

## **NON-DISCRIMINATION POLICY**

### **POLICY STATEMENT**

Southwestern Adventist University is committed to providing an educational, employment, and business environment free of all forms of prohibited discrimination or harassment. Discrimination or harassment based on one's race, color, gender, national origin, age, disability, or any other protected characteristic provided for by state or federal law (hereinafter referred to as Protected Status) is prohibited at the University (all such discrimination or harassment is hereinafter referred to as Prohibited Conduct). Sexual misconduct, including acts of sexual assault, sexual harassment, stalking and other adverse conduct of a sexual nature is a form of sexual discrimination and is prohibited.

As a religious institution, the University is exempt from certain provisions and retains the right to make legitimate employment, admission, and educational decisions on the basis of religious tenets, consistent with applicable laws (Title IX, First Amendment, and Religious Freedom Restoration Act).

Southwestern Adventist University encourages individuals (including, but not limited to complainants and witnesses) to report any incident of sexual misconduct. Upon the Title IX Coordinator receiving the report, the University has been given notice and has a responsibility to respond and take action. This policy and the information outlined within will highlight the resources and tools available for all students and employees, as well as outline the procedures for investigation and resolution of complaints made pursuant to this policy.

Southwestern Adventist University prohibits retaliation against any individual who makes a report under this policy in good faith or participates in the proceedings outlined within this policy. The University believes that any person should feel comfortable reporting their concerns without fear of retaliation and will take responsive action against any person or group who attempts to retaliate.

#### **I. Scope**

##### **A. Generally**

This Policy applies to Prohibited Conduct in all University education programs and activities and to all participants in such education programs and activities, including administrators, faculty, staff, students, volunteers, contractors, and guests. This Policy covers Prohibited Conduct that occurs on campus, in connection with an official University program or activity (regardless of location), and to off-campus conduct when the conduct could deny or limit a person's ability to participate in or benefit from the University's programs and activities or when the University, in its sole discretion, has an identifiable interest in the off-campus conduct.

## **B. Interaction with University Title IX Policy**

All allegations of sex discrimination which rise to the level of Sexual Harassment occurring within the University's Education Programs and Activities as defined by the University's Title IX Policy<sup>1</sup> are handled exclusively pursuant to the procedures outlined in that Policy. All other acts of Discrimination—including acts of sex discrimination which do not rise to the level of Sexual Harassment occurring within the University's Education Programs and Activities as defined by the University's Title IX Policy—are handled pursuant to this Policy.

### III. Definitions of Prohibited Conduct

The following are categories of conduct that constitute Prohibited Conduct and may result in disciplinary action when committed by University employees or students.

- A. "Discrimination"** is conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their education or employment because of their Protected Status.
- B. "Harassment"** as used in this Policy is verbal and/or physical conduct (i) that is severe or pervasive, (ii) that is based on an individual's Protected Status, and (iii) that unreasonably interferes with the individual's work or academic activities, or that creates an intimidating, hostile, or offensive University environment.
- C. "Other Sexual Harassment"** as used in this Policy means unwelcome, sex-based verbal or physical conduct that:
  - 1. in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
  - 2. in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from the University's educational programs or activities.

Other Sexual Harassment does not include allegations of sex discrimination which rise to the level of Sexual Harassment occurring within the University's Education Programs and Activities as defined by the University's Title IX Policy.

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<sup>1</sup> Available at <https://swau.edu/campus-life/title-ix/>

- D. **“Sexual Exploitation”** occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own benefit, or to benefit anyone other than the affected individual, and that behavior does not otherwise constitute other Prohibited Conduct.

