights discrimination complaints in accordance with all laws, system policies and regulations and university rules and procedures. Violations of the privacy of the reporter or any party to the report may result in disciplinary action, up to and including dismissal.

1.4 All employees will comply with equal opportunity and nondiscrimination training requirements pursuant to civil rights laws and system policies and regulations. Tarleton employees who engage in compliance efforts related to civil rights reporting
and adjudication efforts will abide by and complete minimal training requirements recommended by the System Ethics and Compliance Office (SECO).

2. CIVIL RIGHTS COMPLAINT PROCEDURES

2.1 Complaints

All civil rights discrimination complaints should be reported and will be received in accordance to the system regulation and the supplemental guidelines set forth below.

2.1.1 Except as specified in section 2.2 of the system regulation, employees who observe or become aware of alleged discrimination involving a student must promptly report the incident(s) to the Title IX coordinator or designee located in the Department of Risk Management of Compliance in Room 106 of Administration Annex I on the Stephenville campus.

2.1.2 Except as specified in section 2.2 of the system regulation, employees who experience, observe or become aware of alleged discrimination involving an employee or third party must promptly report the incident(s) to their supervisor or the employee relations administrator or designee located in the Department of Employee Services in Room 105 of Administration Annex I on the Stephenville campus. If reported to a supervisor, the supervisor is responsible for notifying the employee relations administrator or designee of the alleged discrimination. Upon review of the alleged discrimination, the employee relations administrator or designee will notify the Title IX coordinator if the alleged sex discrimination involves a student.

2.1.3 Students who experience, observe or become aware of alleged discrimination, including sexual assault and sexual harassment, may file a complaint with the Title IX coordinator or designee located in the Department of Risk Management and Compliance in Room 106 of Administration Annex I or with the Dean of Students Administrative Office located in Room 148 of the Tarleton Center on the Stephenville campus.

2.1.4 Visitors to Tarleton who experience, observe or become aware of alleged discrimination are strongly encouraged to report incident(s) promptly to the Title IX coordinator or designee located in the Department of Risk Management and Compliance in Room 106 of Administration Annex I on the Stephenville campus.

2.1.5 Formal and anonymous reports may also be submitted through the online Civil Rights Compliance Complaint Form located on Tarleton’s webpage at https://www.tarleton.edu/hr/ and https://www.tarleton.edu/titleix/index.html.

2.1.6 Any employee, student or third party who experiences, observes or becomes aware of discrimination based on Section 504 of the Rehabilitation Act of 1973 and System Regulation 08.01.02, Civil Rights Protections for Individuals with Disabilities should report the incident(s) promptly to the associate vice president of academic affairs or designee located in Room 212 of the Administration Building on the Stephenville campus.
2.1.7 In accordance with the system regulation, civil rights complaints against the
president or an employee reporting directly to the president must be promptly
reported to, reviewed and investigated by SECO located in the John B.
Connolly Building, 301 Tarrow Street, College Station, Texas.

2.1.8 Complaints alleging discrimination should be reported as soon as possible
after the action that caused the complaint.

2.1.9 Upon receipt of the report, the appropriate designee will provide timely notice
to appropriate university official(s), SECO, and the System Office of General
Counsel (OGC) in accordance with the system regulation. Notice to university
official(s) will be as follows:

- The chief of staff on behalf of the president and the appropriate vice
  president are notified when a complaint has been reported involving a
  faculty or staff member;
- The chief of staff on behalf of the president and the vice president for
  student affairs are notified when a complaint has been reported involving a
  student as either the complainant or the respondent; and
- A campus survivor advocate may also be notified of reports involving a
  student as the complainant.

2.1.10 The filing of a civil rights discrimination complaint will not stop, delay or
affect pending personnel or disciplinary actions in accordance with the system
regulation.

2.2 Investigations and Decisions

Tarleton’s complaint investigation and decision processes will be overseen by the
appropriate designee, as defined in section 1.1 of this rule, in accordance with the
process set forth in the system regulation and the supplemental guidance set forth
below.

2.2.1 For a complaint against a student, Tarleton will use the investigator model in
accordance with the investigator model process set forth in the system
regulation.

2.2.2 If it is determined that there is insufficient information to proceed with an
investigation, the appropriate designee may conduct an inquiry, take action on
the complaint in accordance with the process set forth in the system regulation
and will notify the complainant of such action in writing.

