

SOUTHERN METHODIST UNIVERSITY

REPORT OF
THE PRESIDENT'S TASK FORCE ON SEXUAL MISCONDUCT
POLICIES AND PROCEDURES

April 22, 2013

Message from the Chair to President Turner

During the past several months, the Task Force has worked diligently to examine SMU's current policies and procedures concerning sexual misconduct to determine where improvements could be made. Our primary concern was to adopt recommendations that would help ensure the safety and well-being of all students and treat them with equal care and fairness.

The Task Force was composed of a diverse group of members from within and outside the SMU community who offered a wide range of perspectives, as did several external experts who met with the Task Force. From these different perspectives, and drawing upon best practices at universities nationwide, Task Force members have formulated a collective vision that we believe best serves the needs and well-being of SMU students.

The Task Force found that SMU has a strong commitment and procedures to help students obtain assistance, resources, and reporting options in dealing with the difficult issue of sexual misconduct. SMU also has recently updated several procedures to comply with new requirements of Title IX, which mandates university procedures for investigating and adjudicating charges of sexual misconduct. As a result of its deliberations, the Task Force recommends continuing, clarifying or enhancing several existing procedures and policies, as well as adopting new measures that can further contribute to prevention, prompt reporting of sexual misconduct, resources for assistance, and fair treatment of all concerned. This report outlines those recommendations.

In addition, Task Force members hope that the SMU administration and campus leadership will continue to monitor conditions that may necessitate changes to these policies and procedures in the future.

Members of the Task Force should be commended for their dedication, commitment and many months of careful deliberation. Our goal is to support a healthy campus environment of mutual respect and responsibility that nurtures academic and personal development.

Kelly Compton, Task Force Chair

Introduction

Sexual misconduct is an issue of concern on college campuses nationwide. Several universities and government agencies – including Amherst College, California Polytechnic State University San Luis Obispo, Miami University of Ohio, Yale University, the California State Governor’s Office and the United States Department of Defense – have appointed task forces on sexual assault/sexual misconduct and produced comprehensive reports on the issue. In addition to reviewing these reports, the President’s Task Force on Sexual Misconduct Policies and Procedures found helpful the University of Notre Dame resolution agreement with the U.S. Department of Education’s Office for Civil Rights.

According to a *Dear Colleague* Letter¹ issued April 4, 2011, by the Office for Civil Rights regarding Title IX of the Education Amendments of 1972, 20 percent of female students and 6.1 percent of male students are victims of completed or attempted sexual assault while in college.²

While a campus with no incidents of sexual misconduct would be ideal, research suggests that a lack of sexual misconduct reports may indicate reluctance by students to come forward and report these incidents. Given this context, SMU should continue to take steps to prevent incidents of sexual misconduct on our campus and involving our students, facilitate and encourage reporting of all cases of sexual misconduct, and have a clearly articulated response to reports of sexual misconduct.

Gina Smith, a nationally recognized expert on campus sexual misconduct issues, noted in an article in the March 22, 2013, issue of *The Chronicle of Higher Education* that colleges and universities must navigate a “complicated constellation of responsibilities” to arrive at appropriate responses to sexual misconduct on campus. Smith says:

“They (colleges and universities) must offer support and resources to students who report incidents, provide a fair process to both alleged victims and alleged perpetrators, comply with federal privacy regulations, and balance safety with students’ desire for confidentiality.” (p. A-17)

The Office for Civil Rights’ *Dear Colleague* Letter outlines the expectations for colleges and universities regarding their responses to incidents of sexual misconduct under Title IX, the federal law prohibiting discrimination based on sex. It is of crucial importance that SMU’s sexual misconduct policies and procedures align with federal mandates and state laws, including the Title IX requirement to investigate reports of sexual misconduct and provide internal grievance procedures.

Additionally, SMU students, faculty, staff, and parents, as well as people outside the SMU community, should know how SMU will respond to such reports and what resources are available

¹ For more information regarding the *Dear Colleague* Letter please see http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf

² SMU statistics may be found in the *SMU Clery Report*, which may be accessed at http://smu.edu/pd/clerystats/ASRs_Default_Page.asp

to complainants and respondents. They also should know that complainants have the right to make certain decisions about their case during an investigation.

SMU should aim for model programs for sexual misconduct prevention and response. To this end, Dr. R. Gerald Turner, the President of SMU, appointed the Task Force on Sexual Misconduct Policies and Procedures on September 28, 2012.

This report outlines the work of the Task Force and offers recommendations in response to the President's charge.

President Turner's Charge to the Task Force

SMU is committed to providing the best possible learning environment for students to achieve their educational and personal goals. Such an environment must support student safety through University policies, standards of conduct, educational programs, and campus resources.

Toward that end, SMU aspires to develop and maintain model programs that include policies and procedures related to sexual misconduct.

The President's Task Force is charged with the overarching goal of examining SMU's procedures and policies in comparison with benchmark practices to determine if any updates or changes are needed, taking into account adherence to state and federal laws, especially Title IX of the Education Act Amendments, requiring colleges and universities to investigate and maintain procedures for dealing with sexual assault. Such policies and procedures also aim to ensure that all students are treated with care and fairness.

