X. POLICY AND PROCEDURES ON SEXUAL HARASSMENT

At the faculty meeting on February 27, 1990, the faculty adopted the following policy and procedures on sexual harassment formulated by the Faculty Affairs Council. The Board of Trustees adopted the same policy and procedures at its regular meeting on April 6, 1990. Amendments to the policy were approved by the faculty on April 28, 1992, and February 15, 1994, and the Board of Trustees on October 30, 1992, and April 15, 1994. On October 31, 2002, the University Council approved a proposal from the Faculty Affairs Council that the Sexual Harassment Advisory Committee report to the University Council effective immediately. Amendments to the procedures were approved by the University Council on February 3, 2003 and subsequently by the faculty on February 11, 2003.

A. Policy and Definition

Sexual harassment in any manner or form, including sexual harassment based on sexual orientation, is expressly prohibited. It is the policy of Southwestern University (the University) to maintain both an academic and a working environment free from all forms of sexual harassment of any employee or applicant for employment, student, donor, former student, volunteer, or any other constituent of the University. Two reasons for this policy are to reaffirm the University's commitment of respect for the person and to enhance the University community's level of consciousness regarding gender issues. Sexual harassment violates both University policy and Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 and the Texas Commission on Human Rights Act. All reported or suspected occurrences of sexual harassment will be promptly and thoroughly investigated. All investigations will be conducted in a professional manner, and to the fullest extent possible. The University intends that these investigations will be kept confidential within the limits of the law. Where sexual harassment has occurred, the University will take appropriate and timely disciplinary action.

As used in this policy, the term "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made, either explicitly or implicitly, a term or condition of a person's employment or education; or

2. submission to or rejection of such conduct by a person is used or threatened as the basis for academic or employment decisions, or evaluations affecting that person; or

3. such conduct has the purpose or effect of a) unreasonably interfering with a person's academic or professional performance or b) of creating an intimidating, hostile, or offensive employment, educational, or campus environment for any person or group of persons.

Other sex-related behaviors, that may or may not be definable as sexual harassment, will hereinafter be referred to as "sex-related misconduct".

B. Examples of Sexual Harassment

The examples of sexual harassment given below are intended to illustrate inappropriate behavior, but are not all-inclusive. Courts in this country have recognized two types of sexual harassment: The first type is quid pro quo ("something for something") harassment, where sexual activity is demanded or offered in exchange for an actual, tangible job or benefit; the second type is hostile environment harassment, where there is not necessarily a loss or gain of a tangible job or benefit. The University intends for this policy to include quid pro quo harassment where sexual activity is demanded or offered in exchange for a tangible academic benefit, and hostile environment harassment where there is not necessarily a loss or gain of a tangible academic benefit.
Examples of unacceptable verbal or physical conduct which may constitute sexual harassment include, but are not limited to:

1. Direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, grades, or letters of recommendation;

2. Intimidating conduct which exerts pressure for sexual activity;

3. A pattern of conduct in class or in the workplace (not legitimately related to the subject matter of the course or job) which would discomfort or humiliate a reasonable person at whom the conduct was directed, through comments of a sexual nature, such as sexually explicit statements, questions, jokes, anecdotes, or references to sexual orientation.

4. A pattern of conduct that would discomfort or humiliate a reasonable person at whom the conduct was directed, through one or more of the following: a) inappropriate touching, patting, hugging, or brushing against a person's body, b) repeated or unwanted staring, c) remarks of a sexual nature about a person's clothing or body, or d) remarks about a person's sexual orientation, sexual activity, or speculations about previous sexual experience;

5. A pattern of conduct which a reasonable person would identify as one or more of the following: a) inappropriate remarks or humor based on gender stereotypes or sexual orientation, b) inequities in references to males and females (e.g., "men and girls"), c) the assignment according to gender stereotype of tasks that are not gender specific.

This policy is not intended to limit legitimate claims of academic freedom. In particular, the policy does not limit classroom teaching concerning sexual topics legitimately related to the content or purposes of a course, even though such topics may elicit discomfort in some class members.

**C. University Administration of Policy**

Persons in positions of authority have specific responsibility in the area of sexual harassment. Particular sensitivity should be addressed to such questions as whether consent is as free as it seems, and to the inherent conflicts of interest in personal relationships where professional and educational relationships are also involved.

