

## POLICY STATEMENT

***No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity.***

Southwestern Adventist University is committed to providing an educational, employment, and business environment free from Sexual Harassment. Sexual Harassment, including acts of Sexual Assault, Dating Violence, Domestic Violence, and Stalking and other adverse conduct of a sexual nature is a form of sexual discrimination and is prohibited.

Southwestern Adventist University encourages all individuals to report any incident of Sexual Harassment. 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.

Southwestern Adventist University prohibits the retaliation of any individual who makes a report under this policy in good faith, participates in the proceedings outlined within this policy, or opposes in a reasonable manner, outcomes as a result of 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 do so.

Southwestern Adventist University complies with Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations (*see* 34 C.F.R. § 106 *et seq.*), which prohibits discrimination on the basis of sex in the University's programs and activities and retaliation; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA); Title VII of the Civil Rights Act of 1964 (Title VII); Chapter 21 of the Texas Labor Code; and other applicable federal and state laws.

## RESPONSIBILITY

### Title IX Coordinator

Southwestern Adventist University's Title IX Coordinator is responsible for oversight and implementation of the policies and procedures; ensuring all members of the Title IX team are trained in issues specific to sexual and gender-based harassment and discrimination; and educating employees, students, and the community on reporting procedures and requirements, as well as issues of sexual and gender-based harassment and discrimination.

The Title IX Coordinator acts with independence and authority free of conflicts of interest. Any concerns involving a conflict of interest by the Title IX Coordinator should be sent directly to the University President, Ana Patterson at [pattersonam@swau.edu](mailto:pattersonam@swau.edu). Any concerns regarding a potential conflict of interest with any other Title IX office member should go to the Title IX Coordinator. Any inquiries regarding policies or procedures, or complaints regarding anyone under the purview of the University, which include sexual or gender-based discrimination and harassment, should be referred to the Title IX Coordinator:

Elizabeth Page  
100 W. Hillcrest Street  
Keene, TX 76058  
(817)202-6743  
[epage@swau.edu](mailto:epage@swau.edu)

### Title IX Decision Maker

The Decision Maker acts independently of the Coordinator and Investigators. He or she must assess the relevant evidence, including party and witness credibility, to decide if the claimant has met a burden of proof showing the respondent to be responsible for the alleged sexual harassment.

Renard Doneskey  
Professor & Department Chair  
(817)202-6265  
[doneskey@swau.edu](mailto:doneskey@swau.edu)

### Title IX Investigators

Southwestern Adventist University engages several Investigators who are responsible for impartially gathering all relevant evidence, including party and witness statements. They receive training annually to ensure they are able to carry out their duties responsibly and without bias. Investigators are selected annually; however, the University does not impose a limit on term of service.

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

Keith Beucler  
Associate Director of IT  
(817)202-6420  
[keithb@swau.edu](mailto:keithb@swau.edu)

Matthew Agee  
Associate Director of Campus Security  
(817)202-6415  
[matthewagee@swau.edu](mailto:matthewagee@swau.edu)

Connie Jenkins  
Assistant Director of Admissions  
(817)202-6252  
[cjenkins@swau.edu](mailto:cjenkins@swau.edu)

Cristina Thomsen  
Librarian  
[thomsenc@swau.edu](mailto:thomsenc@swau.edu)  
(817)202-6732

The University retains discretion to retain and appoint suitably qualified persons who are not University employees to fulfill any function of the University under this policy, including, but not limited to, the investigator, hearing officer, administrative officer, informal resolution officer, and/or appeals officer. The University also retains discretion to appoint two or more persons to jointly fulfill the role of investigator, hearing officer, administrative officer, informal resolution officer, and/or appeals officer.

## APPLICABILITY AND SCOPE

### I. Individuals covered under this policy

This policy applies to all University students whether housed on campus or off campus; employees including Faculty, Staff, and Administrators; contractors, consultants, and vendors doing business with and/or providing services to the University; individuals who perform duties and services as volunteers; visitors and guests with the University's purview. For the purposes of this policy, "employee" means an individual who receives compensation for work or services for which the University has the right (whether or not it exercises the right) to supervise and control the manner of performance as well as the result of the work or service.

### II. Jurisdiction

Southwestern Adventist University is responsible for conduct that occurs in its Education Programs and Activities within the United States, including conduct occurring:

- On its campus or University grounds;
- In any building owned or controlled by a student organization that is officially recognized by the University;
- During University-sponsored education programs, activities, and/or events regardless of location;
- Through the use of University owned or provided technology resources;

**"Education Programs and Activities"** refers to all the operations of the University, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs.

### III. Community Engagement

The University recognizes there will be times where students may need assistance. This assistance may include direct intervention, alerting law enforcement, seeking assistance from a person in authority, or filing a report of an incident that was witnessed. The University will not tolerate the retaliation of any individual who chooses to act in this regard.

### IV. Other Sex-Based Misconduct

This policy only applies to Sexual Harassment as defined in this policy. The University may refer and resolve complaints of other forms of sex discrimination consistent with other institutional policies, including the University's Non-Discrimination Policy.

