

# I. Sexual Harassment Policy

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. Administrative updates were approved by the Strategic Planning and Budget Committee in April, 2015. Administrative updates were completed by the Title IX Compliance Committee in January, 2018.

## 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 University policy, Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, the Texas Commission on Human Rights Act, and Title IX of the Education Amendments of 1972.

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 or other appropriate remedial 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 "sexual misconduct."

Retaliation based on sexual harassment is also prohibited when a person participated in an activity under this policy or protected by law; the person suffers an adverse employment or other action; and a causal connection exists between the protected activity and a materially adverse action. To violate this policy, there must be a reasonable belief that the protected activity is based on a violation of this policy or the law.

In all cases, the provisions and requirements of the law will prevail over this policy, and a violation of this policy does not necessarily give rise to a legal claim where one otherwise did not exist.

#### B. EXAMPLES OF SEXUAL HARASSMENT AND RETALIATION

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. This policy includes quid pro quo harassment and hostile environment harassment.

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 reasonably or 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. An example of unacceptable conduct which may constitute retaliation, includes:

1. A person covered by this policy reasonably believes they have been the subject of prohibited harassment and makes a complaint regarding same. Retaliation occurs when that person suffers a material adverse action (e.g., employment termination or discipline) because they complained about conduct reasonably believed to violate the sexual harassment policy.

#### C. UNIVERSITY ADMINISTRATION OF POLICY

Persons in positions of authority have specific responsibility in the areas covered by this policy. 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 a University member suspects sexual harassment, sexual misconduct, or retaliation which involves a University employee, they should immediately take action by contacting the Sexual Harassment Officer (SHO) to discuss the situation and determine a course of action.

A SHO, appointed by the President of the University, is available to assist the University community in dealing with all complaints of sexual harassment, sexual misconduct, and retaliation (even if the sexual misconduct is not processed through the Sexual Harassment Policy). The SHO works in close coordination with the University's Title IX Coordinator, Deputy Title IX Coordinator, and other appropriate University officials.

The duties and responsibilities of the SHO include, but are not limited to:

1. Receiving notification from University officials and/or members of the University community of all allegations of sexual misconduct including, but not limited to, “sexual harassment” or “retaliation;”
2. Serving as a member of the University’s Title IX Compliance Committee (an administrative working group) and also as an ex-officio member of the University’s Sexual Assault Risk Reduction Committee;
3. Reporting, through the Title IX Compliance Committee, to the University community allegations of sexual harassment, sexual misconduct, and retaliation, and the subsequent resolution of those reported incidents not otherwise reported by the University;
4. Reporting the initiation of any formal complaint to the appropriate member of the University’s President’s Staff and to the Associate Vice President for Human Resources (AVPHR);
5. Initiating the informal and/or formal complaint processes as appropriate; being involved in resolutions of the incidents as appropriate.

#### D. GENERAL PROCEDURES FOR HANDLING COMPLAINTS

Members of the Southwestern University community who believe that they have been sexually harassed or retaliated against (or those who have been accused of sexual harassment) may turn for assistance to the University’s SHO, the AVPHR, the appropriate supervisor, the appropriate member of the President’s Staff, or the Associate Vice President for Academic Affairs (AVPAA), and should not feel compelled to seek assistance from any person or persons who may be the perpetrator of the alleged wrongful conduct. The President and members of the President’s Staff may appoint a designee to serve on their behalf. The complainant has the option of taking an informal or formal action according to the procedures outlined below.

Any person who believes that they have been sexually harassed or retaliated against is encouraged to consult the SHO, the AVPHR, or the AVPAA. These individuals are administrators whose job responsibilities include handling such complaints and 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;
2. Discuss the definition of sexual harassment or retaliation to reach a reasonable decision as to whether sexual harassment or retaliation as defined in this policy has occurred;
3. Outline possible courses of action, including the Informal and Formal Complaint Procedures described in this policy and including who should be notified should the individual wish to make a formal complaint.

The University will comply with all obligations under the law in connection with the handling and investigation of complaints. These individuals will maintain confidentiality within the limits of the law, including Title IX, Title VII, applicable state law and related

regulations. Unless a complainant gives the SHO, AVPHR, or AVPAA permission to disclose specific information concerning the alleged act of harassment, these individuals may, but are not required to, limit their assistance to the items described in 1 through 3 above and will not discuss with or report the alleged act of harassment to any person other than the SHO (unless required by law, including Title IX, Title VII, applicable state law, and related regulations). The complainant should realize, however, that these individuals and the University may be impaired in taking 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 SHO reasonably believes that the safety of a member of the University community or general public will be at risk or where the SHO reasonably believes a violation of the law may have occurred; this includes the risk of other individuals being subjected to sexual harassment or retaliation.