When faculty or staff members suspect sexual harassment on the part of a person or persons under their jurisdiction, they should immediately take action by contacting the Sexual Harassment Officer to discuss the situation and determine a course of action.

A Sexual Harassment Officer, appointed by the President of the University, is available to assist the University community in dealing with all complaints of sexual harassment and sex-related misconduct (even if the sex-related misconduct is not processed through the Sexual Harassment Policy).

The duties and responsibilities of the Sexual Harassment Officer include:

1. Receiving notification from University officials and/or members of the University community of all allegations of sex-related misconduct including, but not limited to, “sexual harassment” and “sexual misconduct”;

2. Reporting, as needed, to the University community allegations of sexual harassment and sexual misconduct and the subsequent resolution of those reported incidents;

3. Reporting the initiation of any formal complaint to the appropriate member of the University's Senior Staff and to the Associate Vice President for Human Resources;
4. Serving as Chair of the Sexual Harassment Advisory Committee and reporting, as needed, to the University community the activities of the Committee;

5. Arranging for training of Sexual Harassment Advisors;

6. Counseling and assisting Sexual Harassment Advisors throughout the year;

7. Initiating the informal and/or formal complaint processes as appropriate; be involved in resolutions of the incidents as appropriate.

The Sexual Harassment Advisory Committee is appointed by the President of the University and consists of two students, two faculty members, and two staff/administrators. Members of this Sexual Harassment Advisory Committee are hereinafter referred to as "Sexual Harassment Advisors." Members of the University community interested in serving as Sexual Harassment Advisors submit applications to the Provost (faculty), the Vice President for Fiscal Affairs (staff), or the Vice President and Dean of Students (students) during the spring semester prior to the academic year of service. The three ex officio members of the Sexual Harassment Advisory Committee (the Sexual Harassment Officer, the Associate Vice President for Human Resources, and the Associate Provost) forward recommendations to the President for approval. Sexual Harassment Advisors are appointed for staggered terms of two academic years, with interim arrangements when necessary for summer.

The Sexual Harassment Advisors responsibilities include:

1. Providing information regarding the procedures for handling complaints to members of the University community;

2. Offering support to persons who suspect that they have been victims of sexual harassment;

3. Offering support to persons who have been accused of sexual harassment;

4. Actively participating in the Sexual Harassment Advisory Committee; and

5. Willingly participating in training for handling sexual harassment situations.

D. General Procedures for Handling Complaints

Members of the Southwestern University community who believe that they have been sexually harassed may turn for assistance to the University's Sexual Harassment Officer, the Associate Vice President for Human Resources, the appropriate supervisor, the appropriate member of the President’s Senior Staff, or any Sexual Harassment Advisor. At this or any subsequent stage, the complainant may ask for the assistance of a Sexual Harassment Advisor, keeping in mind that the role of such an advisor is to provide assistance and support and such advisors are not part of the official University complaint procedure. Whether or not a person consults with a University official or a Sexual Harassment Advisor, she or he has the option of taking an informal or formal action according to the procedures outlined below.

A party accused of sexual harassment may also turn for assistance to any Sexual Harassment Advisor, and, if requested to do so, said advisor shall accompany the accused through any informal and/or formal complaint procedure.
Advisory Option

Any person who believes that she or he has been sexually harassed is encouraged to seek advice from the Sexual Harassment Officer or a Sexual Harassment Advisor. These individuals have been trained and are familiar with the University's procedures for handling such complaints. The Sexual Harassment Officer or Sexual Harassment Advisor who is contacted will be available to aid a member of the University Community in the following ways:

1. Provide immediate support by listening to and discussing the allegation with the advisee;

2. Discuss with the advisee the definition of sexual harassment to help the advisee reach a reasonable decision whether sexual harassment as defined in this policy has occurred;

3. Outline for the advisee possible courses of action, including the Informal and Formal Complaint Procedures described in this policy and including selection of the authority who should be notified should the advisee wish to make a formal complaint;

4. Discuss with the advisee possible effects of the various courses of action, including consequences to the advisee and to the person against whom the advisee has a complaint;

5. Accompany the advisee through the University's informal and/or formal complaint procedure, if the advisee has decided to follow such a procedure and wants her or his Sexual Harassment Advisor present.

