

# **Southern Methodist University**

## **Title IX Sexual Harassment Grievance Procedure**

### **For Students**

The following is the grievance procedure that applies to all formal complaints filed against students under the SMU Title IX Sexual Harassment Policy.

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

- a. 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, Affirmative Action and Equal Opportunity Policy.
- b. 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.
- c. Complaint investigations will focus primarily upon the allegations of sexual harassment. Students involved in a sexual harassment case may qualify to receive amnesty for other violations of the Student Code of Conduct.
- d. Due to extenuating circumstances, the Title IX Coordinator may extend for a reasonable period any of the deadlines set forth in the grievance procedures.

#### **2. Withdrawal or Graduation While a Complaint Is Pending**

If a respondent withdraws or graduates from the University with a sexual harassment complaint pending, the University:

- a. must not end the grievance process or issue a transcript to the student until the University makes a final determination of responsibility; and
- b. must expedite the University grievance process as necessary to accommodate both the student's and the alleged victim's interest in a speedy resolution.

#### **3. 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 SMU 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. A counselor in the SMU Health Center is also available to accompany students who report that they have been sexually assaulted to the hospital, if desired. 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.

#### 4. **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. If a party does not have an advisor present at the live hearing, the University must provide without fee or charge to that party, an advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

#### 5. **Informal Resolution**

- a. 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.
- b. An informal resolution process cannot be used to resolve sexual harassment allegations filed by students against faculty or staff.

#### 6. **Investigation**

- a. A fact-finding investigation will commence upon the receipt of a completed Title IX Sexual Harassment Complaint Form. The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The parties will be given an equal opportunity to present relevant witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The investigation may include, but is not limited to, conducting interviews of the complainant, the respondent, and any witnesses; reviewing law enforcement investigation documents, if applicable; reviewing

student and personnel files; and gathering and examining other relevant documents or evidence. Prior to completion of the investigation report, the University will send to each party and the party's advisor, if any, the evidence directly related to the allegations raised in a formal complaint in an electronic format or a hard copy, and the parties will have 10 days to submit a written response, which the investigator(s) will consider prior to completion of the investigation report. The evidence will also be available at the live hearing to give each party an equal opportunity to refer to the evidence during the hearing, including for purposes of cross-examination.

- b. 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 investigation 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 investigation report in an electronic format or a hard copy, for their review and written response.

## **7. Live Hearing**

Provided that the complaint is not dismissed or resolved through informal resolution, the University will provide a live hearing (in-person or virtual) for all formal complaints. The hearing process may typically take up to 60 days to conclude after the completion of the investigation.

### **a. Decision-makers**

- i. The Title IX Coordinator will designate a three-person panel of decision-makers comprised of one faculty member, one staff member, and one student. The decision-makers will be selected from members of the University Conduct Board and University Conduct Council who received Title IX Sexual Harassment Policy and grievance procedure training. The Title IX Coordinator will appoint a Chair for the hearing and may appoint a Chair who is not a decision-maker.
- ii. The parties will be given the names of the decision-makers and will have an opportunity to submit in writing any objections prior to the hearing to the Title IX Coordinator. The decision-makers will be given the names of the parties prior to the hearing and will make the Title IX Coordinator aware of any potential bias or conflicts of interest. The Title IX Coordinator will determine if a decision-maker should be removed. The hearing may be delayed in order to designate replacement decision-makers.
- iii. Once the final panel of decision-makers is selected, they will receive access to the complaint, investigation report, and evidence.

### **b. Written Notice of the Hearing**

No less than 10 days prior to the hearing, the Chair will send notice of the hearing to the parties and their advisors, if any, including the date, time, location, and the names of all participants. The Chair will notify the witnesses of the date, time, and location of the hearing.

### **c. Evidence**

- i. Any evidence that the decision-makers determine is relevant and credible may be considered. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- ii. Any credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

- iii. The decision-makers will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
  - iv. The evidence directly related to the allegations will be available at the hearing to give each party an equal opportunity to refer to the evidence during the hearing, including for purposes of cross-examination.
  - v. If a party attempts to introduce new evidence during the hearing, the Chair may delay the hearing to assess the relevance of the new evidence and may advise the investigator(s) to re-open the investigation in light of the new evidence.
- d. **Separate Rooms and Virtual Participation**
- i. 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-makers and parties to simultaneously see and hear the party or the witness answering questions. Hearings 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. If a party prefers not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Chair at least 5 days prior to the hearing. The Chair can arrange for the hearing to occur with the parties located in separate rooms with technology enabling the decision-makers and the parties to simultaneously see and hear the participants answering questions.
  - iii. Virtual options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Chair know at least 5 days prior to the hearing so that appropriate arrangements can be made.
- e. **Hearing Procedure**
- i. The hearing will convene at a date, time, and location determined by the Chair.
  - ii. The Chair will answer all questions of procedure and decorum.
  - iii. The complainant and the respondent have the right to make an opening and a closing statement. The complainant may give the first opening statement. The respondent may give the last closing statement. The complainant and the respondent may each include a statement of the impact of the alleged offense as part of a closing statement.
  - iv. Parties and witnesses must respond to questions on their own behalf.
  - v. Each decision-maker may direct questions to the parties and witnesses.
  - vi. Each party's advisor will have an opportunity to ask relevant questions and follow-up questions of the other party and of any witnesses that participate in the hearing, including questions that challenge 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.
  - vii. Before a participant answers a question, the Chair will rule as to whether the question is relevant to the alleged charges. If the Chair rules the question as not relevant, then the Chair must explain any decision to exclude a question as not relevant. If the Chair allows the question as relevant, the participant will answer it.
  - viii. The Chair will allow witnesses, including the investigator(s), who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the decision-makers and the parties and will then be excused.
  - ix. If a party or witness refuses to submit to any cross-examination questions during the hearing, the decision-makers will not rely on any statement (including those made in the