Specifically, the Task Force is asked to review the following to determine if changes or additions are needed to strengthen SMU's efforts:

- Sexual assault reporting procedures, including Clery Act compliance and effective coordination among campus offices, the SMU Police Department and the Dallas County District Attorney's Office.
- The student conduct process as it relates to sexual misconduct, including the structure of the grievance procedure required by Title IX and the make-up of conduct review mechanisms.
- Programs and responses to ensure a harassment-free environment, particularly for the complainant.
- Policies regarding students who are accused of sexual misconduct.
- Support services on and off-campus for students who are victims of sexual assault.
- Orientation, training and education programs for all faculty, staff and students, especially for those who serve in roles in which a student might report a sexual assault (e.g., resident assistants), and who participate in conduct review activities.

- Sexual misconduct policies and procedures that treat all parties involved with care and fairness.

Task Force Members

- Kelly Compton, Task Force Chair
Executive Director of the Hoglund Foundation, SMU Trustee and chair of the Board of Trustees' Student Affairs Committee
- Jim Burnham
Former Dallas County Assistant District Attorney
- Martin Camp
Assistant Dean for Student Affairs, SMU Dedman School of Law
- Karen Click
Director of the SMU Women's Center
- Dennis Cordell
Associate Dean of General Education and Professor of History
- Jeanne Tower Cox
Dallas civic leader, SMU Trustee and parent of two SMU graduates
- Monique Holland
SMU Senior Associate Director of Athletics
- Anita Ingram
SMU Associate Vice President and Chief Risk Officer
- Monika Korra
SMU alumna
- Ellyce Lindberg
Office of Dallas County District Attorney
- Steve Logan
Senior Executive Director of SMU Residence Life and Student Housing
- Alex Mace
SMU Student Body President
- Courtney Underwood Newsome
Executive Director, The SANE Initiative Safer Dallas Better Dallas and Co-Founder, The Dallas Area Rape Crisis Center
- Rick Shafer
SMU Chief of Police
- Rachany Thi Son
SMU law student
- Cathey Soutter
Director of SMU Counseling and Psychiatric Services
- Tom Tunks
SMU Professor of Music and former co-chair of SMU's Substance Abuse Prevention Task Force
- Vanessa Uzoh
SMU student and Residence Hall Assistant
- Lori S. White
Vice President for Student Affairs
- Beth Wilson, SMU Associate Vice President for Institutional Access and Equity and an Executive Assistant to the President, and Title IX Coordinator

Task Force Staff Support

- Troy Behrens, Assistant Vice President for Student Affairs
- Susan Howe, Associate University Counsel
- Paul Ward, Vice President for Legal Affairs

Methodology

The Task Force met 12 times during the 2012-2013 academic year: October 11, 17; November 1, 8, 19, 27; January 23; February 7, 28; and March 6, 20, 25. All meetings lasted two hours. Task Force members also met in sub-groups several times outside of regularly scheduled meeting times. Please see the Appendix for a detailed list of meetings and agendas.

Over these six months the Task Force reviewed more than 45 benchmarking reports – including Task Force reports from other universities and government agencies, and student codes of conduct from other colleges and universities – and consulted with experts in the field (see Appendix for description of benchmark institutions). The Task Force also invited feedback from sexual misconduct complainants and respondents who had cases reviewed through the University student conduct process, as well as from campus and external constituents, including law enforcement and community resource agencies. Detailed information on speakers who met with the Task Force is in the Appendix.

Fortunately, the Task Force’s consultation with outside experts, review of benchmarking data and committee deliberations revealed that SMU already had a number of effective services and programs. Nonetheless, the Task Force identified a number of areas for improvement and growth. They are outlined in our recommendations.

In addition, during its sub-group deliberations, the Task Force identified some measures that it deemed important enough for the University to implement immediately. These initiatives included the University’s adoption of *Interim Title IX Harassment Policy 2.5.1*, <http://smu.edu/policy/S2/policy2.5.1.html>. The Appendix identifies other changes SMU already has initiated in advance of this formal Task Force report.

The Task Force also asked what role, if any, the culture on campus has played in incidents of sexual misconduct involving SMU students. Research indicates that alcohol is a factor in sexual misconduct, and students whom the Task Force consulted described an active social life in which alcohol consumption can cloud judgment or inhibit students’ ability to communicate effectively about their expectations in sexual relationships. These students believed that alcohol is a contributing factor in sexual misconduct cases but not an excuse for it. They underscored that many students did not understand the definitions of “consent” and under what conditions consent cannot be given. These students also stressed the importance of personal responsibility and strengthening the sense of community on campus. They emphasized the need to foster the values of care and respect for one another among the student body. Taken together, these are all

important steps toward building a campus culture where sexual misconduct is rare. The Task Force strongly concurs with these observations and suggestions.

Our recommendations include policy and procedural changes needed to respond more effectively to sexual misconduct reports, to ensure that sexual misconduct complainants are fully supported and that respondents are treated fairly, to work closely with local law enforcement to coordinate effective responses, and to strengthen our students' sense of personal responsibility to each other and to the larger SMU community. The Task Force recommendations also emphasize a complainant's right to choose the options that best meet his or her needs and that support personal healing.

A comment on terminology: In this report we use the term *complainant* to refer to the individual who reports sexual misconduct (in other settings the term *sexual assault victim* or *survivor* might be used) and *respondent* to refer to the individual who is alleged to have committed sexual misconduct (the term *perpetrator* or *accused* might be used in other settings). The terms complainant and respondent are consistent with those used in the SMU student conduct process. For the sake of clarity, we have also chosen to use these terms.

