

Southern Methodist University

Sexual Harassment (Not Title IX) Grievance Procedure

For Students

The following is the grievance procedure that applies to all formal complaints of sexual harassment (not Title IX) filed against students under the SMU Nondiscrimination and Equal Opportunity Policy. Definitions are included in Appendix A.

1. Formal Complaints and Reports of Sexual Harassment (Not Title IX)

- a. Any person who believes that they are being, or have been, subjected to sexual harassment is encouraged to file a formal complaint of the alleged act of discrimination as promptly as possible by completing and submitting a Discrimination Complaint Form (Not Title IX) to the Title IX Coordinator or a Deputy Title IX Coordinator. Filing a formal complaint will invoke the grievance procedures herein 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 determination and sanctions imposed, if any, and be informed of the right to request an appeal. Retaliation for filing a complaint or participating in the grievance process is strictly prohibited.
- b. A report of 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 herein.
- 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.

5. Informal Resolution

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.

6. Investigation

- a. A fact-finding investigation will commence upon the receipt of a completed Discrimination Complaint Form (Not Title IX). 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 make the report and all relevant evidence available to each party, 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.
- 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 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. The investigators will prepare an investigation report that fairly summarizes all relevant evidence.
- c. 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.

7. **Sanctioning Panel**

Provided that the complaint is not dismissed or resolved through informal resolution, the Title IX Coordinator shall submit the complaint and the investigation report to a Sanctioning Panel. The Sanctioning Panel will be comprised of the Director of Student Conduct & Community Standards or his or her designee, a Deputy Title IX Coordinator, and an SMU student. The members of the Sanctioning Panel will have participated in sexual harassment training. The Sanctioning Panel shall determine the appropriate sanctions as defined in the next section, and the complainant and the respondent will be notified simultaneously in writing of the sanction.

8. **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 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 Sanctioning Panel. 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 Sanctioning Panel. If the student is found responsible for violating the terms of the deferred suspension during the period established by the Sanctioning Panel, 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 Sanctioning Panel 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.

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. On request by the student, the University may remove from a student's transcript a notation required under this section if:

- the student is eligible to reenroll in the University; or
- the University determines that good cause exists to remove the notation.

9. Remedies

The University will provide remedies to a complainant where a determination of responsibility 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.

10. Appeals to the University Conduct Council

- a. The parties may request an appeal to the University Conduct Council. 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 member(s) of the Sanctioning Panel 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 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 sexual harassment 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.

For questions about the Nondiscrimination and Equal Opportunity Policy or grievance procedure, please contact the Office of Institutional Access and Equity at 214-768-3601 or accessequity@smu.edu.

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.

“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.

“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 the 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 the 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 the Policy 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 the 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 the Policy 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 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 unwelcome, sex-based verbal or physical conduct that:

- a. in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
- b. in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.
- c. Sexual assault, dating violence, domestic violence, or stalking as defined herein.

"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 Institutional Access and Equity, and their designees and any successors.

Appendix B: Examples of Sexual Harassment

If unwelcome, sex-based verbal or physical conduct that, in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment or, in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution, the following are examples of sexual harassment prohibited by the Policy:

- a. Physical sexual acts perpetrated:
 - against a person's will; or
 - 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:
 - comments of a sexual nature;
 - sexually explicit statements, questions, jokes, anecdotes or gestures;
 - 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 sexual harassment may take many different forms. Examples include the following:
 - direct threats and other verbal statements;
 - email or other electronic messages;
 - physical contact;
 - jokes;
 - gestures; and
 - pictures or other visuals.