

# SOUTHERN METHODIST UNIVERSITY GOVERNANCE AND POLICY MANUAL

## POLICY 2.5

### SEXUAL HARASSMENT AND CONSENSUAL RELATIONSHIPS

<b>APPLICABILITY:</b>	All Administrators, Faculty, Staff, Students and Visitors
<b>RESPONSIBLE OFFICIAL:</b>	Associate Vice President & Executive Assistant to the President for Institutional Access and Equity (X 8-3601)
<b>POLICY TYPE:</b>	Administrative
<b>POLICY HISTORY:</b>	
Originally Issued:	Original Adoption Date Unknown; Originally Codified in 1994.
Last Revised:	November 14, 2005
Last Updated:	February 18, 2013 <i>effective retroactively to January 13, 2013.</i>
Additional History:	Originally implemented with the passage of Title VII of the Civil Rights Act of 1964; revised following the passage of Title IX of Education Amendments of 1972. Revised February 18, 2013 to take into account adoption of Policy 2.5.1, <i>Interim Title IX Sexual Harassment.</i>

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Notwithstanding anything herein to the contrary, complaints of Title IX sexual harassment are handled exclusively under Interim Policy 2.5.1, Title IX Sexual Harassment.

The University strives to provide an educational and working environment free of intimidation and harassment for its students, faculty, and staff. Unprofessional treatment of students, faculty, staff, and other colleagues, in any form and from any source related to the University, is unacceptable to the University and will be subject to this Policy.

This statement contains policies on sexual harassment and consensual sexual relationships<sup>[1]</sup>, and a grievance procedure to govern the resolution of complaints that fall under either policy. The Director of Institutional Access and Equity is available to any member of the University community for counseling regarding any alleged incidents of discrimination, including sexual harassment, and will be notified of all sexual harassment complaints.

#### A. SEXUAL HARASSMENT

##### STATEMENT OF POLICY

Southern Methodist University is committed to providing a work and study environment that encourages intellectual and academic excellence and the emotional wellbeing of its students, faculty and staff. Circumstances, facts and conduct that violate this policy contradict the University's educational philosophy and standard.

The University expressly prohibits sexual harassment of its students, faculty or staff, or of applicants who seek to join the University community in any capacity. Sexual harassment constitutes sex discrimination and violates the dignity of the person. Although also an issue of sex, sexual harassment is most often an issue of power. Typically, sexual harassment occurs when a person with power abuses that power. Such abuses create confusion by eliminating boundaries between professional role and

personal relationship. In addition, the University is equally committed to preventing peer sexual harassment where issues of power may not be present or may not be apparent. (See the Appendix attached hereto for the definition of *sexual harassment* as used in this Policy.)

In carrying out its responsibility to provide a proper educational and working environment, the University may make decisions that are independent of the wishes of the Complainant and the Accused. The University is not bound to resolve complaints based on agreement between the parties.

## B. CONSENSUAL SEXUAL RELATIONSHIPS

### 1. 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.

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, Southern Methodist 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.

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.

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. 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 his/her 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.

## 2. 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.

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.

Additionally, problems arise when a student who had a prior relationship with the staff member needs his/her 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.

## 3. 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. 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. 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 Director, Office of Institutional Access and Equity.

## C. GRIEVANCE PROCEDURES:

### OVERVIEW

There are two levels of review for complaints of sexual harassment. The first involves an informal complaint procedure to be handled by the administrative official to whom the complaint is first brought (the "Administrative Official"). The second involves a formal action taken by the appropriate authority (the "Appropriate Authority") to whom the Administrative Official refers the Complainant. The goal at both levels will be to perform a thorough, timely review and resolution of the complaint. In either case, an informal, preliminary investigation shall be held in order to determine whether there is a reasonable basis for believing the Complainant's allegations. If the Administrative Official handling the charge, or the Appropriate Authority to whom the case is referred, considers settlement to be a reasonable outcome, settlement between the Complainant and the Accused may be accomplished. If a written settlement is reached, the Administrative Official or the Appropriate Authority must file a copy of the Agreement with the Office of Institutional Access and Equity. A copy of the written settlement agreement shall also be made available, upon request, to each party. If an oral agreement is reached, the Administrative Official or Appropriate Authority must file a summary of the case, including the nature of the agreement, with the Office of Institutional Access and Equity. At the conclusion of the informal proceedings, if an agreement has not been reached, the Complainant may pursue a formal complaint. Persons involved in this process should not publicize or divulge either the nature of the proceedings or the identities of the people involved.