Task Force Recommendations and Rationales for Them

SEXUAL MISCONDUCT REPORTING

1. SMU should provide clear information regarding both internal and external support services available to the campus community in the event of sexual misconduct, regardless of which office initially receives a sexual misconduct report.

Rationale: Because the complainant controls when and how a sexual misconduct incident is reported, there is no one point of contact for initial reporting of sexual misconduct. The reporting process is initiated when the complainant approaches University personnel. A variety of personnel may receive a complaint. For example, a student might choose initially to report the incident to the SMU Police Department (SMUPD), a resident assistant, a professor, staff members in the Women's Center, the Dean of Student Life Office, the Title IX Coordinator, a pastoral counselor in the Chaplain's Office or a physician, nurse or counselor at the Health Center. Rather than attempting to designate or require one point of entry for sexual misconduct reporting, protocols need to be in place so that the staff or faculty member who first receives the complaint from a student will know where to refer the student to ensure that she or he receives appropriate medical care, as well as counseling and other support from Student Affairs staff. Staff also will inform the student about options after receiving care, as outlined in the following recommendations, including on reporting incidents to law enforcement.

2. Complainants should be encouraged to undergo a health assessment offered by Texas Health Presbyterian Hospital of Dallas' Sexual Assault Nurse Examiner (SANE) program or a comparable program as soon as possible.

Rationale: Law enforcement representatives as well as members of the Community Resources Panel who spoke to the Task Force on November 8 emphasized the importance of encouraging a health assessment to determine potential health risks and/or to enable the collection of potential evidence.

3. Students should always be encouraged to report sexual misconduct to SMUPD or other law enforcement agencies, depending upon where the alleged misconduct occurred. Students should be informed that a police report does not automatically lead to charges being filed or criminal prosecution. Students also should be informed that even if they talk with the police, they still will have some input about the case. At the same time, it should be emphasized to students that it is important to report the incident to the police as soon as possible so that police can collect evidence and other information that may be helpful in building a criminal case, even if the student decides to wait until a later date to file charges.

Rationale: SMU should create an environment that supports student reporting of sexual misconduct on and off campus, including providing students with clear and consistent information about what to do if sexual misconduct occurs. It is important that anyone on campus to whom a complainant first might report sexual misconduct knows where to refer the complainant so that he or she can receive appropriate support, medical attention, and understand his or her options to pursue criminal and/or administrative processes.

With respect to reporting, the Task Force also wants to acknowledge how very important it is to respect the rights and choices of an adult complainant, as defined in Title IX. At the same time, SMUPD will coordinate with the appropriate external law enforcement agency when the University is made aware that sexual misconduct may have been committed by an SMU student.

We think it is also important at all times to encourage students to report sexual misconduct to the SMUPD or a local law enforcement agency if the misconduct occurred outside of the SMUPD jurisdiction.

Non-confidential SMU staff and faculty are required to report any sexual misconduct reported to them to the University's Title IX Coordinator. See Recommendation No. 5 on Title IX for more information, as well as "Reporting a Sexual Assault" on SMU's Health and Safety website at smu.edu/liveresponsibly.

Balance is very important here. We do not want to create a "chilling effect" for students who may be hesitant about stepping forward to report sexual misconduct if they perceive that they will not have the opportunity to "control" what happens with their case. Sexual assault counselors and survivors agree that maintaining a sense of control is a key component in the healing process following such an incident. Therefore, the University also should take

care to make students aware of which resources they can access confidentially and which resources are not confidential (see Recommendation No. 4). The University also should make it possible for students to report sexual misconduct incidents anonymously (see Recommendation No. 6).

Because time is of the essence when it comes to the preservation of critical evidence necessary for a thorough criminal investigation, reporting incidents to the appropriate law enforcement agency is imperative. Students should be informed that there could be serious negative ramifications if such measures are not taken in a timely manner. Proof that could be key in inculcating or exculpating a person may be lost forever. In addition, if incidents are reported to law enforcement, such information may prevent further assaults against other victims. For these reasons and because the consequences and ramifications are potentially severe and long-lasting for any SMU student who is a complainant or a respondent in a sexual misconduct case, every step should be undertaken to encourage and make it easy for a student who believes that she or he is a victim of sexual misconduct to make a report to the appropriate police department as soon as possible.

4. Confidential and non-confidential campus resources should be explicitly defined. Confidential resources include SMU Counseling and Psychiatric Services and the SMU Chaplain's Office. Other campus resources – including the Office of the Dean of Student Life and SMU Women's Center – are required to notify SMU's Title IX Coordinator of sexual misconduct reports. SMU's Health and Safety website, smu.edu/liveresponsibly, designates confidential and non-confidential resources. We recommend that SMU develop a "confidentiality chart" similar to that formulated by Yale University (<http://smr.yale.edu/>) and include it in all sexual misconduct information materials. The Yale chart delineates where students can expect confidential assistance and where their report of an incident must be reported or escalated and to whom it will be reported or escalated.

Rationale: It is important that students and other members of the campus community know which resources are confidential and non-confidential, and to whom these resources report. Regarding confidentiality, the *Dear Colleague* Letter states:

"Schools also should inform and obtain consent from the complainant ... before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited." (p. 5)

5. Information related to sexual misconduct reporting should inform students that any sexual misconduct reported to a non-confidential resource must be referred to the SMU Title IX Coordinator as required by the *Dear Colleague* Letter.