## **REPORTING SEXUAL HARASSMENT**

The University recognizes the right of a victim of Sexual Harassment to report the incident to appropriate authorities and to receive a prompt and equitable resolution of the report. The following section outlines the steps the University will take to resolve all allegations of Sexual Harassment. This may also be used to address any misconduct occurring in conjunction with any allegations of harassment whether related or unrelated. All other allegations may be resolved using the University's Student Code of Conduct, Faculty and Staff Handbook, or other applicable policies.

### **I. Immediate Assistance**

In cases of sexual assault or any emergency, the following is encouraged:

- Go to a safe place
- Call someone trusted
- Consider going to the nearest hospital emergency room
  - A medical professional will check for physical injuries, etc.
  - A certified sexual assault nurse examiner can collect evidence should the decision to file a criminal complaint be made.

The University recognizes and supports the right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement. In addition, it is important for a victim of sexual harassment, sexual assault, dating violence, or stalking to go to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after an incident. Being examined as soon as possible, ideally within 72 hours, is important for evidence collection, which may be used to support prosecution should the Complainant decide to pursue criminal charges. If possible, avoid changing clothes, showering, bathing, douching, eating, drinking, and defer the elimination of bodily waste as far as possible before arriving to the emergency room to preserve any DNA evidence. If possible, take extra clothes with you, as clothing may be held for evidence.

Contact Campus Safety:

Matthew Agee, Associate Director of Campus Security  
(817) 202-6415  
<https://swau.edu/campus-life/campus-security/>

### **II. Filing a report**

Any individual may report an alleged incident of Sexual Harassment to the Title IX Coordinator by completing the Title IX Complaint Form found on the University website (<https://swau.edu/campus-life/title-ix/>).

### III. Mandatory Reporting Requirement for Employees

Under Texas law, all University employees, with the exception of Confidential Employees, who:

1. in the course and scope of their employment<sup>1</sup>
2. witnesses or receives information regarding an incident that the employee reasonably believes constitutes Sexual Harassment,<sup>2</sup> Sexual Assault, Dating Violence, or Stalking, which
3. is alleged to have been committed by or against a person who was a student enrolled at or an employee of the University at the time of the incident

must promptly report the incident to the University's Title IX Coordinator.

**Writing required.** Reporting by utilizing the University's online incident reporting form is the preferred method of communicating incidents promptly, so that a record is made of the time and all factual details disclosed in the initial report. An email or written memo to the Title IX Coordinator is also acceptable if it can be delivered to a Coordinator promptly after the employee's duty to report arises.

**Report Contents.** The employee's report must include all information concerning the incident known to the employee which is relevant to an investigation under this Policy, including whether the subject of the report has expressed a desire for an institutional response to the incident or made a request for confidentiality in reporting the incident.

**Confidentiality.** Unless waived in writing by the affected individual, the identity of an alleged victim of an incident reported pursuant to this mandatory reporting requirement may be disclosed only to (a) employees of the University who are necessary to conduct an investigation of the report or any related hearings and (b) a law enforcement officer.

**Exceptions.** The mandatory reporting requirement does not apply to:

1. Employees who are themselves the victims of the Sexual Harassment, Sexual Assault, Dating Violence, or Stalking;
2. Instances when an employee receives information about Sexual Harassment, Sexual Assault, Dating Violence, or Stalking at a public awareness event sponsored by the University; or

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<sup>1</sup> "Course and Scope of Employment" means an employee performing duties in the furtherance of the institution's interests.

<sup>2</sup> For the purposes of Texas's mandatory reporting requirement only, "Sexual Harassment" means: means unwelcome, sex-based verbal or physical conduct that (a) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or (b) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from the University's educational programs or activities.

3. Students enrolled at the institution.<sup>3</sup>

**Consequences of Non-Compliance.** An employee who fails to make a required report will be terminated following an investigation and any required process under the applicable personnel policy.<sup>4</sup>

**Immunity.** An employee who, in good faith reports or assists in the investigation of a report under this Policy, or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident, will not be subject to disciplinary action under other University policies for violations that are reasonably related to the incident. This immunity does not apply to a person who perpetrates or assists in the perpetration of the incident reported under this policy or who commits a criminal offense pursuant to Texas Education Code § 51.255(a).

#### IV. Confidential Employees

The University believes it is critical to provide community members who may be experiencing Sexual Harassment information about available institutional resources to empower those individuals to make informed decisions about their rights and options. Members of the University community may speak to officially designated Confidential Employees<sup>5</sup> about Sexual Harassment, Sexual Assault, Dating Violence, or Stalking without the conversation triggering a mandatory report of incident details.

The University has designated the following Confidential Employees:

- Vice President for Spiritual Development
- Assistant Chaplain
- All University Counselors

**A Confidential Employee is not required to report any information that would violate an individual's expectation of privacy, such as the name or other identifying information of an individual who has experienced or allegedly engaged in Sexual Harassment.**

This provision does not affect any employee's duty to report incidents of sexual misconduct as required by other law.