Contact with the SHO, AVPHR, or AVPAA in no way obligates the individual to pursue an official complaint. The SHO, AVPHR, or AVPAA, however, may be required to independently report the incident to appropriate University officials who may initiate an investigation under the law, including Title IX, Title VII, state law and related regulations. The complainant has the option of choosing, upon reflection, not to pursue the matter and not to make contact with the accused, or to pursue the Informal or Formal Complaint Procedure. For the sake of clarity, a complainant is not required to first pursue the Informal Complaint Procedure, and may at any time initiate the Formal Complaint Procedure.

### ***Informal Complaint Procedure***

A common method of utilizing the informal approach is through a letter written by the complainant 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 the complainant elects a mediated or face-to-face meeting, they will coordinate such action through the SHO.

If the complainant elects to write a letter, 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 complainant feels about the events.
3. How the complainant wants the matter resolved and within what timeframe. This part should include a statement that, if the matter is not resolved satisfactorily within a specified amount of time, the complainant may take formal action.

The complainant has the option of preparing such a letter with the assistance of the SHO, AVPHR, or AVPAA. If the writer declines that option, the writer is encouraged to have the SHO, AVPHR, or AVPAA review the communication prior to it being sent. In all cases, the SHO conducts the final review of the letter. The letter may be delivered in person, by registered or certified mail, or by the SHO. The accused person may reply to a writer who wishes to remain anonymous through the SHO. 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 they wish 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 SHO, AVPHR, or AVPAA. If the complaint involves a student, the Vice President for Student Life will be notified; if it involves a faculty member, the Dean of the Faculty; if it involves staff/administration, the Vice President for Finance and Administration; in all of the above cases, the University's SHO will be notified. Should either the Vice President for Student Life, the Dean of the Faculty, or the Vice President for Finance and Administration be notified of a complaint involving sexual harassment, such party shall inform the SHO in a timely manner of any such allegations and actions regarding sexual harassment or retaliation. In any situation where the SHO is notified of the complaint because the accused is the party set forth above to whom complaints should be given, then the SHO will make the determinations described in 1, 2, and 3 below and report directly to the President of the University.

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

1. Faculty: Upon receipt of a formal, written complaint in which the accused party is a faculty member, the Dean of the Faculty shall determine, with the assistance of the SHO, and with or without the assistance of the appropriate associate dean and/or department chair, depending on whether or not the Dean of the Faculty elects to notify such associate dean or department chair, whether further investigation or recommendation for sanctions is warranted. The Dean of the Faculty shall notify the accused faculty member as soon as reasonably possible of the

complaint and the Dean's finding as to whether further investigation or recommendation for sanctions is warranted.

2. Staff: Upon receipt of a formal, written complaint in which the accused party is a staff member/administrator, the Vice President for Finance and Administration shall determine, with the assistance of the SHO, 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 Finance and Administration shall notify the accused staff member/administrator as soon as reasonably possible of the complaint and the finding as to whether further investigation or recommendation for sanctions is warranted.
3. Students: Upon receipt of a formal, written complaint in which the accused party is a student, the Vice President for Student Life shall determine, with the assistance of the SHO, whether further investigation or recommendation for sanctions is warranted. The Vice President for Student Life 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 Dean of the Faculty, the Vice President for Finance and Administration, or the Vice President for Student Life, 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 SHO may recommend an ad hoc committee to the respective President's Staff member. No member of the committee shall have been the complainant or the accused. The SHO 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 information it deems necessary to assist it in reaching a determination as to the merits of the allegation(s). The ad hoc committee will summarize the information gathered from the inquiry for the party who convened the committee. The SHO, as chair of the ad hoc committee, will consult with the party who convened the committee to discuss recommendations regarding resolution of the complaint(s).

Once the President's Staff member has received the report of the ad hoc committee convened (if they have not served on the committee or have otherwise reached a basis for making a decision) and have consulted with the SHO, then they shall submit their recommendation(s) in writing to the President. The President shall review the recommendation(s) and, if in agreement, 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, the President shall refer it back to the appropriate President's 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, state with specificity the grounds and basis for the appeal, and addressed to the President within 30 days after notification of the original decision.

#### E. UNIVERSITY DISCIPLINARY ACTIONS AND PENALTIES

Students found responsible for sexual harassment may receive a warning, specific penalties, disciplinary probation, suspension, or expulsion, as explained in the Student Handbook under Personal Conduct Policies (including Student Sexual Misconduct Policy).

Faculty members found responsible for sexual harassment or retaliation 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 or related retaliation, 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 Dismissal with Cause, Section IV of the Faculty Handbook.)

Staff and administrators found responsible for sexual harassment or retaliation 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 and/or retaliation 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 they make 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. (See discussion in Sections A. and B. above.) All reasonable action will be taken to ensure 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 they 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.