Rationale: The *Dear Colleague* Letter specifically requires the establishment of a Title IX Coordinator and delineates the Title IX Coordinator's responsibilities, including coordinating the University's investigation of Title IX complaints, including sexual misconduct. Students should be aware that non-confidential University staff and faculty have an obligation to refer any sexual misconduct complaints reported to them to the Title IX Coordinator. Other Task Force recommendations address particular conditions related to the reporting of student sexual misconduct complaints to the Title IX Coordinator.

6. Complainant should have the ability to anonymously report a sexual misconduct incident.

Rationale: Collectively the Task Force recommendations should have a positive impact on the environment for reporting sexual misconduct. However, should a student be reluctant to come forward to report sexual misconduct, he or she should have the ability to report an incident anonymously. There is a difference between this recommendation to allow anonymous reporting, and Recommendation No. 7 that a complainant be able to request anonymity during the reporting process. Anonymous reporting provides an opportunity for a student to report to the University that sexual misconduct occurred without formally speaking to anyone at the University, similar to other anonymous crime reporting "hotlines." We recommend that SMU review the excellent anonymous reporting policies of Yale and Winthrop universities (see Appendix).

7. Complainant should be able to request anonymity. The Task Force recommends that the request for anonymity by a student who is informally reporting an incidence of sexual misconduct to a faculty or staff member be respected if the student does not consent to the release of personally identifiable information. In these cases the University employee will report the details of the sexual misconduct incident to the Title IX Coordinator as they have been disclosed, excluding the name of the complainant. The name of the complainant will be released by the person who received the initial report only when deemed absolutely necessary by the Title IX Coordinator after preliminary investigation of the details released. The Task Force recommends that the University apply any remedies that can be effective within the bounds of complainant privacy, and that it breach complainant privacy only when a comprehensive investigation and/or full formal resolution are required to prevent the possible occurrence of another sexual misconduct incident.

Rationale: The Task Force believes that a student's wishes should be given full and powerful consideration at all times when confidentiality, particularly anonymity, is requested, because it is imperative that complainants be fully supported in their efforts to heal and respond as they determine is in their own best interest. To this end, we recommend that the University safeguard each complainant's confidentiality, respect the complainant's privacy, and support the complainant's right to make choices about the resources and options available whenever possible. The Title IX Coordinator should assess requests for confidentiality and anonymity on a case-by-case basis.

8. SMU should fund after-hours counselors and/or publicize the Dallas Area Rape Crisis Center (DARCC) 24-hour rape crisis hotline across campus so that complainants will have confidential resources available at all hours.

Rationale: Sexual misconduct can occur at any time of day or night, and it is important that anyone who may be a victim of sexual misconduct – or who is looking for assistance for someone who may be a victim – has immediate access to resources. The availability of these resources should be widely publicized.

9. SMU should ensure that adequate resources are provided to the SMU Health Center for specially trained and dedicated sexual assault counselors and to SMUPD for specialized training for police officers.

Rationale: While SMUPD regularly provides special training for its officers, SMU currently has only one specially trained and dedicated sexual assault counselor in Counseling and Psychiatric Services. *The California Campus Blueprint to Address Sexual Assault* report and other similar studies emphasize the importance of providing ongoing funding for this training and student support. (April 2004, p. 10)

10. An instruction document, such as a pocket-sized card, should be developed for all SMU employees with information about how to support students who report sexual misconduct. These instructions should be formulated in consultation with campus and community experts and law enforcement agencies. These instructions also should be available online and included in employee training.

Rationale: Students initially may report sexual misconduct to a staff or faculty member whom they know or who is accessible. It is therefore important that all SMU community members know what to do if they receive a report of sexual misconduct. The instruction document should include emergency numbers, including for the SMUPD or other local law enforcement agencies; as well as information about support services, including SMU Counseling and Psychiatric Services and specifically about the importance of going to a hospital for a health assessment through the Texas Health Presbyterian Hospital Dallas Sexual Assault Nurse Examiner (SANE) program or a comparable program as noted in Recommendation No. 2; and other resources to ensure that a student's immediate health and safety needs are met.

11. A checklist should be developed for staff members who may meet with a student to more formally review the sexual misconduct reporting process. The checklist should outline the rights of complainants and respondents, and identify the resources available to them as part of the University's investigation of sexual misconduct. We recommend that this checklist be developed by the Dean of Student Life Office and the Title IX Coordinator in consultation with other campus offices as appropriate. One side of the checklist might provide

information for complainants and the other side for respondents, so each is aware of the information provided to the other.

Rationale: The Title IX investigative and student conduct processes are sometimes complicated for students to understand, particularly given the often stressful situation in which they find themselves following sexual misconduct. We want to improve the delivery of this information and make sure respondents and complainants are both aware of their respective rights and the rights afforded to the other party. We also want students to have a written document to which they may refer later. Once such a checklist is developed, a staff member meeting with a student will review the checklist with the student and then sign it to indicate that the checklist has been reviewed. It may be a good practice for students to sign the form also, although the Task Force emphasizes that no student should feel compelled to sign the form under duress. The student then would be given a copy of the signed checklist. Another copy would be placed in the student's file.

