



**Southern Methodist University**  
**UNIVERSITY POLICY MANUAL**

## **Title IX Sexual Harassment**

**Policy number:** 3.3

**Policy section:** Equal Opportunity

### **1. Policy Statement**

It is the policy of the University to promote an academic and work environment that is free of sexual harassment by providing a means for addressing complaints of such harassment. The University has designed this policy to ensure a safe, non-harassing environment for its students, faculty, staff, and other members of the University community. The University does not intend for this policy to infringe upon any First Amendment or academic freedom protections available to members of the University community.

### **2. Purpose**

a. The policy of Southern Methodist University is to comply with Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106. SMU expressly prohibits sexual harassment against:

- i. its students, faculty, and staff;
- ii. applicants who seek to join the SMU community in any capacity; and
- iii. other individuals participating in an education program or activity of the University.

b. Sexual harassment violates Title IX. University personnel must maintain an academic and work environment that is free of such harassment. The University will take immediate and appropriate corrective action where sexual harassment occurs, and in such cases, members of the University community are encouraged to consult immediately with the Title IX Coordinator or a Deputy Title IX Coordinator.

### **3. Sexual Harassment Definition**

Sexual harassment under Title IX means conduct on the basis of sex that satisfies one or more of the following:

- a. Quid Pro Quo: An employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;

- b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- c. Sexual assault, dating violence, domestic violence, or stalking as defined in this policy.

Sexual harassment under Title IX must occur in an education program or activity of the University against a person in the United States.

#### **4. Prohibition of Retaliation**

Retaliation is a separate violation of the University's Title IX Sexual Harassment Policy. University policy prohibits any member of the University community – students, faculty, staff or visitors participating in an education program or activity of the University – from retaliating in any way against a person that has raised allegations of sexual harassment prohibited by Title IX. It is a violation of this policy to retaliate against any person who has exercised the right to file a complaint or report of Title IX sexual harassment, used any of the processes provided by SMU, cooperated with an investigation, or testified or otherwise offered evidence connected to a complaint. A complaint's actual or perceived lack of merit does not excuse retaliatory conduct. Any person who observes retaliation should promptly notify the Title IX Coordinator. For more information, please see the definition of retaliation in Appendix A.

#### **5. Consensual Sexual Relationships**

Relationships that begin as consensual have the potential to evolve into sexual harassment, particularly with regard to faculty-student and staff-student relationships, as well as in supervisor-subordinate relationships. Therefore, the University prohibits consensual sexual relationships between a faculty member and a student enrolled in a course taught by the faculty member, or whose work, academic or otherwise, is supervised by the faculty member. As in the case of faculty/student relationships, relationships between staff/student where the staff member has authority or control over the student, a consensual sexual relationship is a violation of the University's Personal Conduct Policy. For more information on consensual sexual relationships, please see Appendix C.

#### **6. Mandatory Reporting by University Employees**

- a. Any University employee who becomes aware of a potential violation of the Title IX Sexual Harassment Policy is obligated to promptly report it to the Title IX Coordinator in the Office of Equal Opportunity. This reporting obligation extends beyond violations involving students and can include, but is not limited to, violations that involve faculty, staff, and campus visitors.
- b. Under Texas law, a University employee who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX Coordinator or a Deputy Title IX Coordinator. The report must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident.

- i. An employee designated by the University as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking (Counseling Services and the Chaplain's Office) or who receives information regarding such an incident under circumstances that render the employee's communications confidential or privileged under other law (licensed physicians, psychologists, and pastoral counselors) shall, in making a report, state only the type of incident reported and may not include any information that would violate a student's expectation of privacy. This reporting requirement does not affect the employee's duty to report an incident under any other law.
  - ii. Victims of sexual harassment, sexual assault, dating violence, or stalking or disclosures made at sexual harassment public awareness events sponsored by the University or an SMU student organization do not have to be reported.
  - iii. The University shall terminate the employment of an employee whom the institution determines, in accordance with the institution's disciplinary procedure, to have knowingly failed to report or knowingly made a false report with the intent to harm or deceive. Such an offense is a Class B misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the actor intended to conceal the incident that the actor was required to report.
- c. The University reserves the right to review and investigate potential violations of University policy whether through the filing of a complaint or otherwise at its sole discretion.