#### V. Requests for Confidentiality

Once a report has been shared with the Title IX Coordinator, a Complainant may request that their identity remain private (request for anonymity), that no investigation occur, or that no disciplinary action

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<sup>3</sup> This exception applies to traditional "students-workers" working part-time at the University, and not full-time employees taking courses at the institution. The exception does not apply to students employed as Resident Assistants.

<sup>4</sup> Employees who fail to make a mandatory report under this provision may also be subject to criminal prosecution pursuant to Texas Education Code section 51.255(a).

<sup>5</sup> Under Texas law, a "Confidential Employee" is an employee (1) designated by the University as a person with whom students may speak confidentially concerning Sexual Harassment, Sexual Assault, Dating Violence, or Stalking or (2) receives information regarding such an incident under circumstances that render the employee's communications confidential or privileged under other law.

be taken. However, the University must determine whether or not they are required to investigate an alleged incident, even against such a request, in order to protect the health and safety of the University community. As necessary, the University reserves the right to initiate a Formal Complaint without the active participation by the victim of alleged misconduct.

If the Title IX Coordinator elects to file a Formal Complaint, the University will inform the alleged victim of the incident of that decision. Even if the University determines not to investigate the alleged incident, the University may take additional steps the University deems necessary to protect the health and safety of the University's community in relation to the alleged incident.

#### VI. Prohibition on False Complaints

Reports of a violation of this Policy must be made in good faith. The University will not tolerate intentional false reporting of incidents. It is also a violation of this Policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy. However, filing a complaint or providing information which a party or witness genuinely believes is accurate (*i.e.*, in "good faith"), but which is ultimately dismissed due to insufficient evidence or found to be untrue, does not constitute intentional false reporting. Any person who knowingly files a false complaint is subject to disciplinary action, up to and including termination or dismissal from the University.

#### VII. Retaliation

No member of the University community may retaliate against another member for filing a complaint pursuant to this Policy or for cooperating in an investigation of a violation of this Policy. Complaints of retaliation should be reported immediately to the University's Title IX Coordinator. Any person who knowingly and intentionally retaliates against an individual is subject to disciplinary action, up to and including termination or dismissal from the University.



## **PRELIMINARY ASSESSMENT OF REPORT**

Upon receipt of a report, the Title IX Coordinator or their designee will conduct a preliminary assessment to determine whether the conduct, as reported, constitutes or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of this Policy, and/or could not constitute Sexual Harassment, even if investigated, the Title IX Coordinator will close the matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act ("FERPA"). The Title IX Coordinator may refer the report to other University offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of this Policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant. If necessary, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if such identity is not apparent from the report.

### **I. Contacting the Complainant**

If a report is not closed as a result of the preliminary assessment and the Complainant's identity is known, the Title IX Coordinator or their designee will promptly contact the Complainant to discuss the following:

- the availability of Supportive Measures with or without filing a Formal Complaint;
- the Complainant's wishes with respect to such Supportive Measures;
- the process for filing and pursuing a Formal Complaint;
- the importance of going to a hospital for treatment and preservation of evidence as soon as practicable after the incident, if applicable;
- the right to report the incident to the institution and to receive a prompt and equitable resolution of the report;
- the right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement; and
- information about resources that are available on campus and in the community.

### **II. Supportive Measures**

Supportive Measures are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the University's Education Programs and Activities without unreasonably burdening another Party, including measures designed to protect the safety of all parties implicated by a report or the University's education environment, or to deter Sexual Harassment. Supportive measures may include: 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.

The Title IX Coordinator or their designee will coordinate all services for individuals impacted by Sexual Harassment. These services include but are not limited to issuing a no-contact order, confidential counseling, academic and residence hall accommodations for students when possible, as well as referrals within the University and in the local community.

Any individual affected by or accused of Sexual Harassment will have equal access to support and counseling services offered through the University. The University encourages any individual who has questions or concerns to seek support of University-identified resources. The Title IX Coordinator is available to provide information about the University's policy and procedure and to provide assistance. A list of University identified resources is located at the following link: <https://swau.edu/academics/counseling-testing-center/>

**Complainant.** The Title IX Coordinator or their designee will offer and make available Supportive Measures to the Complainant upon receipt of a report of Sexual Harassment regardless of whether the Complainant elects to file a Formal Complaint.

**Respondent.** The Title IX Coordinator will notify the Respondent of the availability of Supportive Measures contemporaneously with the Respondent being notified of a Formal Complaint. Once a Formal Complaint has been initiated, the University will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. The University will also offer and make available Supportive Measures to the Respondent prior to the Respondent being notified of a Formal Complaint, if the Respondent requests such measures.

**All Parties.** The University will, to the greatest extent practicable, ensure that each Party or other person who reports an incident of Sexual Harassment is offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident. In addition, all Parties are allowed to drop a course in which both Parties are enrolled without any academic penalty.

**Confidentiality.** The University will maintain the confidentiality of Supportive Measures provided to either a Complainant or Respondent, to the extent that maintaining such confidentiality does not impair the University's ability to provide the Supportive Measures in question.