#### 1. INFORMAL PROCEEDINGS

A Complainant may bring an allegation of violation of this policy to an appropriate Administrative Official, who may be any academic or administrative officer such as the Director of Institutional Access and Equity; a Vice President; a Dean; the Dean of Student Life; or other director, supervisor, department chair or head.

The Administrative Official will counsel the Complainant regarding his/her rights and options available under this policy as well as resources available through the Office of Institutional Access and Equity, Memorial Health Center, Human Resources, Women's Center, and other facilities. The Administrative Official will encourage, but not require, the Complainant to seek first a direct resolution of his/her concerns by stating objections to the alleged behavior orally or in writing

to the alleged offending party. If a direct approach results in a satisfactory resolution, the matter will be deemed closed, except that the Administrative Official will notify the Director of Institutional Access and Equity of the allegation and outcome in order to keep appropriate and accurate University records. If the result of the direct approach is unsatisfactory, or if the Complainant chooses not to use it, the Administrative Official will direct the Complainant to the Appropriate Authority to hear the complaint and handle the case under this Policy.

In determining the Appropriate Authority to whom the Complainant shall be referred, the Administrative Official to whom the Complainant initially brings the allegation shall consult the Director of the Office of Institutional Access and Equity. The Director of the Office of Institutional Access and Equity may handle the investigation at her/his discretion. If the Director does not handle the investigation the Administrative official and the Director of the Office of Institutional Access and Equity may choose another Appropriate Authority to handle the investigation. In selecting the Appropriate Authority to handle the investigation, consideration shall be given to the level of authority of such person, his/her ability to utilize effectively all of the procedures and channels of communication available for resolution of the complaint, and his/her ability to ensure that a thorough and timely review of the complaint shall take place. Consideration should also be given to selecting a two-person team (one male, one female as warranted) to serve as the Appropriate Authority to handle the informal complaint resolution. In instances where sexual orientation is at issue, appropriate consideration will be given to the composition of that team as well.

The single Appropriate Authority, or the chosen team, as the case may be, will conduct a preliminary investigation to determine whether there is a reasonable basis for believing that a violation of this Policy has occurred. In the process of this investigation, the Appropriate Authority, single person or team, will meet separately with the Complainant and the Accused and obtain signed written statements from each, if possible. The Appropriate Authority may also meet with any other persons reasonably believed to have knowledge about the allegations and obtain signed written statements from them, if possible. At this stage of the proceedings, the identity of the Complainant shall not be disclosed without the consent of the Complainant. However, failure of the Complainant to allow his/her name to be released may substantially reduce the effectiveness of this Policy in handling the complaint.

If the preliminary investigation reveals that there is a reasonable basis for believing that a violation of this policy did occur, the Accused will be so informed, and the Appropriate Authority will conduct an administrative review of the complaint including:

- a. review of the allegations by the Complainant;

- b. review of the response of the Accused to the allegations;
- c. responses from others;
- d. negotiations to resolve the matter in a manner reasonably acceptable to both interested parties.

If the Appropriate Authority handling the case determines that a violation of this policy has occurred, the Appropriate Authority may structure an agreed settlement which includes, but is not limited to, an oral or written warning, a promise not to commit such an abuse again, an oral or written apology, professional counseling for the individual who violated the policy, or any other sanction which appropriately reflects the severity of the violation of this Policy and other relevant considerations. If an agreement between the parties is reached, which the University approves, appropriate sanctions will take effect. However, the University reserves the right to act as deemed appropriate at any time with or without written statements and without the agreement of a party or parties.

## 2. DISCONTINUANCE OF INFORMAL PROCEEDINGS AND INITIATION OF FORMAL PROCEEDINGS

Informal proceedings may be discontinued and formal proceedings initiated in one of the following ways:

- a. If, after the informal proceedings, the Appropriate Authority handling the case concludes that there is no reasonable basis for the complaint, the Complainant may request a formal hearing in accordance with the procedures outlined in the next section.
- b. If the Complainant wishes to end the informal process at any time, the Complainant may request formal proceedings as outlined below.

## 3. FORMAL PROCEEDINGS

Formal proceedings hereunder shall take place in accordance with the following guidelines:

- a. If a complaint is filed against either a full-time or part-time member of the faculty, a teaching assistant or a student teaching assistant in his/her teaching capacity, or any other instructional personnel, the matter shall be submitted to the Faculty Senate Ethics and Tenure Committee for its consideration and action in accordance with its then-current guidelines and procedures;
- b. If a complaint is filed against a University staff member, the matter shall be submitted to the Vice President, or to the person designated by the Vice

President, responsible for the unit employing the accused. A formal hearing may be convened in accordance with the University's Grievance Policy and Procedures, Policy 2.8, if appropriate.