## 7. General Provisions

- a. **Applicability.** Any person participating in or attempting to participate (e.g., applicants) in an education program or activity of the University whether on or off campus including students, faculty, staff, applicants, all other members of the University community, and visitors may file a formal complaint of Title IX sexual harassment by following the procedures set forth in this policy. The University must dismiss a formal complaint or allegations of conduct within a formal complaint that do not meet the definition of Title IX sexual harassment, did not occur in an education program or activity of the University, or did not occur against a person in the United States. If a complaint is dismissed under this policy, the complainant may wish to file a complaint under the University's Nondiscrimination and Equal Opportunity Policy. To the extent that other University policies conflict with this policy, the procedures set forth in this policy take precedence. The following provisions apply to all formal complaints of Title IX sexual harassment.
- b. **Confidentiality.** The University considers complaints of Title IX sexual harassment, their investigation, and related proceedings to be confidential. The University will use its best efforts not to disseminate information concerning an allegation of Title IX sexual harassment beyond those necessary for its investigation and handling by the University. Release of confidential information to the public will be authorized only by the President or their designee.
  - i. An employee designated by the University as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking (Counseling Services and the Chaplain's Office) or who receives information regarding such an incident under circumstances that render

the employee's communications confidential or privileged under other law (licensed physicians, psychologists, and pastoral counselors) shall, in making a report, state only the type of incident reported and may not include any information that would violate a student's expectation of privacy. This reporting requirement does not affect the employee's duty to report an incident under any other law.

ii. Nothing in this assurance of confidentiality precludes or limits the responsibility and authority of the central administration and the SMU Board of Trustees to take actions that they deem necessary to protect students, faculty, and staff of the University.

c. **Assistance and Reporting.** The University encourages students subjected to sexual assault to promptly seek medical assistance and counseling and to report the incident to the SMU Police Department and the Title IX Coordinator as soon as possible.

d. **Presumption of Innocence.** The respondent is presumed not responsible for the alleged sexual harassment until a determination regarding responsibility is made at the conclusion of the grievance process.

e. **Evidentiary Standard.** A preponderance of the evidence standard is the standard that will be used in any investigation, hearing, or appeal of a decision regarding a complaint of Title IX sexual harassment. This standard requires a showing that it is more likely than not that Title IX sexual harassment occurred.

f. **Advisors.** The complainant and the respondent may have an advisor of their choice present throughout the proceedings. Advisors serve in a support role and may not act or speak on behalf of the parties, except during a live hearing when an advisor conducts cross-examination on behalf of a party.

g. **Examination of Witnesses.** The complainant and the respondent may not personally question or conduct a cross-examination of the other party during any investigation, hearing, or appeal. During live hearings, advisors may conduct cross-examination on behalf of the parties.

h. **Sequencing of Criminal Investigations of Allegations of Sexual Harassment.** A complainant alleging sexual harassment may simultaneously pursue a criminal complaint, if applicable, with the appropriate law enforcement agency and file a complaint for Title IX sexual harassment with the Title IX Coordinator. In this circumstance, the University will continue to process and investigate complaints alleging sexual harassment and will not delay its handling of a complaint until the commencement or conclusion of a criminal investigation or proceeding. Notwithstanding the foregoing, at the request of law enforcement authorities, the University may temporarily delay its processing of the complaint while law enforcement authorities gather evidence concerning the allegation of sexual harassment.

i. **Interim Protective Steps.** Pending the investigation, hearing, or appeal of a complaint for Title IX sexual harassment, the University may take interim steps to protect the complainant, as well as other members of the University community. For example, the University may:

i. issue a "no contact" order prohibiting one party from having contact with another;

ii. direct the lateral transfer of a staff member or move a student to another classroom setting;