2.2.3 If it is determined that there is sufficient information to proceed with an
investigation, the appropriate designee will appoint an investigative authority
and assign a co-investigator within five (5) business days of the determination
to proceed with the investigation. Investigative authorities and co-
investigators will conduct investigations in accordance with the process set
forth in the system regulation.
2.3 Sanctions

Sanctions will be administered in accordance with the system regulation and the supplemental guidance set forth below.

2.3.1 In cases involving employees as respondents found responsible for the alleged illegal discrimination, sexual harassment and/or related retaliation, sanctions will be administered in accordance with the system regulation.

2.3.2 In cases involving other sexual violence and sexual harassment student conduct violations, Tarleton hereby adopts the minimum sanction guidelines as set forth in the system regulation appendix, Model Sanctioning Matrix for Sexual Violence and Sexual Harassment Violations by Students in The Texas A&M University System (system regulation appendix). Additionally, applicable sanctions found in the Student Code of Conduct may be administered.

2.3.3 For sexual violence and sexual harassment student conduct rule violations, the determination of the student’s eligibility to represent the university in extracurricular activities, both on and off campus, will be made by the designated administrator in accordance with the system regulation appendix and the Student Code of Conduct. The designated administrator will not be an administrator who has an inherent conflict of interest in the student’s participation in a particular activity (e.g., the coach of a student-athlete, the advisor to a student club or organization).

2.3.4 In the case of a student as a respondent found responsible for the alleged illegal discrimination the aggrieved party will have the opportunity to submit a Victim Impact Letter (letter) to the appropriate designee for review by the respondent. This letter is intended to give the aggrieved party the opportunity to describe to the respondent the impact the incident had on them. The Student Code of Conduct may restrict what may be included in the letter. The respondent may read the letter in the presence of the designee. The respondent is not allowed to take the letter from the designee’s office or meeting room nor are they allowed to duplicate the letter in print, electronic or other form.

2.4 Appeals

Appeals will be filed and administered in accordance with the system regulation and the supplemental guidance set forth below.

2.4.1 The complainant or respondent may file an appeal of the decision and imposed sanction(s) in accordance with the guidance set forth in the system regulation. Appeals must be submitted by the appellant in writing to the appropriate designee, as outlined in section 2.1.1 of this rule, within five (5) business days of notification of the finding and/or sanction.

2.4.2 The appellate authority for cases involving a student respondent will be the vice president for student affairs or designee.
2.4.3 The director of employee services or designee will designate, on a case-by-case basis, the appellate authority for cases involving employees and third party respondents.

### Related Statutes, Policies, or Requirements

- Family Educational Rights and Privacy Act (FERPA)
- The Equal Pay Act of 1963
- Title VII of The Civil Rights Act of 1964, as amended
- The Age Discrimination in Employment Act of 1967
- The Age Discrimination Act of 1975
- Title IX, Education Amendments of 1972
- The Rehabilitation Act of 1973, as amended
- Americans with Disabilities Act of 1990, as amended
- The Genetic Information Nondiscrimination Act of 2008
- Executive Order 11246, as amended
- Executive Order 13672
- 34 CFR 668.46(a)
- Texas Commission on Human Rights Act
- Texas Fair Housing Act
- Tex. Educ. Code § 51.9363, Sexual Assault Policy
- Tex. Lab. Code, Ch. 21, Employment Discrimination
- System Policy, 08.01, Civil Rights Protections and Compliance
- System Regulation, 08.01.01, Civil Rights Compliance
- System Regulation 08.01.01, Appendix Model Sanctioning Matrix for Sexual Violence and Sexual Harassment Violations by Students in The Texas A&M University System
- System Regulation 08.01.02, Civil Rights Protections for Individuals with Disabilities
- System Policy 12.01, Academic Freedom, Responsibility and Tenure
- System Policy 32.01, Employee Complaint and Appeal Procedures
- System Regulation 32.01.01, Complaint and Appeal Procedures for Faculty Members
- System Regulation 32.01.02, Complaint and Appeal Process for Nonfaculty Employees
- Tarleton Standard Administrative Procedure 12.01.99.T1, Granting Extension of Tenure Probationary Period
- Tarleton Standard Administrative Procedure 32.01.01.T0.01, Complaint and Appeal Procedures for Faculty Members
- Tarleton State University Student Code of Conduct
- Tarleton State University Faculty and Administrative Staff Handbook
- Tarleton State University Staff Handbook

This rule supersedes:

Tarleton 08.01.01.T1.03
Contact Office

Risk Management and Compliance
254.968.9415

Employee Services
254.968.9128