## FORMAL RESOLUTION PROCESS

### I. Formal Complaint

#### **A. Filing a Formal Complaint**

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that the University investigate and adjudicate a report of Sexual Harassment in accordance with this Policy. Provided, however, that at the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of the University's Education Programs or Activities.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified above. No person may submit a Formal Complaint on the Complainant's behalf.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of the University if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the University Community. Factors the Title IX Coordinator may consider include (but are not limited to):

1. the seriousness of the alleged incident, including (a) whether a weapon was involved in the incident, (b) whether multiple assailants were involved in the incident, and (c) whether the incident is poses a risk of recurrence;
2. whether the institution has received other reports of Sexual Harassment committed by the Respondent;
3. whether the alleged incident poses a risk of harm to others; and
4. any other factors the University determines relevant.

If the Complainant or the Title IX Coordinator files a Formal Complaint, then the University will commence an investigation and proceed to adjudicate the matter. If the University elects to proceed as a Complainant, the University will inform the alleged victim of the incident of that decision. In all cases where a Formal Complaint is filed, the Complainant will be treated as a Party, irrespective of the Party's level of participation.

#### **B. Consolidation of Formal Complaints**

The University may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sexual Harassment arise out of the same facts or circumstances. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in this policy to the singular "Party," "Complainant," or "Respondent" include the plural, as applicable.

### **C. Dismissal Prior to Commencement of Investigation**

In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and must dismiss it if the Title IX Coordinator determines:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of this Policy (*i.e.*, because the alleged conduct did not occur in the University's Education Programs and Activities).

In the event the Title IX Coordinator determines the Formal Complaint should be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other University offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination for purposes of this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

### **D. Notice of Formal Complaint**

Within five days of the Title IX Coordinator receiving a Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

- A physical copy of or hyperlink to this Policy;
- Sufficient details known at the time so that the Parties may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known);
- A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice;
- Notifying the Complainant and Respondent of their right to inspect and review evidence;
- Notifying the Complainant and Respondent of the University's prohibitions on retaliation and false statements; and
- Information about resources that are available on campus and in the community.

Should the University elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the University will provide a supplemental written notice describing the additional allegations to be investigated.

## **E. Presumption of Non-Responsibility**

From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

### II. Interim Removal

At any time after receiving a report of Sexual Harassment, the Title IX Coordinator may remove a student Respondent from the University's education programs and activities on a temporary basis if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. In the event the Title IX Coordinator imposes an interim removal, the Title IX Coordinator must offer to promptly meet with the Respondent provide the Respondent an opportunity to challenge the interim removal.

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff), and in its discretion, the University may place the Respondent on administrative leave at any time after receiving a report of Sexual Harassment, including during the pendency of the investigation and adjudication process.

For all other Respondents, including independent contractors and guests, the University retains broad discretion to prohibit such persons from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

### III. Investigation

The Title IX Coordinator will assign a formal complaint to the Title IX investigation team. Investigators will gather all incident reports, statements, text messages, emails, pictures, etc. directly related to the allegations raised and interview all parties involved. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the University and not with the Parties. Although the length of each investigation may vary depending on the totality of the circumstances, the University strives to complete each investigation within *45 days* of the transmittal of the written notice of Formal Complaint.

#### **A. Witnesses and Evidence**

Both the complainant and the respondent will be given the opportunity to present witnesses and supporting documentation or information. Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant. The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a Party's opportunity to present testimonial and other evidence that the Party believes is relevant to resolution of the allegations in the Formal Complaint. A Party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

### **B. Access to Evidence**

Prior to the completion of the investigation report, the investigator will transmit to each Party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence the University may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a Party or some other source. The parties will have *ten days* in which to submit to the investigator a written response, which the investigator will consider prior to completing the investigation report. The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not duplicate or disseminate the evidence to the public.

### **C. Investigation Report**

After the period for the parties to provide any written response has expired, the investigator will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the investigator will transmit a copy to the Title IX Coordinator. The investigator will also transmit the investigation report to each Party and their advisor, in either electronic or hard copy form.

## **IV. Adjudication**

After the investigator has sent the investigation report to the parties, the Title IX Coordinator will confer with each Party about the Hearing and Administrative Adjudication processes specified below. Additionally, depending on the circumstances, the Title IX Coordinator may confer with both parties about: (a) the option of pursuing an informal resolution of the Formal Complaint; (b) whether the Respondent wants to accept responsibility; or (c) whether the Complainant would like to withdraw the Formal Complaint.

### **A. Hearing Process**

The hearing process for adjudicating Formal Complaints is the default adjudication process for Formal Complaints under this policy. The hearing process will be used to adjudicate all Formal Complaints unless both parties' timely consent to administrative adjudication or informal resolution.

## 1. *Hearing Officer*

The Title IX Coordinator will promptly appoint a hearing officer who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint, at the conclusion of the hearing process. The Title IX Coordinator will ensure that the hearing officer is provided a copy of the investigation report and a copy of all evidence transmitted to the parties by the investigator.