- iii. make arrangements for academic and employment evaluations;
- iv. at any time during or after an investigation or hearing of a Title IX sexual harassment complaint against a member of the faculty or teaching assistant (acting in a teaching capacity), the Provost, or their designee, may place the member of the faculty or teaching assistant on administrative leave from teaching responsibilities if the Provost reasonably believes that:
  - 1. the alleged harassment has occurred; and
  - 2. the respondent would be in a position to do harm to members of the University community if the respondent continues to teach a class. Such leave may be with pay and all benefits in place.
- v. at any time during or after an investigation or hearing of a Title IX sexual harassment complaint against a staff member, the appropriate University Officer responsible for the unit employing the respondent may place the staff member on administrative leave from employment responsibilities if the University Officer reasonably believes that:
  - 1. the alleged harassment has occurred; and
  - 2. the respondent would be in a position either to retaliate against, or in any way do harm to, members of the University community if the respondent continues to work in that unit or department. Such leave may be with pay and all benefits in place.
- vi. at any time during or after an investigation or hearing of a Title IX sexual harassment complaint against a student, the Vice President for Student Affairs, or their designee, may restrict a student-respondent from attendance in one or more classes, restrict the student-respondent from living in campus housing or otherwise prohibit the student-respondent's presence on the University's campuses, as deemed appropriate and necessary, if the Vice President for Student Affairs reasonably believes that:
  - 1. the alleged harassment has occurred; and
  - 2. the respondent would be in a position either to retaliate against, or in any way do harm to, members of the University community.
- vii. The University may remove a respondent from its education program or activity on an emergency basis by undertaking an individualized safety and risk analysis, determining that there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment that justifies removal, and providing the respondent with notice and an opportunity to challenge the decision immediately following removal.
- j. **Extensions of Time.** Due to extenuating circumstances, the Title IX Coordinator may extend for a reasonable period any of the deadlines set forth in this policy or grievance procedures.
- k. **Records.** Except as otherwise stated in this policy, the Office of Equal Opportunity is the repository of all records of Title IX sexual harassment complaints and their investigation and internal adjudication. The Office of Equal

Opportunity shall receive and maintain all such records.

## **8. Supportive Measures**

- a. The University will provide non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Parties may also drop a course in which both parties are enrolled without academic penalty. The University will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. Please contact the Title IX Coordinator to request supportive measures.
- b. Students affected by sexual harassment may also arrange confidential crisis counseling with a counselor in the Dr. Bob Smith Health Center. The SMU Chaplain's Office is also a confidential resource for students. Confidential crisis counseling for faculty and staff may be arranged through the University's Employee Assistance Program.
- c. Students who have experienced a sexual assault may choose to access a Sexual Assault Nurse Examiner (SANE) at the Dr. Bob Smith Health Center at no charge. It is important for victims to go to the hospital for treatment and to preserve evidence, if applicable, as soon as practicable after the incident if the student decides later to prosecute or file a complaint. Victims of incidents that rise to the level of being a crime have a right to choose whether to report the crime to law enforcement, be assisted by the University in reporting the crime, or decline to report the crime.

## **9. False Accusations**

A false complaint of sexual harassment can place a permanent stigma on a member of the SMU community and other persons, regardless of the ultimate outcome of any formal complaint. Accordingly, SMU prohibits false accusations of sexual harassment; false complaints of sexual harassment are a violation of University policy. At the conclusion of SMU's Title IX sexual harassment complaint procedures, and if it appears reasonably likely that a complainant and others acted in bad faith or deliberately and knowingly filed a false complaint or provided false testimony, the respondent, as well as the appropriate University officials, may seek redress against the complainant and others through appropriate University channels. False accusation charges shall be brought to the attention of the Title IX Coordinator.

## **10. Summary of Grievance Procedures**

The following is a summary of the grievance procedures that apply to all formal complaints filed against students, faculty, and staff under this policy.

#### **a. Formal Complaints and Reports of Title IX Sexual Harassment**

- i. Any person who believes that they are being, or have been, subjected to Title IX sexual harassment is encouraged to file a formal complaint of the alleged act of discrimination as promptly as possible by completing and submitting a Title IX Sexual Harassment Complaint Form to the Title IX Coordinator or a Deputy Title IX Coordinator. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the University. Filing a formal complaint will invoke the grievance procedures outlined in this policy including the right of both the complainant and the respondent to receive a prompt, fair, impartial and equitable resolution, be notified in writing of the result of the hearing and sanctions imposed, if any, and be informed of the right to request an appeal. The University must dismiss a formal complaint or allegations of conduct within a formal complaint that do not meet the definition of Title IX sexual harassment, did not occur in an education program or activity of the University, or did not occur against a person in the United States. If a complaint is dismissed under the Title IX Sexual Harassment Policy, the complainant may wish to file a complaint under the University's Nondiscrimination and Equal Opportunity Policy.
- ii. A report of Title IX sexual harassment made to the Title IX Coordinator or a Deputy Title IX Coordinator is not considered a complaint and does not invoke the grievance procedures outlined in this policy.