Examples of Sexual Exploitation include, but are not limited to:

- causing or attempting to cause the Incapacitation<sup>2</sup> of another individual for sexual purposes;
  - electronically recording, videoing, photographing, or transmitting sexual sounds or images of another individual without their Consent;
  - allowing a third-party to observe sexual acts without all parties’ Consent;
  - engaging in voyeurism (*e.g.*, watching private sexual activity without the Consent of the participants or viewing another person’s intimate parts (including genitalia, breasts, or buttocks) in a place where that person would have a reasonable expectation of privacy); or
  - knowingly exposing another individual to a sexually transmitted disease/infection or HIV.
- E. **“Other Unprofessional/Inappropriate Conduct”** is behavior or conduct of a sexual nature that is unprofessional and/or inappropriate for the educational and/or working environment, but does not rise to the level of Sexual Harassment or other form of Prohibited Conduct outlined above.
- F. **“Retaliation”** is any attempt to seek retribution against an individual or group of individuals involved in filing a complaint or report under this Policy, filing an external complaint, participating in a disciplinary process, or opposing in a reasonable manner an action believed to constitute a violation of this Policy. Retaliation can take many forms, including abuse or violence, threats, and intimidation. Actions in response to a good faith report or response under this Policy are considered retaliatory if they have a materially adverse effect on the working, academic or University-controlled living environment of an individual; or if they hinder or prevent the individual from effectively carrying out their University responsibilities. Any individual or group of individuals can engage in retaliation and will be held accountable under this Policy.
- G. **“Complainant”** means an individual who is alleged to be the victim of Prohibited Conduct.<sup>3</sup>

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<sup>2</sup> This Policy adopts by reference the definitions of Incapacitation, Consent, and Coercion provided in the University’s Title IX Policy.

<sup>3</sup> A Complainant and Respondent are each individually a “party” and collectively the “parties” with respect to a complaint under this Policy.

H. **“Respondent”** means an individual who has been reported to be the perpetrator of Prohibited Conduct.

#### IV. Reporting Complaints of Prohibited Conduct

Community members who experience or witness Prohibited Conduct should submit a complaint to the appropriate University administrator. The following offices have been designated to handle complaints of a violation of this Policy:

##### **Student Complaints**

James The  
Vice President for Student Services  
[jthe@swau.edu](mailto:jthe@swau.edu)  
(817)202-6719

##### **Employee Complaints**

Genelle Martin  
Director of Human Resources  
[genelle@swau.edu](mailto:genelle@swau.edu)  
(817)202-6214

While verbal reports of Prohibited Conduct will be received and responded to as appropriate considering the wishes of the reporting individual(s) and the circumstances of each case, the University strongly recommends reports of violations of this Policy be submitted in writing. The written complaint should identify the parties involved; describe the Policy violation, including when and where it occurred; and identify by name or description any witnesses and/or evidence. Written complaints will be treated as confidentially as practical and shared only on a need-to-know basis.

#### V. Supportive Measures

Regardless of the complaint resolution process utilized in response to a complaint of Prohibited Conduct, the University will, to the extent practicable based on the University’s resources, provide the Complainant with support and resources to restore or preserve equal access to the University’s education programs and activities and/or employment. Such measures are designed to protect the safety of all parties implicated by a report or to deter Prohibited Conduct. Supportive measures may include, but are not limited to: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

## VI. Complaint-Resolution Process

### **A. Receipt of a Complaint and Preliminary Assessment**

Upon receipt of a complaint, an appropriate University administrator (hereinafter the “Administrator”) will conduct a preliminary inquiry designed to assess:

- the institutional policy or policies potentially invoked by the alleged conduct,
- the appropriate University official to respond to the complaint, and
- the best path of resolution for the complaint.

In the event the Administrator determines there are no reasonable grounds for believing the conduct at issue constitutes a violation of this Policy, the Administrator will close the complaint.

### **B. Informal Resolution**

The Administrator will determine whether informal resolution is an appropriate mechanism of resolution based on the information provided about the incident. Options for informal resolution include, but are not limited to, mediation, restorative justice, or other form of alternative resolution. If informal resolution is determined to be appropriate, the Administrator or their designee will meet separately with both parties to discuss an informal resolution based on the information available. If the proposed resolution satisfies the University’s obligation to provide a safe and non-discriminatory environment for the University Community, the resolution will be implemented, and the matter will be closed. The Human Resources and/or Student Life offices will maintain records of all reports and conduct referred for informal resolution.