## 2. *Hearing Notice and Response to the Investigation Report*

After the hearing officer is appointed by the Title IX Coordinator, the hearing officer will promptly transmit written notice to the parties notifying the parties of the hearing officer's appointment; setting a deadline for the parties to submit any written response to the investigation report; setting a date for the pre-hearing conference; setting a date and time for the hearing; and providing a copy of the University's Hearing Procedures. Neither the pre-hearing conference, nor the hearing itself, may be held any earlier than *ten days* from the date of transmittal of the written notice.

A Party's written response to the investigation report must include:

- To the extent the Party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history, or for any other reason;
- A list of any witnesses that the Party contends should be requested to attend the hearing pursuant to an attendance notice issued by the hearing officer;
- A list of any witnesses that the Party intends to bring to the hearing without an attendance notice issued by the hearing officer;
- Any objection that the Party has to the University's Hearing Procedures;
- Any request that the parties be separated physically during the pre-hearing conference and/or hearing;
- Any other accommodations that the Party seeks with respect to the pre-hearing conference and/or hearing;
- The name and contact information of the advisor who will accompany the Party at the pre-hearing conference and hearing;
- If the Party does not have an advisor who will accompany the Party at the hearing, a request that the University provide an advisor for purposes of conducting questioning.

A Party's written response to the investigation report may also include:

- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

### *3. Pre-Hearing Conference*

Prior to the hearing, the hearing officer will conduct a pre-hearing conference with the parties and their advisors. The pre-hearing conference will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the pre-hearing conference will be conducted with the hearing officer, the parties, the advisors, and other necessary University personnel together in the same physical location. However, upon request of either Party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

During the pre-hearing conference, the hearing officer will discuss the hearing procedures with the parties; address matters raised in the parties' written responses to the investigation report, as the hearing officer deems appropriate; discuss whether any stipulations may be made to expedite the hearing; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolve any other matters that the hearing officer determines, in the hearing officer's discretion, should be resolved before the hearing.

### *4. Issuance of Notices of Attendance*

After the pre-hearing conference, the hearing officer will transmit notices of attendance to any University employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise the subject to contact the hearing officer immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

The University will not issue a notice of attendance to any witness who is not an employee or a student.

### *5. Hearing*

After the pre-hearing conference, the hearing officer will convene and conduct a hearing pursuant to the University's Hearing Procedures. The hearing will be audio recorded. The audio recording will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the hearing will be conducted with the hearing officer, the parties, the



advisors, witnesses, and other necessary University personnel together in the same physical location. However, upon request of either Party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio. The hearing may, in the hearing officer's discretion, be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

While the Hearing Procedures and rulings from the hearing officer will govern the particulars of the hearing, each hearing will include, at a minimum:

- Opportunity for each Party to address the hearing officer directly and to respond to questions posed by the hearing officer;
- Opportunity for each Party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other Party and any witnesses, including questions that support or challenge credibility;
- Opportunity for each Party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;
- Opportunity for each Party to submit evidence that the Party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect;
- Opportunity for each Party to make a brief closing argument.

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the parties, their advisors, the investigator, the hearing officer, the Title IX Coordinator, and other necessary University personnel. With the exception of the investigator and the parties, witnesses will be sequestered until such time as their testimony is complete.

While a Party has the right to attend and participate in the hearing with an advisor, a Party and/or advisor who materially and repeatedly violates the rules of the hearing in such a way as to be materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, in the discretion of the hearing officer.

Subject to the minimum requirements specified in this section, the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply. The hearing officer will have discretion to modify the hearing procedures when good cause exists to do so.

## *6. Subjection to Questioning*

In the event that any Party or witness refuses to attend the hearing, or attends but refuses to submit to questioning by the Parties' advisors, the statements of that Party or witness, as the case may be, whether given during the investigation or during the hearing, will not be considered by the hearing officer in reaching a determination of responsibility.

Notwithstanding the foregoing, the hearing officer may consider the testimony of any Party or witness, whether given during the investigation or during the hearing, if the parties jointly stipulate that the testimony may be considered or in the case where neither Party requested attendance of the witness at the hearing.

In applying this Section, the hearing officer will not draw an inference about the determination regarding responsibility based solely on a Party or a witness's absence from the live hearing and/or refusal to submit to questioning by the parties' advisors.

### **C. Deliberation and Determination**

After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The hearing officer will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-hearing conference, during the hearing, or otherwise. The hearing officer will resolve disputed facts using a preponderance of the evidence (i.e., "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

### **D. Written Decision**

After reaching a determination and consulting with the appropriate University official and Title IX Coordinator as required above, the hearing officer will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
- A description of the procedural steps taken by the University upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.
- Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
- The discipline determined by the appropriate University official;

- Whether the Complainant will receive any ongoing support measures or other remedies as determined by the Title IX Coordinator; and
- A description of the University's process and grounds for appeal.

The hearing officer's written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal. Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, the University strives to issue the hearing officer's written determination within *15 days* of the conclusion of the hearing.

### **E. Administrative Adjudication**

In lieu of the hearing process, the Parties may consent to have a Formal Complaint resolved by administrative adjudication. Administrative adjudication is voluntary and must be consented to in writing by both parties and approved by the Title IX Coordinator. At any time prior to the issuance of the administrative officer's determination, a Party has the right to withdraw from administrative adjudication and request a live hearing.