#### **b. Informal Resolution**

- i. After a formal complaint is filed, the parties may wish to resolve the complaint through an informal resolution process that does not involve a full investigation and adjudication. The University may facilitate an informal resolution process at any time prior to reaching a determination regarding responsibility. Any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. The informal resolution process may typically take up to 30 days to conclude after the filing of a formal complaint.
- ii. An informal resolution process cannot be used to resolve sexual harassment allegations filed by students against faculty or staff.

#### **c. Investigation**

- i. Any person who believes that they are being, or have been, subjected to Title IX sexual harassment is encouraged to file a formal complaint of the alleged act of discrimination as promptly as possible by completing and submitting a Title IX Sexual Harassment Complaint Form to the Title IX Coordinator or a Deputy Title IX Coordinator. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the University. Filing a formal complaint will invoke the grievance procedures outlined in this policy including the right of both the complainant and the respondent to receive a prompt, fair, impartial and equitable resolution, be notified in writing of the result of the hearing and sanctions imposed, if any, and be informed of the right to request an appeal. The University must dismiss a formal complaint or allegations of conduct within a formal complaint that do not meet the definition of Title IX sexual harassment, did not occur in an education program or activity of the

University, or did not occur against a person in the United States. If a complaint is dismissed under the Title IX Sexual Harassment Policy, the complainant may wish to file a complaint under the University's Nondiscrimination and Equal Opportunity Policy.

- ii. The investigation of a formal complaint may typically take up to 60 days to conclude after the filing of a formal complaint. At the conclusion of the investigation, the investigator(s) will create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the live hearing, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

#### **d. Live Hearing**

- i. The University's grievance process must provide for a live hearing (in-person or virtual). At the request of either party, the University must provide for the hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- ii. Decision-maker(s) will hear the case and make a determination regarding responsibility and sanctions, if any. At the hearing, the decision-maker(s) must permit each party's advisor of choice to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the hearing must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. If a party does not have an advisor present at the hearing, the University must provide without fee or charge to that party, an advisor of the University's choice, to conduct cross-examination on behalf of that party. Only relevant cross-examination questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- iii. The decision-maker(s) will issue a written determination regarding responsibility and sanctions, if any, to the parties. The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The hearing process may typically take up to 60 days to conclude after the completion of the investigation.

#### **e. Appeals**

The parties may request an appeal from a determination regarding responsibility and from the University's

dismissal of a formal complaint or any allegations. The appeal process may typically take up to 30 days to conclude after an appeal is filed. Appeals may be requested on the following bases:

- i. Erroneous findings of fact;
- ii. Procedural irregularity that affected the outcome of the matter;
- iii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter;
- iv. Sanctions imposed are substantially disproportionate to the severity of the violation;
- v. 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 of the matter.

## 11. Grievance Procedures

For complaints filed against students, faculty, or staff, grievance procedures can be accessed at <https://www.smu.edu/oeo/PoliciesandProcedures>.

## 12. Student Sanctions

One or more of the following sanctions in addition to educational sanctions including, but not limited to, training, reflection exercises, research papers, and community service may be imposed upon students found responsible of violating the Title IX Sexual Harassment Policy and will be included in the student's formal conduct record:

- a. **Expulsion.** An individual or group will be separated from the University on a permanent basis. An individual's expulsion will be permanently recorded on their academic transcript. Before this sanction is enforced, the President of the University will review it. A student expelled from the University may not enter campus grounds for any reason without the express written permission from the Office of the Dean of Students. A student expelled from the University will not receive a refund of any monies paid and is not relieved of any financial obligations to the University, including tuition, fees, and room and board.
- b. **Suspension.** An individual or group will be dismissed from the University for an assigned time period and under the conditions deemed necessary by the decision-maker(s). A student suspended from the University may not enter campus grounds for any reason during the period of their suspension without the express written permission from the Office of the Dean of Students. A student suspended from the University before an academic semester ends will not receive a refund of any monies paid, including tuition, fees, and room and board. No academic credit earned during the period of suspension at any other institution may be transferred to SMU. A disciplinary suspension and its effective dates are recorded on a student's academic transcript. The notation remains for the time the student is enrolled in the University and is removed three (3) years after graduation. If the student leaves the University before graduation, the notation is removed three (3) years after the anticipated date of graduation from the University.