12. The Task Force reaffirms the University's ongoing commitment to respond in a timely manner when a sexual misconduct incident has been reported to University personnel. The SMUPD operates a 24-hour emergency line. Counseling and Psychiatric Services' hotline also is available to students 24 hours a day. SMU also maintains a "Dean on Call" procedure, whereby a Student Affairs staff member is always available to police or other SMU staff when an emergency involving a student occurs.

Rationale: It is of critical importance that SMU respond promptly to any report of sexual misconduct so that the University can ensure that the student making the report receives immediate support, and that law enforcement is notified and can respond.

13. The University should ensure the complainant is provided with the reasonable support and protection necessary to continue her or his education while the sexual misconduct complaint is investigated. Language in the University's sexual misconduct policy must affirm that the complainant will be provided this support and protection.

Rationale: The *Dear Colleague* Letter underscores the importance of universities providing support and protection to sexual misconduct complainants throughout investigations so that their educational and campus experiences are not negatively impacted. The University of Virginia offers a salient example of how a university may articulate its commitment to supporting the complainant:

"In all complaints of alleged sexual misconduct, regardless of whether the complainant wishes to pursue Formal Resolution, Informal Resolution, or no resolution of any kind, the University will undertake an appropriate inquiry and take such prompt and effective action as is reasonably predictable under the circumstances to support and protect the complainant, including taking appropriate interim steps before the final outcome of the investigation and hearing, if any... When taking steps to separate the complainant and the accused student, the Dean will seek to minimize

*unnecessary or unreasonable burdens on either party; provided, however, that every reasonable effort will be made to allowing the complainant to continue in his or her academic, University housing, and/or University employment arrangements.” **

**(http://www.virginia.edu/sexualviolence/documents/sexual_misconduct_policy070811.pdf, p. 9.)*

SMU should include language similar to that above in its sexual misconduct policy. The SMU statement should be shared with complainants and respondents as part of the checklist mentioned in Recommendation No. 11.

TITLE IX POLICIES

14. The Task Force affirms SMU's existing *Interim Title IX Harassment Policy* 2.5.1 delineating the University's process for investigating sexual harassment, including sexual misconduct, in accordance with the requirements of Title IX and the implementing provisions of the *Dear Colleague* Letter. The Task Force recommends that Interim Policy 2.5.1 become a permanent SMU policy as soon as the Task Force recommendations have been reviewed and approved by appropriate University personnel.

Rationale: We think it is important that the University make its interim policy permanent as soon as practicable in order to affirm the University's commitment to all Title IX requirements.

15. SMU should enhance efforts to educate students about the role of the Title IX Coordinator in response to incidents of sexual misconduct.

Rationale: Title IX legislation and the *Dear Colleague* Letter require a Title IX Coordinator. Students should know who on campus serves in that capacity as well as who serves as Deputy Title IX Coordinators and what their responsibilities entail.

16. Title IX Coordinators and Deputy Title IX Coordinators should not directly oversee the student conduct process. SMU already has implemented this recommendation.

Rationale: In order to avoid any perceived or actual conflict of interest, it is important that there is clear separation between the individuals and offices investigating a sexual misconduct report and the individuals and offices responsible for adjudicating a sexual misconduct case.

STUDENT CONDUCT PROCESS AND THE STUDENT CODE OF CONDUCT

Enhancing student understanding of the Student Code of Conduct related to sexual misconduct

17. The language in the preamble to the Student Code of Conduct should be more accessible to students and reflect a more conversational tone. However, since the precise provisions of the code are subject to interpretation and consequent enforcement, the existing code should retain its more formal language. Definitions and specific examples should be added to the code that will facilitate students' understanding of the terms used. We recommend SMU review the conduct codes of Emory, Marquette and Yale universities and consider whether changes should be made in the organization and language of SMU's code to make it more readable and easier to understand.

- Emory University <http://conduct.emory.edu/>
- Marquette University
<http://www.marquette.edu/osd/policies/conduct/index.shtml>
- Yale University <http://provost.yale.edu/uwc>

Rationale: Students and others who have reviewed the SMU Student Code of Conduct have indicated that the code, while comprehensive and thorough, is difficult to understand. Students also would like to know how the code may be applied specifically to their experiences. The university codes mentioned above offer good examples for SMU to emulate.

18. The SMU sexual misconduct policy should constitute a separate section of the broader Student Code of Conduct.

Rationale: Sexual misconduct is one of the most serious violations of the Student Code of Conduct. It is vitally important that students understand what constitutes sexual misconduct and the University's process for responding to sexual misconduct. Students' observations to the Task Force suggest that they have had difficulty finding SMU's sexual misconduct policy. Presenting the sexual misconduct policy as a separate section of the broader student code and also including the policy in other relevant University print and online publications will enable easier access for students.

19. Students should understand the difference between pursuing a sexual misconduct case through the University conduct process and pursuing a criminal process, and their option to pursue both or either process.

Rationale: Students and others are often not clear about the difference between the student conduct process and the criminal process, both of which they may pursue. They also often don't understand that a student has the right under Title IX to pursue a complaint under University policy. An article titled "Southern Methodist University Student Code of Conduct: Background and Philosophy" (see Appendix) provides an overview of the SMU

conduct process and outlines the difference between the student conduct and criminal processes.

Defining & Communicating Consent

20. The definitions of *consent* included in the conduct codes of Brandeis, Emory, Marquette and Yale universities should be reviewed, and appropriate changes should be made to SMU's definitions and explanation of consent. (The definitions of consent used by these institutions are included in the Appendix.)