If administrative adjudication is selected, the Title IX Coordinator will appoint an administrative officer. The Title IX Coordinator will see that the administrative adjudicator is provided a copy of the investigation report and a copy of all the evidence transmitted to the parties by the investigator.

The administrative officer will promptly send written notice to the Parties notifying the parties of the administrative officer's appointment; setting a deadline for the parties to submit any written response to the investigation report; and setting a date and time for each party to meet with the administrative officer separately. The administrative officer's meetings with the parties will not be held any earlier than ten (10) days from the date of transmittal of the written notice specified in this paragraph.

A Party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that a particular piece or class of evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history, or for any other reason;
- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence;
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

After reviewing the Parties' written responses, the administrative officer will meet separately with each party to provide the Party with an opportunity make any oral argument or commentary the Party wishes to make and for the administrative officer to ask questions concerning the Party's written response, the investigative report, and/or the evidence collected during the investigation.

After meeting with each Party, the administrative officer will objectively reevaluate all relevant evidence, including both inculpatory and exculpatory evidence and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The administrative officer will take care to exclude from consideration any evidence that the administrative officer determines should be ruled inadmissible based on the objections and arguments raised by the Parties in their respective written responses to the investigation report. The administrative officer will resolve disputed facts using a preponderance of the evidence (*i.e.*, "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

Thereafter, the administrative officer will consult with any University official and the Title IX Coordinator and will prepare and transmit a written decision which shall serve as a resolution for purposes administrative adjudication. Transmittal of the administrative officer's written determination concludes the administrative adjudication, subject to any right of appeal. Although the length of each administrative adjudication will vary depending on the totality of the circumstances, the University strives to issue the administrative officer's written determination within thirty days of the transmittal of the initiating written notice.

#### V. Discipline and Remedies

In the event the Respondent is found responsible for violating this policy, the hearing officer will, prior to issuing a written decision, consult with an appropriate University official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. The hearing officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

If a student is found responsible for Sexual Harassment and the sanction imposed makes the student ineligible to reenroll in the University (*i.e.*, suspension or expulsion), the University will include a notation on the student's transcript. The student may request the removal of a transcript notation imposed under this Policy if:

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

If the University receives an appropriate request by another postsecondary educational institution, the University will provide to the requesting institution information relating to the University's determination that the student violated this Policy.

**Consequences:** Consequences for violations may include a range of actions from change in department/residence up to and including dismissal from the University if the committee determines such action is warranted. In addition, notations will be made on the respondent's transcript if a formal investigation has been conducted and a formal determination has been communicated. Southwestern

Adventist University reserves the right to amend, change, and /or determine what sanctions are to be imposed. Southwestern Adventist University also reserves the right to place a hold on transcripts and/or registration, admission, or readmission of any student who fails to meet any sanctions. All pending conduct matter must be resolved prior to a student's graduation, transfer from, or continued education with Southwestern Adventist University.

#### VI. Dismissal During Investigation or Adjudication

The University may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:

- The Complainant provides the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);
- The Respondent is no longer employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Title IX Coordinator determines that a Formal Complaint should be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other University offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination as it pertains to this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

#### VII. Appeals

##### **A. Grounds for Appeal**

Either Party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:

1. A procedural irregularity affected the outcome;
2. There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
3. The Title IX Coordinator, investigator, hearing officer, or administrative officer had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome.
4. The sanctions imposed are substantially disproportionate to the severity of the violation.

Appeals are not intended to be full re-hearings of the complaint. In most cases, appeals are confined to a review of the written documentation and evidence available at the time of the Investigation, and pertinent documentation regarding the grounds for appeal.

## **B. Deadline to File Appeal**

A Party must file an appeal within **five days** of the date they receive notice of dismissal or determination appealed from or, if the other Party appeals, within three days of the other Party appealing, whichever is later. The appeal must be submitted in writing to **Matthew Agee, Associate Director of Campus Security** ([matthewagee@swau.edu](mailto:matthewagee@swau.edu)), who serves as the appeal officer. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing Party believes the appeal should be granted, and articulate what specific relief the appealing Party seeks.

## **C. Resolution of Appeal**

Promptly upon receipt of an appeal, the appeal officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, the appeal officer will dismiss the appeal and provide written notice of the same to the parties. If the appeal officer confirms that the appeal is timely and invokes at least one permitted ground for appeal, the appeal officer will provide written notice to the other Party that an appeal has been filed and that the other Party may submit a written opposition to the appeal within **five days**. The appeal officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale. The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no Party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision. No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, the University strives to issue the appeal officer's written decision within **21 days** of an appeal being filed.

Respondents who have been expelled/suspended/terminated and choose to appeal the decision may be required to leave campus or be subject to restrictions during the course of the appeal. Once the appeal decision has been made, it is final, and no further appeals will be granted.

## INFORMAL RESOLUTION

The University may, in the Title IX Coordinator's discretion, facilitate an Informal Resolution in accordance with the protocol outlined below.