- c. **Deferred Suspension.** Individual or group suspension may be deferred (not enforced). Deferred terms (i.e., conditions of the deferred suspension and its duration) will be set by the decision-makers. If the student is found responsible for violating the terms of the deferred suspension during the period established by the decision-makers, the student may be suspended.
- d. **Conduct Probation.** An individual or group is given a warning that further violations will result in consideration of suspension. The student or a group representative may be required to report to a Conduct Officer on a regular basis during the period of the probation.
- e. **Formal Conduct Warning.** The individual or group will be given formal notice by the decision-makers that they have violated this policy. If the student or group is found in violation of a further charge, that case will be considered more seriously.

### **13. Faculty and Staff Sanctions**

Depending on the severity of the offense and in addition to education and training on sexual harassment, sanctions may include, but are not limited to, the following actions that may be imposed upon faculty and staff found responsible for violating the Title IX Sexual Harassment Policy:

1. Initiation of formal action by the University to dismiss the employee;
2. The removal of the employee from the work unit and placement on a leave of absence;
3. The placement of a letter in the employee's personnel file indicating the nature of the improper behavior. The letter may include a notation about required action that will be taken in the future should reported conduct occur again; and
4. A documented verbal warning to the employee that a repetition of the reported behavior will result in written action.

### **14. Online Training for Faculty and Staff**

All new SMU faculty and staff must take SMU's online course on harassment and discrimination prevention.

### **15. Contact for Complaints**

Complaints of Title IX sexual harassment should be referred to SMU's Title IX Coordinator:

Ms. Samantha Thomas  
Title IX Coordinator  
Assistant Vice President for Equal Opportunity  
Office of Equal Opportunity  
204 Perkins Administration Building  
6425 Boaz Lane  
P.O. Box 750200  
Dallas, TX 75275-0200

Phone: 214-768-3601  
FAX: 214-768-2101  
Email: thomassa@smu.edu  
Web: http://smu.edu/oeo

Deputy Title IX Coordinators include:

Ms. Denise Gauthier  
Director and ADA/504 Coordinator  
Office of Equal Opportunity  
204 Perkins Administration Building  
6425 Boaz Lane  
P.O. Box 750200  
Dallas, Texas 75275-0200  
Phone: 214-768-3601  
FAX: 214-768-2101  
Email: dgauthier@smu.edu  
Web: http://smu.edu/oeo

Mr. Jasper Chieng  
Title IX/Equal Opportunity Investigator  
Office of Equal Opportunity  
204 Perkins Administration Building  
6425 Boaz Lane  
P.O. Box 750200  
Dallas, Texas 75275-0200  
Phone: 214-768-3601  
FAX: 214-768-2101  
Email: jchieng@smu.edu  
Web: http://smu.edu/oeo

Ms. Dawn Rogers  
Deputy Athletic Director for Internal Affairs  
Department of Athletics  
312K Loyd All-Sports Center  
5800 Ownby Drive  
P.O. Box 750315  
Dallas, Texas 75275-0315  
Phone: 214-768-4963, Cell: 480-353-8675

FAX: 214-768-3871

Email: dawnr@smu.edu

Mr. Stephen B. Yeager

Assistant Dean for Student Affairs

Dedman School of Law

Storey Hall, Suite 130A

3315 Daniel Avenue

P.O. Box 750116

Dallas, Texas 75275-0116

Phone: 214-768-4178

FAX: 214-768-4064

Email: syearer@smu.edu

Ms. Bonnie Hainline

Director of Campus Recreation

Student Affairs

Dedman Center for Lifetime Sports: Office 123

6000 Bush Avenue

P.O. Box 750161

Dallas, TX 75205

Phone: 214-768-3367

FAX: 214-768-1422

Email: bhainline@smu.edu

Dr. Alan Itkin

Senior Assistant Dean for Academic Affairs and Chief of Staff

Moody School of Graduate and Advanced Studies

Frances Anne Moody Hall 365

6404 Airline Rd.

P.O. Box 750399

Dallas, TX 75275-0399

Phone: 214-768-4202

FAX: 214-768-1079

Email: aitkin@smu.edu

## **16. Questions**

Direct questions about this policy to:

Office of Equal Opportunity

204 Perkins Administration Building  
6425 Boaz Lane  
P.O. Box 750200  
Dallas, Texas 75275-0200  
Phone: 214-768-3601  
FAX: 214-768-2101  
Email: equalopportunity@smu.edu  
Web: http://smu.edu/oeo

With a copy to:

Office of Legal Affairs  
130 Perkins Administration Building  
6425 Boaz Lane  
P.O. Box 750132  
Dallas, Texas 75275-132  
Phone: 214-768-3233  
FAX: 214-768-1281  
Email: ola@smu.edu  
Web: http://www.smu.edu/ola

## **APPENDIX A: DEFINITIONS**

“**Advisor**” means an individual of the party’s choice who accompanies the complainant or the respondent to proceedings. Advisors serve in a support role and may not act or speak on behalf of the parties, except during a live hearing when an advisor conducts cross-examination on behalf of a party.

“**Complainant**” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

“**Complaint**” means formal complaint. See definition for formal complaint.

“**Conduct Officer**” means the University staff member trained in the student conduct review process.

“**Consent**” means voluntary, clear, continuous, mutually understandable permission, given by words or actions, regarding one’s willingness to engage in sexual activity.

- A sexual interaction is considered consensual when individuals willingly and knowingly engage in the interaction.
- Someone who is incapacitated (by alcohol, drug use, unconsciousness, disability, or other forms of helplessness) cannot consent.

- Consent cannot be procured by the use of physical force, compulsion, threats, intimidating behavior, or coercion.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Previous relationships or previous consent for sexual activity is not consent to sexual activity on a different occasion.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.
- Silence or absence of resistance is not consent.
- Consent can be withdrawn at any time.
- Previous consent does not mean ongoing consent. (For example, consent to certain acts does not mean consent to the same act later.)
- How drugs and alcohol affect consent:
  - Individuals should be aware of, and carefully consider the potential consequences of the use of alcohol and drugs. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given.
  - If there is a question about whether someone consented to sexual activity after consuming drugs or alcohol, the University will examine the issue from the perspective of a reasonable person. Specifically, the University will consider whether the respondent reasonably should have known about the impact of the alcohol and other drugs on the complainant's ability to give consent.
  - The use of alcohol or drugs does not justify or excuse behavior that constitutes sexual harassment.

**“Dating violence”** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship;
- The type of relationship; and The frequency of interaction between the persons involved in the relationship.

**“Day”** means a calendar day, excluding when the University is officially closed.

**“Dean of Students”** means the person who holds the title of Dean of Students at SMU or their designee and any successors.

**“Decision-maker”** means the individual(s) making the determination of responsibility and sanctions, if any, at a hearing or making the appeal determination and cannot be the Title IX Coordinator or the investigator(s).

**“Domestic violence”** means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the

victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by 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.

**“Education program or activity”** means locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

**“Exculpatory evidence”** means evidence that supports that the respondent did not violate this policy.

**“Formal complaint”** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the University.

**“Incapacitation”** means the inability to provide consent due to the use of drugs or alcohol, when a person is asleep or unconscious, or because of an intellectual or other disability that prevents an individual from having the capacity to give consent.

**“Inculpatory evidence”** means evidence that supports that the respondent violated this policy.

**“Intimidation”** means to unlawfully place another person in a reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

**“Party”** means a complainant or a respondent.

**“Parties”** means complainant(s) and respondent(s).

**“Proceeding”** means all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings or hearings. Proceeding does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.

**“Reasonable person”** means one under similar circumstances and with similar identities to the victim.

**“Respondent”** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**“Result”** means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result must include any sanctions, if any, imposed by the institution.