- investigation report) of that party or witness, when reaching a responsibility determination. The decision-makers will not 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.
- x. If any hearing participants fail to comply with the Chair's instructions or the rules set within these procedures, the Chair may delay the hearing and/or expel the participant.
- f. **Recording of Hearings**
- i. The University will create an audio or audiovisual recording, or transcript, of any hearing and make it available to the parties for inspection and review. The deliberations of the decision-makers after the hearing will not be recorded or transcribed.
  - ii. The parties may not record the proceedings, and no other unauthorized recordings are permitted.
  - iii. A copy of the recording will be provided to the Title IX Coordinator.
- g. **Determination and Sanctions**
- i. The decision-makers will deliberate to determine whether the respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof will be used.
  - ii. The decision-makers will review and consider the respondent's conduct history provided by the Office of Student Conduct and Community Standards and will determine the appropriate sanction(s), if the respondent is found responsible for violating the Title IX Sexual Harassment Policy.
  - iii. The decision-makers may impose 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: expulsion, suspension, deferred suspension, conduct probation, and formal conduct warning. Please refer to the Title IX Sexual Harassment Policy for more information.
  - iv. The Chair will prepare a written determination that will include:
    - 1. Identification of the allegations potentially constituting sexual harassment;
    - 2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
    - 3. Findings of fact supporting the determination;
    - 4. Conclusions regarding the application of the University's Student Code of Conduct to the facts. Violating the Title IX Sexual Harassment Policy violates Section IV(C)(4) of the Student Code of Conduct;
    - 5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the complainant; and
    - 6. The University's procedures and permissible bases for the complainant and respondent to appeal.
  - v. The determination will be sent to the parties simultaneously. The determination will also be sent to the Dean of Students and the Title IX Coordinator.
  - vi. 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.

vii. If a student is ineligible to reenroll in the University for a reason other than an academic or financial reason, the University shall include on the student's transcript a notation stating that the student is ineligible to reenroll in the University for a reason other than an academic or financial reason.

1. On request by the student, the University may remove from a student's transcript a notation required under this section if:
  - a. the student is eligible to reenroll in the University; or
  - b. the University determines that good cause exists to remove the notation.

## 8. Remedies

The University will provide remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent. Remedies will be designed to restore or preserve equal access to the University's education program or activity. Such remedies may include the same individualized services described in the section on Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

## 9. Appeals

- a. 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.
- b. The University Conduct Council is the basic unit responsible for student conduct appeals in response to Title IX sexual harassment complaints. It is the recommending body to the Vice President for Student Affairs.
- c. The composition of the University Conduct Council is set forth in the University Conduct Review Process.
- d. Within 3 days of receipt of the determination and recommended sanctions, if any, the complainant or the respondent or both have the right to request in writing that the Dean of Students permit the requesting party to appeal to the University Conduct Council the findings and recommended sanctions, if any. The non-appealing party will receive a copy of the appeal and may provide a written response to the Dean of Students within 3 days of receipt of the appeal. The Dean of Students has the discretion to grant or deny the request for an appeal.
- e. Within 7 days of receipt of a written request for an appeal and written response, if any, the Dean of Students may grant an appeal to the complainant or the respondent or both on finding that the grounds for an appeal exist, and the grounds may significantly change the findings and/or recommended sanctions, if any.
- f. An appeals packet will be provided to the University Conduct Council that will contain, at a minimum, the complaint, the investigation report, the determination, the request(s) for an

appeal, and the other party's response, if any. The University Conduct Council will base its findings on the appeal packet.

- g. Only members of the University Conduct Council who have received Title IX Sexual Harassment Policy and grievance procedure training shall sit as the appellate body.
- h. Within 10 days of the date of the receipt of the appeal packet, the University Conduct Council shall recommend to the Vice President for Student Affairs one of the following actions and include a rationale for its determination:
  - i. Uphold the findings and/or sanctions, if any; or
  - ii. Render new findings and/or sanctions, if any.

i. **Review and Final Determination**

Within 7 days of receipt of the recommendation from the University Conduct Council, the Vice President for Student Affairs shall review the recommendation and the record of the complaint as a whole and shall render a final determination in the matter. The Vice President for Student Affairs shall provide simultaneously to both parties a written decision describing the result of the appeal and the rationale for the result. The final determination will also be sent to the Title IX Coordinator.

Please refer to the Title IX Sexual Harassment Policy for definitions contained within the grievance procedure. For questions about the Title IX Sexual Harassment Policy or grievance procedure, please contact the Office of Institutional Access and Equity at 214-768-3601 or [accessequity@smu.edu](mailto:accessequity@smu.edu).