Rationale: Student feedback indicates that students do not clearly understand what constitutes consent for sexual contact between individuals and under what conditions consent cannot be given. While the current SMU Code of Conduct does include definitions of consent, students indicated they need definitions that they can more easily understand, illustrated by specific examples of hypothetical social situations. The universities cited above are good benchmarks for enhancing references to consent in the SMU Student Code.

Hearing Boards

21. The Task Force recommends that hearing boards continue to be included in the student conduct process for sexual misconduct cases where their use is appropriate and/or at the complainant's request.

Rationale: The *Dear Colleague* Letter requires that colleges and universities have a process for adjudicating sexual misconduct cases and states that a student conduct process that includes hearing boards is acceptable. Historically, SMU has used hearing boards in the student conduct process, and we believe this practice should continue. For additional information regarding the philosophy undergirding the SMU student conduct process, please see the Appendix.

22. The Task Force recommends that a sexual misconduct hearing board continue to be appointed as a subset of the student conduct hearing boards. This body should be specifically designated as the sexual misconduct hearing board, and its members should continue to receive specialized training. In addition to the internal training resources, we encourage SMU to take advantage of the many external training resources that are available. (See the Appendix for a list of these resources.) In addition, we recommend that members of the appellate board called the University Conduct Council (UCC) also receive specialized training related to sexual misconduct prevention and support.

Rationale: Students choosing to have their case heard by a hearing board deserve a well-informed and well-trained board that understands the sensitivity and intense emotions often related to sexual misconduct cases. Appellate board training is also important because either the complainant or the respondent may decide to lodge an appeal with that body.

23. The Task Force affirms that students should continue to serve on sexual misconduct hearing boards. While students may be members of such boards, they should not serve as chair, nor should they make up a majority of board membership. Students and all other board members should be required to keep confidential all information presented as part of the hearing process. Those who breach confidentiality must be immediately removed from the board and sanctioned. Student appointments to the sexual misconduct hearing board should be equal to the honor and responsibility bestowed on appointments such as the student member of the Board of Trustees or student representatives to Board committees. The selection process leading to the appointment of students to a sexual misconduct hearing board should aim at recruiting the most highly respected students. SMU should offer special recognition to students who serve on this board.

Rationale: The Task Force thoroughly discussed the recommendation to continue allowing student representation on sexual misconduct hearing boards and considered all points of view presented. SMU has a longstanding tradition of student participation in University governance, ranging from selecting one student each year as a full voting member of the SMU Board of Trustees to appointing students to other University bodies, such as this Task Force. Students also are entrusted with the responsibility for approving changes to the Student Code of Conduct. Therefore, continuing to have students serve on sexual misconduct and other conduct hearing boards is consistent with SMU's tradition of student involvement in important University matters. Students serving on the Task Force also noted that student members of the sexual misconduct hearing board provide critical student perspective and help demystify the conduct process for other students. Enhancing the honor of serving on the sexual misconduct hearing board as well as promoting recognition of students who serve on this board will attract applications from SMU's best and most well-respected students.

Retaliation

24. The SMU sexual misconduct policy should forbid retaliation against the complainant and others involved in the reporting of a sexual misconduct incident in clear language and should include examples. This aspect of the policy should be strongly emphasized in training related to the sexual misconduct policy.

Rationale: The *Dear Colleague* Letter explicitly directs institutions to prevent retaliation directed at students who report sexual misconduct. It is important that this policy of no tolerance for retaliation be made clear to students. They should also be provided examples as to what constitutes retaliatory behavior.

25. When an incident of sexual misconduct is reported, SMU should take clear steps to address the possibility of retaliation and adjudicate any retaliatory behavior immediately. University personnel who meet with complainants, respondents and other members of the

student community must underscore the University's policy of not tolerating retaliation and make it clear to all that such instances will be grounds for a separate adjudication.

Rationale: The possibility of retaliation is cited by some complainants as a reason for not proceeding with a conduct or legal case.

Amnesty for Alcohol or Drug Violations

26. SMU should add language to the Student Conduct Code indicating that it may be possible to extend the amnesty policy for alcohol and drug violations to students in sexual misconduct cases.

Rationale: Earlier in this report, we stated that alcohol is often a factor in sexual misconduct cases. Students and individuals who have worked with complainants indicated that complainants may be reluctant to report sexual misconduct – and that other students may be reluctant to share knowledge about a sexual misconduct incident – if they think the University will sanction them for alcohol or drug use. While we do not condone excessive use of alcohol, underage drinking, or drug use, we also do not want students who may have used alcohol or drugs to be hesitant about reporting sexual misconduct because they are afraid of “getting in trouble” for alcohol or drug use.

Other Recommendations

27. The complainant and the respondent must be treated fairly throughout the process. Any campus office involved in responding to sexual misconduct incidents or providing support to students involved in such incidents must be equally available to both students. Additionally, both the complainant and the respondent should be provided with a student conduct liaison and counselor from Counseling and Psychiatric Services; both students should be encouraged to utilize both of these resources.

Rationale: It is important that the University provide both complainants and respondents with resources and support throughout the process. We have noted earlier in the report the recommendation that both complainants and respondents be made aware of the rights afforded to the other. We also think it is important that both parties be encouraged to take advantage of the University's counseling services and be provided with a conduct liaison. Conduct liaisons are specially trained neutral staff members who are available to students to explain the conduct process and support them throughout the process.