**“Retaliation”** means no member of the University community may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Intimidation, threats, coercion, or discrimination, including charges against an

individual for Student Code of Conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation. Examples of conduct which may be retaliation include, but are not limited to:

- Threats of harm to an individual or the individual's property;
- Forcing or pressuring an individual to take time off from school or work;
- Pressuring an individual to refrain from talking to the media;
- Removing an individual from sports teams or other extracurricular activities for reporting Title IX sexual harassment;
- Unreasonably failing to accommodate an individual's housing or academic needs; or
- Terminating, demoting, reassigning, or denying benefits to an employee.

**“Sex discrimination”** means giving preferential treatment to one gender to the disadvantage of the other because of their gender. It may occur also when policies or practices are facially neutral, but have a disproportionately adverse impact on a particular gender when applied. Sexual harassment is a form of sex discrimination.

**“Sexual assault”** means an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation:

- **Sex Offenses, Forcible** means any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent:
  - **Forcible Rape** (Except Statutory Rape) means the carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity.
  - **Forcible Sodomy** means oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.
  - **Sexual Assault With An Object** means to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.
  - **Forcible Fondling** means the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.
- **Sex Offenses, Non-forcible** (Except Prostitution Offenses) means unlawful, non-forcible sexual intercourse:

- **Incest** means non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape** means non-forcible sexual intercourse with a person who is under the statutory age of consent.

“**Sexual harassment**” means conduct on the basis of sex that satisfies one or more of the following:

- a. Quid Pro Quo: An employee conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct;
- b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity; or
- c. Sexual assault, dating violence, domestic violence, or stalking as defined in this policy.

Sexual harassment under Title IX must occur in an education program or activity of the University against a person in the United States.

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

- Fear for his or her safety or the safety of others; or
- Suffer substantial emotional distress.

For purposes of the definition of stalking:

- “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.
- “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

“**Title IX Coordinator**” means the Executive Director, Office of Equal Opportunity, and their designees and any successors.

“**University Officer**” means the officer at SMU responsible for the office, school, college, or other administrative unit with direct supervisory authority over the faculty or staff employee and their designees and any successors.

## **APPENDIX B: EXAMPLES OF TITLE IX SEXUAL HARASSMENT**

If unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity, the following are examples of Title IX sexual harassment prohibited by this policy:

- a. Physical sexual acts perpetrated:
  - i. against a person's will; or
  - ii. where a person is incapable of giving consent due to that person's use of drugs or alcohol or due to an intellectual or other disability;
- b. Direct or implied statements, threats, or demands for sexual favors, sexual advances, accompanied by implied or actual promises of preferential treatment for submission to such demands; or implied or actual threats that failure to submit to such demands may result in adverse treatment concerning the person's admission, enrollment, employment, work status, promotion, grades or recommendation;
- c. Persistent, unwelcome flirtation, requests for dates, repeated and unwanted staring, advances or propositions of a sexual nature;
- d. Gratuitous displays of sexually suggestive objects or pictures, including images displayed, transferred, forwarded or shared via the internet, text messaging or other electronic means;
- e. A pattern of conduct unrelated to an academic course or the requirements of the workplace intended to cause discomfort or humiliation or both that includes one or more of the following:
  - i. comments of a sexual nature;
  - ii. sexually explicit statements, questions, jokes, anecdotes or gestures;
  - iii. a pattern of conduct that would cause discomfort or humiliation, or both, to a reasonable person to whom the conduct is directed and that includes one or more of the following:
    1. unnecessary touching, such as patting, pinching, hugging or repeated brushing against a person's body;
    2. remarks of a sexual nature about a person's clothing or body; or
    3. remarks about sexual activity or speculations about previous sexual experience.
- f. Treating individuals adversely because they do not conform to stereotypical norms of feminine or masculine gender behavior;
- g. Acts of Title IX sexual harassment may take many different forms. Examples include the following:
  - i. direct threats and other verbal statements;
  - ii. email or other electronic messages;

- iii. physical contact;
- iv. jokes;
- v. gestures; and
- vi. pictures or other visuals.