### I. Guiding Principles

Generally, informal resolution involves a structured, supervised interaction between the Parties and/or other affected community members that seeks to identify and meet the needs of the Complainant while providing an opportunity for the Respondent and/or other affected community members to accept responsibility and repair harm (to the extent possible). Informal resolution may not include an investigation, hearing, or disciplinary action against a Respondent (including transcript notations), but may include imposing appropriate and reasonable remedies as agreed to by the Parties. All informal resolutions are facilitated by a trained administrator or outside expert.

### II. Availability of Informal Resolution

Informal resolution is available in matters in which the Title IX Coordinator, in the Title IX Coordinator's discretion, determines it is appropriate. Factors the University will consider when determining whether a report of Prohibited Conduct is suitable for Alternative Resolution include, but are not limited to:

- the nature and severity of the conduct, including whether the use of force or a weapon was involved;
- the Respondent's prior known disciplinary or criminal conduct, including whether the University has received other reports of Prohibited Conduct committed by the Respondent;
- whether the alleged incident poses a risk of harm to other individuals or the community;
- the dynamics of power or control commonly associated with the alleged conduct or the nature of the parties' relationship;
- whether multiple parties are affected or involved;
- any admissions of responsibility by the Respondent; and
- any other factor deemed relevant by the Title IX Coordinator or their designee in the interest of overall campus safety or safety of the parties involved.

Informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

### III. Informal Resolution Process

At any time after the parties are provided written notice of the Formal Complaint, and before the completion of any appeal, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties. Administrative Adjudication is a form of informal resolution.

The specific manner of any informal resolution process will be determined by the Parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the Parties that:

- Describes the parameters and requirements of the informal resolution process to be utilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another University official, or a suitable third-Party);
- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a Party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each Party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence. The University will not pressure or compel any individual to engage in mediation, to directly confront the other, or to participate in any particular form of informal resolution. Individuals may be accompanied by an adviser or support person at any meetings related to the informal resolution process.

If the Parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the University, except as otherwise provided in the resolution itself, absent a showing that a Party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either Party or to the University. Notwithstanding the foregoing if the form of informal resolution is Administrative Adjudication, there shall not be an agreed resolution requiring the parties' signatures; instead, the determination issued by the administrative officer shall serve as the resolution and conclude the informal resolution process, subject only to any right of appeal. With the exception of a resolution resulting from the Administrative Adjudication process, all other forms of informal resolution pursuant to this Section are not subject to appeal.

#### IV. Termination of Informal Resolution

A Party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

#### V. Deadlines for Informal Resolution

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within **21 days**. If an informal resolution process does not result in a resolution within 21 days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the informal resolution process



will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution. During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

## **OTHER INVESTIGATION AND ADJUDICATION CONSIDERATIONS**

### **Advisor of Choice**

From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney.

Except for the questioning of witnesses during a hearing, the advisor will play a passive role and is not permitted to communicate on behalf of a Party, insist that communication flow through the advisor, or communicate with the University about the matter without the Party being included in the communication. In the event a Party's advisor of choice engages in material violation of this policy, the University may preclude the advisor from further participation, in which case the Party may select a new advisor of their choice.

The University will provide an advisor for any Party at a hearing without fee or charge, who will conduct questioning on behalf of the Party at the hearing. The University will also provide an advisor to any Party upon receipt of a request to the Title IX Coordinator or their designee. The University will have sole discretion to select the advisor it provides.

### **Conflicts of Interest, Bias, and Procedural Complaints**

The Title IX Coordinator, investigator, hearing officer, administrative officer, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any Party who believes one or more of these University officials has a material conflict of interest or material bias must raise the concern promptly so that the University may evaluate the concern and find a substitute, if appropriate. The failure of a Party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal.

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that the University may evaluate the matter and address it, if appropriate.

### **Treatment Records and Other Privileged Information**

During the investigation and adjudication processes, the investigator and adjudicator are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use:

- a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party; or

- information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege

unless the University has obtained the Party's voluntary, written consent to do so for the purposes of the investigation and adjudication process. However, the investigator and/or adjudicator may consider any such records or information if the Party holding the privilege affirmatively discloses the records or information to support their allegation or defense.

### **Sexual History**

During the investigation and adjudication processes, questioning regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this Section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this Section.

### **Student Withdrawal or Graduation Pending Disciplinary Charges**

If a student withdraws or graduates from the University pending an investigation of a complaint of Sexual Misconduct under this Policy, the University will expedite the disciplinary process as necessary to accommodate both the Complainant and the Respondent's interest in a speedy resolution and continue the investigation with or without the participation of the Respondent.

### **Interpretation**

The University retains discretion to interpret and apply this Policy in a manner that is not clearly unreasonable, even if the University's interpretation or application differs from the interpretation of the Parties. The provisions of this Policy and the Hearing Procedures are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the University retains discretion to revise this Policy and the Hearing Procedures at any time, and for any reason. The University may apply Policy revisions to an active case provided that doing so is not clearly unreasonable.

### **Vendors, Contractors and Third Parties**

The University does business with various vendors, contractors, and other third-parties who are not students or employees of the University. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this policy, the University retains its right to limit any vendor, contractor, or third-party's access to campus for any reason. And the University retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this policy.