A Sexual Harassment Advisor will maintain confidentiality within the limits of the law. Unless a complainant gives a Sexual Harassment Advisor permission to disclose specific information concerning the alleged act of harassment, a Sexual Harassment Advisor will limit his or her assistance to the items described in 1 through 5 above and will not discuss with or report the alleged act of harassment to any person other than the Sexual Harassment Officer. The complainant should realize, however, that the Sexual Harassment Advisors, the Sexual Harassment Officer, and the University cannot take any actions to attempt to resolve the alleged problem if the complainant desires to keep the allegation and the circumstances surrounding such allegation anonymous. An exception to non-disclosure of anonymous complaints may be made in cases where the Sexual Harassment Officer reasonably believes that the safety of a member of the University community or general public will be at risk; this includes the risk of other individuals being subjected to sexual harassment.

Contact with the Sexual Harassment Officer or a Sexual Harassment Advisor in no way obligates the complainant to pursue an official complaint. The complainant has the option of choosing, upon reflection, not to pursue the matter and not to make contact with the accused. On the other hand, the complainant may pursue an Informal or Formal Complaint Procedure.

Informal Complaint Procedure

A common method of utilizing the informal approach is through a letter written by the alleged victim to the accused person. Other options may include, but are not limited to, the use of a mediator or a facilitated face-to-face meeting between the parties. If a letter is used, it generally should address three matters:

1. The facts of what has occurred, told without evaluation. These facts should be as detailed and precise as possible, with dates, places, and a description of the incident(s).

2. How the writer feels about the events.
3. How the writer wants the matter resolved and within what time frame. This part should include a statement that if the matter is not resolved satisfactorily within a specified amount of time the writer may take formal action.

The writer has the option of preparing such a letter with the assistance of the Sexual Harassment Officer and a Sexual Harassment Advisor. If the writer declines that option, the writer is to have the Sexual Harassment Officer review the communication prior to it being sent. In all cases, the Sexual Harassment Officer conducts the final review of the letter. The letter may be delivered in person, by registered or certified mail, or by the Sexual Harassment Officer. The accused person may reply to a writer who wishes to remain anonymous through the Sexual Harassment Officer. The writer should keep a copy of the letter, but not send copies to others. If the letter does not achieve its purpose, it can be used to support a formal complaint. Although it is the personal decision of the complainant as to whether she or he wishes to remain anonymous, choosing to remain anonymous may hinder resolution of the matter in circumstances where the accused is unsure or does not clearly recall the incident leading to the complaint.

Formal Complaint Procedure

In a formal complaint action, the complainant must notify in writing an appropriate University official, with or without the help of the Sexual Harassment Officer or a Sexual Harassment Advisor. If the complaint involves a student, the Vice President and Dean of Students will be notified; if it involves a faculty member, the Provost; if it involves staff/administration, the Vice President for Fiscal Affairs; in any of the above cases, the University's Sexual Harassment Officer will be notified. Should either the Vice President and Dean of Students, the Provost, or the Vice President for Fiscal Affairs be notified of a complaint involving sexual harassment, such party shall inform the Sexual Harassment Officer in a timely manner of any such allegations and actions regarding sexual harassment. In any situation where the Sexual Harassment Officer is notified of the complaint because the accused is the party set forth above to whom complaints should be given, then the Sexual Harassment Officer will make the determinations described in 1, 2, and 3 below and report directly to the President of the University.

Once the Sexual Harassment Officer is notified of allegations concerning sexual harassment and the complainant's desire to proceed with a formal complaint against the accused, a prompt investigation by the University will follow. The University is committed to investigate formal complaints which it receives and to deal appropriately with any person found to have violated the policy. Proceedings under the Formal Complaint Procedure shall take place in accordance with the following guidelines:

1. Faculty: Upon receipt of a formal, written complaint involving a faculty member, the Provost shall determine, with the assistance of the Sexual Harassment Officer, and with or without the assistance of the appropriate Dean or Department Chair, depending on whether or not the Provost elects to notify such Dean or Chair, whether further investigation or recommendation for sanctions is warranted. The Provost shall notify the accused faculty member as soon as reasonably possible of the complaint and the Provost's finding as to whether further investigation or recommendation for sanctions is warranted.

2. Staff: Upon receipt of a formal, written complaint involving a staff member/administrator, the Vice President for Fiscal Affairs shall determine, with the assistance of the Sexual Harassment Officer, and with or without the assistance of the appropriate administrator/department head, whether further investigation or recommendation for sanctions is warranted. The Vice President for Fiscal Affairs shall notify the accused staff member/administrator as soon as reasonably possible of the complaint and the finding as to whether further investigation or recommendations for sanctions is warranted.