## **APPENDIX C: CONSENSUAL SEXUAL RELATIONSHIPS**

- a. **Faculty/Student Relationships.** For purposes of this policy, a faculty member or a teacher is any member of the full-time or part-time faculty, a teaching or research assistant when acting in a teaching capacity, an academic advisor, or any other person making academic judgments about a student's work.
- i. It is a serious breach of professional ethics for a teacher to initiate or acquiesce in a sexual relationship with a student who is under the personal supervision of the faculty member. Therefore, the University prohibits consensual sexual relationships between a faculty member and a student enrolled in a course taught by the faculty member, or whose work, academic or otherwise, is supervised by the faculty member. This applies even when both parties appear to have consented to the relationship. A faculty member and/or a student who currently has, or has previously had, a consensual sexual relationship with a person should not enter into, or should immediately disengage from, a student/teacher relationship with that person. The burden to disengage from the student/faculty relationship falls equally on both parties.
  - ii. The professional relationship between faculty and students is central to the University's educational philosophy. When faculty members interact with students in a student-teacher relationship, they exercise a form of power over the students, whether in the form of criticism, praise, suggestions, corrections or career guidance. Any action in which power is abused, or appears to have been abused, can disrupt this professional relationship and undermine the mutual trust and respect upon which this professional relationship is founded.
  - iii. A consensual sexual relationship between a faculty member and a student, particularly when the faculty member is in a position of power, will irreparably undermine this professional relationship. The issue of power and control over the student remains so strong in a sexual relationship that voluntary consent by a student is improbable and highly questionable. What one thinks is voluntary consent may be only forced consent, which the hidden, subtle pressure stemming from the faculty member's position of power has transformed into a "voluntary" act. Such a relationship creates an inevitable conflict of interest when the teacher makes judgments about a student's work.
  - iv. The appearance of impropriety to the University community, which such relationships produce, casts doubt on the faculty member's academic decision concerning a particular student's performance, the faculty member's overall professionalism and credibility, and the genuineness of the student's accomplishments where the faculty member is directly supervising and teaching the student. In addition, problems arise when a student who had a

prior relationship with the faculty member, needs or wants to take a class taught by that faculty member or otherwise needs their assistance. As a result, even where there is no power or authority of the faculty member over the student, consensual sexual relationships are discouraged between faculty/student.

b. **Staff/Student Relationships.** As in the case of faculty/student relationships, relationships between staff/student where the staff member has authority or control over the student, a consensual sexual relationship is a violation of University policy.

i. A consensual sexual relationship between a staff member and a student, particularly when the staff member is in a position of power over the student, will irreparably undermine their professional relationship. The issue of power and control over the student remains so strong in a sexual relationship that voluntary consent by a student is improbable and highly questionable. What one thinks is voluntary consent may be only forced consent, which the hidden, subtle pressure stemming from the staff member's position of power has transformed into a "voluntary" act. Such a relationship creates an inevitable conflict of interest when the staff member makes judgments about the student's work. The appearance of impropriety to the University community, which such relationships produce, casts doubt on the staff member's professional decision concerning a particular student's performance, the staff member's overall professionalism and credibility, and the genuineness of the student's accomplishments where the staff member is directly supervising and otherwise assisting the student.

ii. Additionally, problems arise when a student who had a prior relationship with the staff member needs their assistance. As a result, even where there is no power or authority of the staff member over the student, consensual sexual relationships are discouraged between staff members and students.

c. **Faculty/Staff Relationships.** Relationships between supervisors and subordinates, whether involving faculty or staff members, may become problematic because of the inequality of power in the relationship. Faculty and staff members are encouraged to avoid such relationships.

i. The appearance of impropriety, the perception of pressure on the subordinate, concern for favoritism to the subordinate reflect examples of potential disruption to the professional work environment that result from such relationships.

ii. Problems may arise, not only during the course of such relationships, but also when they end. Questions about the propriety of consensual sexual relationships between supervisors and subordinates, who are members of the faculty or staff, should be addressed to immediate supervisors or to the Office of Equal Opportunity.

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The official University Policy Manual is housed in the Office of the University Secretary. The University Secretary is responsible for maintaining new and updated policies and for maintaining this website. Should the official University Policy Manual conflict with any internal policies, procedures, departmental administrative rules, or guidelines, that may be contained in manuals provided by schools, departments, or divisions within the University, the official University Policy Manual controls.



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