- c. If a complaint is filed against a student, the matter shall be submitted to the University Judicial System for adjudication in accordance with the judicial procedures for alleged violations of the Student Code of Conduct.

#### 4. REPORTING

The University authority handling the informal proceedings, and the appropriate reviewing committee, board or panel, in the case of a formal proceeding, shall submit in writing their final recommendation or resolution regarding the complaint to the Director of the Office of Institutional Access and Equity of the University. The parties shall have an opportunity to be advised of the final outcome.

#### 5. RECORDS

Records of any inquiry or proceeding, formal or informal, must be filed with the University Office of Institutional Access and Equity and be maintained by that office pursuant to the Office of Institutional Access and Equity's records retention policy, which is so long as any party is employed by, and/or is a student at, the University, plus two (2) years. Unless required by law, or unless disclosure to the Board of Trustees or corporate officers of the University should be warranted, as determined by the Office of the General Counsel, the identity of any participant in the record shall be kept confidential from anyone outside the Office of Institutional Access and Equity.

#### 6. ISOLATED AND INADVERTENT OFFENSES

Members of the University community demonstrate insensitivity that necessitates remedial measures when, without establishing a pattern of doing so, they engage in isolated conduct which meets the definition and examples of sexual harassment given in sections A & B in the Appendix, but fail to realize that their actions discomfort or humiliate and constitute acts of sexual harassment. When University administrators become aware that such activities are occurring in their areas, they should direct those engaged in such conduct to undertake an educational program<sup>1[2]</sup> designed to help them understand the harm they are doing.

If, after participating in the educational program or failing to participate after being directed to do so, a person continues to engage in the conduct

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<sup>[2]</sup>As used herein, "educational program" may include non-structured as well as structured programs such as self-evaluation or counseling, community service, etc., combined with other appropriate administrative sanctions (with or without pay).

described in this section, the facts and circumstances of the person's activities and conduct shall be reported to the Office of Institutional Access and Equity by the University administrator who requested that the person participate in the educational program. If the Director of the Office of Institutional Access and Equity determines that the person subject to the report has engaged in a pattern of conduct intended to discomfort or humiliate the one to whom the actions or statements are directed, the Director of the Office of Institutional Access and Equity shall forward the findings as a complaint to be acted upon by the appropriate body pursuant to the proceedings for a formal hearing as outlined in University Policy 2.8.

## 7. PROTECTION OF THE COMPLAINANT AND OTHERS

- a. Reasonable actions will be taken to assure that the Complainant and those testifying or participating in other ways in the complaint proceedings will suffer no retaliation as a result of their participation. Steps to avoid retaliation may include:
  - (1) lateral transfers of one or more of the parties in an employment setting and a comparable move if a classroom setting is involved, and
  - (2) arrangements that academic and/or employment evaluations concerning the Complainant or others be made by an appropriate individual other than one who may be in a position of authority to retaliate.
- b. In appropriate circumstances, the Provost may, at any time during or after an investigation of a sexual harassment complaint, place any faculty member or teaching assistant (acting in a teaching capacity) accused of sexual harassment on administrative leave from teaching responsibilities if, the Provost reasonably believes (i) the alleged sexual harassment has occurred and (ii) the accused would be in a position to do immediate harm to members of the University community if the accused continues to teach the class. Such leave may be with pay and all benefits in place.
- c. In appropriate circumstances, the Vice President, or the Vice President's designee, responsible for the unit employing an accused staff member may, at any time during or after an investigation of a sexual harassment complaint, place any staff member on administrative leave from responsibilities if, the Vice-President reasonably believes that (i) the alleged sexual harassment has occurred and (ii) the accused would be in a position either to retaliate against, or in any way do serious harm to members of the University community, if the accused continues to work in that unit or department. Such leave may be with pay and all benefits in place.

- d. In extraordinary circumstances, the Vice President of Student Affairs may, at any time during or after an investigation of a sexual harassment complaint, suspend an accused student from one or more classes or suspend the accused student from the University altogether if, the Vice President of Student Affairs reasonably believes that (i) the alleged sexual harassment has occurred and (ii) the accused would be in a position either to retaliate against, or in any way do serious harm to members of the University community if the accused continues enrollment in that a class or classes or continues living in the University community.