3. Students: Upon receipt of a formal, written complaint involving a student, the Vice President and Dean of Students shall determine, with the assistance of the Sexual Harassment Officer, whether further investigation or recommendation for sanctions is warranted. The Vice
President and Dean of Students shall notify the accused student as soon as reasonably possible of the complaint and the finding as to whether further investigation or recommendation for sanctions is warranted.

With respect to any formal written complaint filed involving faculty, staff, or students, as described in 1, 2, or 3 above, if the circumstances warrant it, the Provost, the Vice President for Fiscal Affairs, or the Vice President and Dean of Students, as the case may be, may convene an ad hoc committee to investigate, review, and summarize the facts surrounding the case and make recommendations for resolution of the complaint. If appropriate, the Sexual Harassment Officer may recommend an ad hoc committee to the respective Senior Staff member. No member of the committee shall have been the complainant or the accused. The Sexual Harassment Officer shall chair any such ad hoc committee unless such person is either the complainant or the accused. The ad hoc committee will conduct its own inquiry to gather whatever information it deems necessary to assist it in reaching a determination as to the merits of the allegations. The ad hoc committee will summarize the information gathered from the inquiry for the appropriate party who convened the committee. The Sexual Harassment Officer, as chair of the ad hoc committee, will consult with the appropriate party who convened the committee to discuss recommendations regarding resolution of the complaint(s).

Once the Senior Staff member has received the report of the ad hoc committee convened (if he or she has not served on the committee or has otherwise reached a basis for making a decision) and has consulted with the Sexual Harassment Officer, then he or she shall determine the judgment and sanctions, if any, and shall submit his or her decision in writing to the President. The President shall review the decision and if in agreement with the recommendations, the President shall notify the accused faculty, staff, or student, as well as the complainant, of the decision. If the President does not agree with the decision, he or she shall refer it back to the appropriate Senior Staff member. If either side chooses to appeal the decision for any reason, including but not limited to alleged procedural errors or alleged new evidence, such appeals shall be made to the President. Requests for appeals should be made in writing and addressed to the President within 30 days after notification of the original decision.

E. University Disciplinary Actions and Penalties

Students found guilty of sexual harassment may receive a warning, specific penalties, disciplinary probation, suspension, or expulsion, as explained in the Student Handbook under Personal Conduct Policies.

Faculty members found guilty of sexual harassment may receive penalties ranging from a warning to dismissal with cause. If procedures for dismissal with cause are instituted on the basis of sexual harassment, those procedures must conform to the policy and procedures adopted at the January 27, 1978, meeting of the Board of Trustees and as may be subsequently amended. (See the section in the Faculty Handbook on Dismissal with Cause, Section IV.)

Staff and administrative members found guilty of sexual harassment may receive penalties ranging from a warning to immediate dismissal as described within the Performance Management Guidelines section of the Staff Handbook.

The University will take timely and appropriate corrective action to end sexual harassment when it is known to have occurred.

F. Retaliation

Except in regard to false accusations as detailed below, no retaliation by any member of the Southwestern community may be taken against any person because she or he makes a complaint concerning sexual harassment or against any member of the University community who serves as an advocate for a party in any such complaint. All reasonable action will be taken to assure that the complainant and those testifying
or participating in other ways in the complaint resolution process will suffer no retaliation as a result of their participation.
G. False Accusations

While the University is committed to preventing and punishing unlawful discrimination, harassment, and retaliation, it also recognizes that false accusations of sexual harassment or retaliation may harm an innocent party who has been falsely accused. Accordingly, any person, who, after an investigation, is found to have knowingly made a false accusation of sexual harassment or retaliation will be subject to appropriate disciplinary action. However, if a person makes a report of what he or she in good faith believes to be sexual harassment or retaliation, the person will not be subject to disciplinary action even if the person turns out to be mistaken or there has been a finding of no sexual harassment or retaliation.

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Sexual Harassment Advisors

A listing of Sexual Harassment Advisors will be made available to the University community at the beginning of each academic year. General information regarding the University’s Sexual Harassment Policy, the Sexual Harassment Officer, and the Sexual Harassment Advisory Committee is available on the University’s Web site at www.southwestern.edu/acsh/.