28. Under the direction of the Vice President for Student Affairs, the University should use the multidisciplinary teams currently in place – including representatives from SMUPD, Counseling and Psychiatric Services, the Dean of Student Life Office, the University Chaplain's Office, Legal Affairs, Risk Management, and the Office of the Vice President for Student Affairs – to determine whether a respondent should be removed from campus, and whether any other temporary action should be taken to protect the complainant prior to a

formal disciplinary hearing. SMU should extend accommodations for all reasonable requests for the complainant's education, housing and well-being. The Student Code of Conduct clearly states the University's right to take such action.

Rationale: As indicated in Recommendation No. 13, Title IX requires institutions to take all necessary steps to protect the complainant.

"Title IX requires schools to take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. The school should undertake these steps promptly once it has notice of a sexual harassment or violence allegation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the school may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school's investigation. When taking steps to separate the complainant and alleged perpetrator, a school should minimize the burden on the complainant and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain." (Dear Colleague Letter, p. 16)

A multidisciplinary team will ensure that the University coordinates an effective interim response and acts to ensure balance in protecting the complainant and treating the respondent fairly.

29. The University should affirm in the sexual misconduct policy that the University may serve as the complainant in the student conduct process.

Rationale: There may be circumstances in which a student complainant does not choose to pursue a sexual misconduct complaint. However, the University may determine the circumstances merit the initiation of the student conduct process in the absence of a student complainant.

MARKETING AND COMMUNICATION

30. SMU should develop a comprehensive print and online publication that addresses sexual misconduct prevention and the availability of support resources. This publication should contain information about resources similar to that included in SMU's Health and Safety website, smu.edu/liveresponsibly.

Rationale: Currently several University publications deal with sexual misconduct prevention and support resources. The Task Force believes that a more effective communication strategy would be to develop one comprehensive, student-friendly publication. The Health and Safety website noted above is excellent and should be used as a guide.

31. SMU should develop an outreach/advertising/marketing team through the Health Education Office that coordinates social norming, manages web information, and reaches out to residence halls and other peer-focused programs. Materials about campus and community resources (such as SANE, DARCC, etc.) should be available in all residence halls as well as in campus libraries, the Health Center, the Dedman Center for Lifetime Sports, the Hughes-Trigg Student Center, and other areas of the campus frequented regularly by students. Such materials might include posters on each floor, in the restrooms and in elevators. Materials should also be posted that let victims of sexual misconduct know they are not alone and to encourage them to call Counseling and Psychiatric Services and other campus resources for support and information. We recommend that a peer education and peer advocate team be developed to support these efforts.

Rationale: Student feedback to the Task Force indicated that students needed to be made more aware of sexual misconduct prevention and support resources, and that peer-to-peer involvement in communicating this information would increase student understanding and engagement in changing community norms. Amherst College, among others, has developed such a peer education program and may be a good model for SMU to emulate: <https://www.amherst.edu/campuslife/deanstudents/Mediation>.

ACCOUNTABILITY

32. SMU must do all that it can to ensure compliance with the requirements of Title IX and the *Dear Colleague* Letter. We recommend that the University mobilize its internal auditing department or another appropriate department to monitor Title IX compliance. In addition, the departments charged with administering the specific recommendations in this Task Force report should evaluate the status of implementation of the recommendations each year, and provide a progress report to the president or his designee.

Rationale: The University is legally obligated to be in compliance with Title IX. Formal auditing of compliance will signal all members of the University community and the public that SMU is complying with the law. Apart from monitoring Title IX compliance, it is essential that the University track progress in implementing each Task Force recommendation.

33. Establish regularly scheduled communication between University representatives and the District Attorney's Office, local law enforcement agencies and local service providers.

Rationale: The Task Force found the contributions of the Task Force member from the District Attorney's Office invaluable to discussions and deliberations. Additionally, the Chair of the Task Force, along with SMUPD officers and SMU Student Affairs staff, met with law enforcement personnel from the Dallas, Highland Park and University Park police forces. These meetings focused on ways in which SMU can continue to work with local law

enforcement agencies in coordinating responses to sexual misconduct complaints, ensuring that complainants are aware of their right to pursue criminal complaints and their right to support resources through SMU, regardless of where the sexual misconduct may have occurred. We strongly recommend that the existing periodic meetings between SMU, the District Attorney's Office, and local law enforcement agencies be continued and that debriefings between SMU and these agencies occur as appropriate after the resolution of any SMU sexual misconduct cases.

EDUCATION AND TRAINING

In this section we offer a series of recommendations related to education and training, with a strong emphasis on creating a culture of shared community values. These recommendations are some of the most important for culture change on campus. Training for faculty, staff, and students is critical to develop model sexual misconduct policies and procedures. Education and training programs also should reach out to parents. Emphasis might well be placed on faculty, staff and upper-level students who could serve as role models and mentors, particularly for first-year students. Students also should be trained in how to intervene in high-risk situations. Most important, SMU must continue its efforts to imbue students with values including responsibility and respect for others. Students should also understand that they are members of a larger University community.

34. Student leaders should encourage the student body to develop, adopt and disseminate a new SMU Values Statement, such as the following:

- "I, as a citizen of the SMU Community, commit myself to upholding the values of intellectual integrity, academic honesty, personal responsibility and sincere regard and respect for all SMU students, faculty, and staff."