### **C. Formal Resolution Procedures**

If the Administrator determines that a formal investigation is warranted to resolve a complaint, the University will determine whether an employee or student is responsible for a violation of this Policy and what, if any, corrective action is appropriate, in accordance with the procedures described below.

#### **1. Assignment of Investigator**

The Administrator will appoint an investigator or investigative team with experience investigating allegations of discrimination and harassment. The investigator(s) may be an employee of the University or an external investigator engaged to assist the University in its fact gathering.

#### **2. The Investigation**

The investigation will be conducted in a manner appropriate in light of the circumstances of the case. The investigation may include, but is not limited to, conducting interviews of the complainant(s), the respondent(s), and any witnesses (witnesses must have observed the acts in question or have information relevant to the incident); reviewing law enforcement investigation documents, if applicable; reviewing personnel files; and gathering, examining, and preserving other relevant documents and physical, written, and electronic evidence (including text messages and other phone records, social media posts, security camera footage, etc.). The parties will be afforded an opportunity to identify and present relevant witnesses and evidence to the investigator, as well as identify witnesses who may have relevant information.

### 3. The Investigator's Report and Conclusions

The investigator will make conclusions as to whether the respondent violated any provision of this Policy. The standard of proof shall be by a preponderance of the evidence. The investigator's findings and conclusions may be shared with the Administrator in a written report.

- a. **Determination of No Policy Violation.** If the investigator determines that the respondent did not violate any provision of this policy, the Administrator will determine and document the appropriate resolution of the complaint and notify the parties of that determination. Appropriate resolutions may include, but are not limited to, dismissal of the complaint, conferences with one or more of the parties, and the introduction of remedial and community-based efforts such as educational initiatives and/or trainings.
- b. **Determination of a Policy Violation.** If the investigator determines there is sufficient information to find, by a preponderance of the evidence, that the respondent violated this Policy, the matter will be referred for corrective action.

### **D. Corrective Action**

If the Respondent is found responsible, corrective action will be addressed as follows:

1. For Policy violations by employees (including staff, faculty, and students acting in their capacity as student employees), the Director of Human Resources will consult with the individual supervisor and department head to determine appropriate corrective action up to and including termination of employment.
2. For Policy violations by contractors, vendors, and others doing business with the University, the Vice President of Financial Administration will consult with the contracting department to determine the appropriate resolution, up to and including termination of a contractual relationship.

3. For Policy violations by students, the Vice President for Student Services will take corrective action as outlined in the University's Student handbook.<sup>4</sup>

**Mandatory Transcript Notations.** Texas law requires a notation on the transcript of any student who is ineligible to reenroll in the University for a reason other than an academic or financial reason. Therefore, this requirement applies to violations this Policy that result in ineligibility to enroll in the University for any period of time, such as suspension and expulsion. In addition, if a student withdraws while there are pending disciplinary charges that may result in the student becoming ineligible to reenroll in the University for a reason other than an academic or financial reason, the University will not end the disciplinary process until a final determination of responsibility has been made. A disciplinary charge becomes a pending matter upon the initial receipt of the complaint, whether oral or written.

### **E. Appeals**

Appeals of findings of responsibility against Student-Respondents will be handled pursuant to the Student Conduct Appeals process contained in the University's Student Handbook.

Appeals of findings of responsibility against Employee-Respondents will be handled pursuant to the applicable policies found in the Faculty & Staff Handbook.<sup>5</sup>

#### **E. *Knowingly Filing a False Complaint***

Knowingly filing a false complaint is a violation of this Policy. Such conduct may result in corrective action up to and including separation from the University.

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<sup>4</sup> Available at [https://drupal9.swau.edu/sites/default/files/2022-12/Student%20Handbook%2021-22.pdf?\\_ga=2.38280931.1378939741.1673020420-637681058.1646866299](https://drupal9.swau.edu/sites/default/files/2022-12/Student%20Handbook%202021-22.pdf?_ga=2.38280931.1378939741.1673020420-637681058.1646866299)

<sup>5</sup> See the University Faculty & Staff Handbook