## 8. FALSE ACCUSATIONS

The accusation of sexual harassment can place a permanent stigma on the Accused, regardless of the ultimate outcome of any inquiries and the truth of the matter. Thus, false accusations of sexual harassment are deemed reprehensible and are prohibited by the University. When this entire process has concluded, and it appears reasonably likely that a Complainant in bad faith, deliberately and knowingly filed a false complaint, the accused and/or the Appropriate Authority who has handled the case may seek redress through appropriate University channels.

## **APPENDIX**

### **A. DEFINITION OF SEXUAL HARASSMENT**

Behavior is defined as sexual harassment from the recipient's perspective, using the reasonable person standard, not through the actor's intent. Sexual harassment includes but is not limited to such behavior as unwelcome sexual advances, requests for sexual favors, verbal or physical conduct of a sexual nature directed towards a student, member of the faculty or staff, or an applicant seeking to join the University community, particularly when any of the following circumstances are present:

1. tolerance of sexual harassment is made an explicit or implicit term or condition of: status in a course, program, activity; academic evaluation or admission; employment, hiring, promotion, job evaluation
2. submission to or rejection of sexual harassment is used as a basis for academic evaluation, or an employment decision affecting such individuals
3. the behavior described has the purpose or effect of creating an intimidating, hostile or offensive environment for work or learning, or unduly interfering with an individual's work performance. For purposes of this policy, "undue interference" is defined as improper, unreasonable or unjustifiable behavior going beyond what is appropriate, warranted or natural

Sexual harassment is not limited to direct, abusive action by an individual in a supervisory position. All persons, including peers and co-workers, who exercise or have potential to exercise any kind of control or review should be careful not to permit the creation of a situation or environment that is abusive, or has potential for being abusive.

In addition, relationships that begin as consensual have the potential to evolve into sexual harassment -- particularly when the persons involved are in unequal positions of power or authority. This potentiality is an inherent risk in faculty/student and staff/student relationships, as well as in supervisor/subordinate relationships involving faculty and staff, and justifies the prohibitions and warnings contained elsewhere in this Policy.

### **B. EXAMPLES OF SEXUAL HARASSMENT**

Sexual harassment may encompass any sexual attention that is unwanted. For purposes of further clarification, and in order to provide some guidance as to what specific behavior constitutes sexual harassment as defined in Section A above, examples of the verbal or physical conduct prohibited by this policy include, but are not limited to:

1. physical assault;

2. direct statements or threats that submission to sexual advances will be a condition of admission, employment, work status, promotion, grades or recommendation;
3. direct proposition of a sexual nature.

In addition, the following examples are intended to illustrate other behavior that may constitute verbal or physical conduct prohibited by this policy. These examples require a more subjective judgment than the foregoing examples and are further qualified by the assumption that the recipient of the conduct described is a reasonable adult, free of hypersensitivities:

1. implied statements or threats that submission to sexual advances will be a condition of admission, employment, work status, promotion, grades or recommendation;
2. subtle pressure for sexual activity, an element of which may be conduct such as repeated and unwanted staring;
3. a pattern of conduct (not legitimately related to the subject matter of an academic course, if one is involved, or to a workplace discussion, if that is the case) intended to discomfort or humiliate, or both, that includes one or more of the following:
  - (a) comments of a sexual nature; or
  - (b) sexually explicit statements, questions, jokes, anecdotes or gestures;
4. a pattern of conduct that would discomfort or humiliate, or both, a reasonable person to whom the conduct is directed, that includes one or more of the following:
  - (a) unnecessary touching, patting, hugging or brushing against a person's body;
  - (b) remarks of a sexual nature about a person's clothing or body; or
  - (c) remarks about sexual activity or speculations about previous sexual experience.

It is important to note that acts of sexual harassment may take many different forms: verbal statements, messages, physical contact, gestures, pictures or other visuals. They may also be posed as direct threats or as jokes. Sexual harassment can be viewed as occurring along a continuum, from acts that annoy to acts that harm and cause fear. Men and women may perceive things differently, culture may influence perception, and our unique experiences may impact our views. Be aware of these differences. A rule of thumb is: **WHEN IN DOUBT, DON'T!**

Questions about the policy, procedure, or its application may be addressed to the Director, Office of Institutional Access and Equity.

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<sup>[1]</sup> “Consensual sexual relationships” may include amorous or romantic relationships, and the term is intended to indicate conduct between members of the University community which passes beyond what a person of ordinary sensibilities would believe to be a collegial or employment relationship.