Rationale: During Task Force discussions, some student panelists noted that they believed "it was about time" that they and other students take a stand to promote the development of a culture of respect among and for all members of the SMU community. Student leaders, led by outgoing student body president Alex Mace, already have begun discussions about the development of the proposed SMU Values Statement.

35. The University should request that the Residential Commons leadership (including staff, faculty-in-residence, and student leaders) develop a mandatory citizenship program for first-year students as a component of SMU's new Residential Commons model. The citizenship program – whether a series of classes, seminars, or other experiences – would focus on the variety of factors involved in being a responsible member of the SMU community, including sexual misconduct issues. The program would be administered within individual Residential Commons to enhance the sense of community, but should be consistent across the various residences. All first-year members of the Residential

Commons (including commuting students assigned to that RC) would be required to participate in the program. Second-year and upper-level students in the RC could help deliver the program, which may be investigated as a way to fulfill the University Curriculum Community Engagement requirement. We recommend that a pilot citizenship program be developed for implementation in Fall 2013.

Rationale: This proposed residential-based citizenship program would introduce students to the history and values of the University, what it means to be a University citizen, and how to contribute to the SMU community in a positive way. Coupled with Recommendation No. 34, this citizenship class would strengthen students' sense of responsibility to self and to the SMU community.

36. All current sexual misconduct prevention education and training programs should be reviewed and evaluated with student leaders. Following that exercise, recommendations should be focused on how to improve them.

Rationale: As the targeted population for these programs and as potential peer education facilitators, students must have the opportunity to provide feedback about current education and training as future programs are designed.

37. The training of student leaders should emphasize their importance as role models in fostering positive values for students and developing a culture where sexual misconduct is not tolerated.

Rationale: Students who have leadership positions on campus should serve as role models to other students regarding the University's values and community standards.

38. The definitions of consent, sexual misconduct and sexual assault should be reviewed carefully with incoming students during orientation and in other training programs focused on sexual misconduct. SMU should continue its practice of a training program focused on these issues for all first-year students within the first week of classes each fall semester. This training should continue to take place every year, and similar training should occur for students of all academic standings. For upper-level students, this training could be mandatory for key student leadership groups including, and not limited to, the Student Senate, resident assistants, Orientation leaders, student athletes, any Greek organization seeking certification to house second-year students, and other student leadership groups. This training already has been implemented in the Mandatory Organization Meetings (MOM) for leaders of all student organizations in accordance with the Texas State law HB2639/SB1138.

Rationale: Students need clear definitions of these terms and the opportunity to discuss their application to social situations. While all first-year students currently receive some training, this training should be enhanced and extended to upper-level students.

39. SMU should initiate an upper-level student and faculty and staff mentorship program. SMU also should develop activities through the Residential Commons to foster respect for others that include a focus on sexual misconduct.

Rationale: A faculty and staff mentorship program is envisioned as a way to provide first-year and transfer students with positive, responsible role models – analogous to those provided by parents, teachers and coaches before students arrive at SMU. It is important for new students to have relationships with faculty and staff that serve to remind them to conduct themselves in a dignified, responsible way in the midst of the greater liberties they encounter in a campus community. We previously noted the important role modeling that we believe upper-level students provide first-year students. Amherst College’s sexual misconduct report, *Toward a Culture of Respect* (January 2013, p. 52), asserts the importance of faculty and staff mentors as key players in promoting civility and responsible citizenship. SMU’s transition to the Residential Commons model in 2014 offers an exciting new opportunity to mobilize and engage faculty and upper-level students as role models and mentors.

40. SMU should develop a bystander intervention program similar to those at Duke and Yale universities (see Appendix).

Rationale: In statements to and conversations with the Task Force, students noted that they need assistance in developing the skills to intervene when they perceive that a friend or a peer may be in a dangerous situation. Several institutions have developed bystander intervention programs for potentially high-risk situations involving students such as excessive drinking, use of drugs, and violence in relationships. Promoting a sense of personal responsibility is, of course, key to heading off these situations. However, it is also imperative to provide students with the skills to recognize a potentially dangerous situation involving themselves or others and adopt strategies to minimize danger. Duke and Yale have effective bystander intervention programs that may serve as models for SMU. The foundations for such programs at SMU already are in place. For example, SMU has been recognized for its TIPS program (Training for Intervention Procedures), which is used extensively on campus. TIPS also is required training for students who participate in at least one SMU Abroad program (SMU-in-Paris) as a way of helping students look out for each other while overseas. In addition, a former student body president launched the *Mustangs Who Care* program, which incorporates bystander intervention strategies. With additional guidance from intervention initiatives at other universities, SMU can build on programs already in place.

41. SMU should educate the parents of incoming students about its sexual misconduct policies and definitions.

Rationale: Parents must understand SMU’s sexual misconduct policies and procedures, including the potential consequences faced by any student found responsible for sexual misconduct. Parents ideally should be allies in SMU’s effort to develop comprehensive

student training and educational programs. It is hoped that parents could join the University in underscoring to their sons and daughters the importance of such training. It is imperative that parents provide support for their students when they are uncertain or confused about any situation that poses a challenge to their integrity. The University encourages and expects that parents will be our partners in encouraging personal responsibility and accountability, and that they will see when their student may be engaging in questionable behavior.