## DEFINITION AND GLOSSARY OF TERMS

**Complainant** is any individual who alleges to be the victim of Sexual Harassment. An individual may be a complainant even where no formal complaint has been filed and no grievance process is pending.

**Respondent** is any individual who is reported to be the alleged perpetrator of Sexual Harassment. An individual may be a respondent even where no formal complaint has been filed and no grievance process is pending.

**Sexual Harassment** for purposes of this Policy is conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.

**Quid Pro Quo Sexual Harassment** occurs when an employee of the University conditions the provision of aid, benefit, or service of the University on an individual's participation in unwelcome sexual contact.

**Hostile Environment Sexual Harassment** is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University's education programs and activities.

**Sexual Assault** includes the sex offenses and attempted offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.<sup>6</sup>

**Rape** is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is "carnal knowledge" if there is the slightest penetration of the vagina or penis by the sexual organ of the other person.

**Sodomy** is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

**Sexual Assault with an Object** is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia.

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<sup>6</sup> The University's definition of "Sexual Assault" is mandated by federal regulations implementing Title IX of the Education Amendments of 1972. Those regulations require the University to adopt a definition of "Sexual Assault" that incorporates various forcible and non-forcible sex crimes as defined by the FBI's Uniform Crime Reporting System. See 34 C.F.R. § 106.30(a).

**Fondling** is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

**Incest** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Texas law.

**Statutory Rape** is sexual intercourse with a person who is under the statutory age of consent as defined by Texas law.

**Coercion** – use of force, intimidation, and/or manipulation to obtain compliance or control over another person. Perpetrators may also use express or implied threats of physical harm, blackmail, alcohol and/or drugs to coerce a person to engage in unwanted activity.

**Consent** – the act of giving permission, agreeing, or saying “yes” to each instance and stage of sexual activity. Consent must be informed, voluntary, and mutual and can be withdrawn at any time. There is no consent when there is force—expressed or implied—or when coercion, intimidation, threats or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Past consent of sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.

An individual is unable to provide Consent to engage in sexual activity when the individual:

- Is under age 17 and (1) is not a spouse of the Respondent or (2) is more than three years older than the victim at the time of the offense;
- Has a mental disorder or developmental or physical disability that renders her or him incapable of giving knowing Consent;
- Is unconscious or physically unable to resist; or
- Is Incapacitated from alcohol or other drugs, and this condition was known, or reasonably should have been known, by the Respondent.

**Force** – use of physical violence and/or imposing on someone physically to gain sexual access. Force includes threats, implied threats, intimidation and coercion that overcome resistance or produce consent.

**Incapacitation** – a state of being that prevents an individual from having the mental ability, emotional stability, or maturity to provide consent at the time the alleged behavior occurs. Incapacitation could result from the use of drugs or alcohol, a person being asleep or unconscious, or because of an intellectual or other disability or medical condition.

Incapacitation is a state where an individual cannot make an informed and rational decision to Consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (*e.g.*, to understand the “who, what, where, when, why or how” of the sexual interaction), is physically or mentally helpless, or is otherwise unaware that the sexual act is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was Incapacitated when viewed from the position of a sober, reasonable person. One’s own intoxication is not an excuse for failure to recognize another person’s Incapacitation.

Incapacitation is beyond mere drunkenness or intoxication, and consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish Incapacitation. The impact of alcohol or drugs varies from person to person, and evaluating Incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual’s:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of Incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

**Retaliation** – actions or words taken against an individual that would discourage that individual from engaging in the reporting, investigation or resolution of an alleged violation. This may include intimidation, threats, coercion and adverse employment or educational actions. Retaliation is prohibited and is considered a stand-alone policy violation without regard to any finding of responsibility for violation of this policy.

**Dating Violence** is violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. Where the existence of such a relationship will be determined based on a consideration of the following factors:
  - The length of the relationship;
  - The type of relationship; and
  - The frequency of interaction between the persons involved in the relationship.

**Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Sexual Harassment in accordance with this Policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the University’s education programs and activities. A “document filed by a Complainant” means a document or electronic submission (such as an email) that contains the Complainant’s physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.

**Stalking** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for their safety or the safety of others; or (b) suffer substantial emotional distress.

For the purposes of this definition—

*Course of Conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, or communicates to or about a person threats, that a reasonable person would regard as threatening bodily injury or death of that person, their family members including someone with whom the person is dating or interferes with that person’s property.

*Reasonable Person* means a person under similar circumstances and with similar identities to the person subjected to the stalking behavior would fear for their safety or the safety of others, or suffer substantial emotional distress.

*Substantial Emotional Distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**Preponderance of the Evidence** is the standard for determining allegations of prohibited conduct under this policy. Preponderance of the evidence means the greater weight of the credible evidence. This standard is satisfied if the evidence and information gathered in the matter indicate that the action is more likely to have occurred than not.

**Employee** means an individual who receives compensation for work or services for which the University has the right (whether or not it exercises the right) to supervise and control the manner of performance as well as the result of the work or service. Volunteers and independent contractors are not considered “employees” for the purposes of this Policy.