

**SOUTHERN METHODIST UNIVERSITY
POLICIES AND PROCEDURES**

EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

POLICY NUMBER: 2.5.1

REVISED AS OF: August 1, 2017

TITLE IX HARASSMENT

- Section 1. APPLICATION
- Section 2. POLICY AGAINST TITLE IX HARASSMENT IN EMPLOYMENT AND EDUCATION PROGRAMS
- Section 3. PURPOSE OF POLICY
- Section 4. INQUIRIES CONCERNING TITLE IX COMPLIANCE
- Section 5. DEFINITIONS AND EXAMPLES
- Section 6. ISOLATED AND INADVERTENT OFFENSES
- Section 7. CONSENSUAL RELATIONSHIPS
- Section 8. GRIEVANCE PROCEDURES FOR ALLEGED VIOLATIONS OF SMU'S POLICY AGAINST TITLE IX HARASSMENT
 - 8.1. Relationship to Other SMU Policies.
 - 8.2. General Provisions
 - 8.2.1. Applicability to University activities and programs
 - 8.2.2. Confidentiality
 - 8.2.3. Sexual Violence
 - 8.2.4. Evidentiary Standard
 - 8.2.5. Examination of Witnesses
 - 8.2.6. Records
 - 8.2.7. Sequencing of Criminal Investigations of Allegations of Sexual Assault and Sexual Violence
 - 8.2.8. Interim Protective Steps
 - 8.2.9. Support
 - 8.2.10. Extensions of time
 - 8.2.11. False Accusations

- 8.3. General Procedures
 - 8.3.1. Complaints and Reports of Title IX Harassment
 - 8.3.2. Informal (Administrative) Resolution
 - 8.3.3. Investigation

- 8.4. Specific Procedures for Complaints Filed Against Students
 - 8.4.1. Sanctions
 - 8.4.2. Appeals to the University Conduct Council
 - 8.4.3. Review by the President of the University

- 8.5. Specific Procedures for Complaints Filed Against Staff
 - 8.5.1. Corrective Action
 - 8.5.2. Hearing Procedures

- 8.6. Specific Procedures for Complaints Filed Against Faculty
 - 8.6.1. Hearing Committee
 - 8.6.2. Pre-Hearing Meeting
 - 8.6.3. Hearing Procedures
 - 8.6.4. Report and Recommendations to the President and Final Decision

Section 9. ON-LINE TRAINING COURSE

Section 1. APPLICATION

This policy applies exclusively to allegations of sexual harassment, including sexual violence and gender-based harassment. Other forms of protected harassment and discrimination are handled under Policy 2.8, University Grievance Policy and Procedure.

Section 2. POLICY AGAINST TITLE IX HARASSMENT IN EMPLOYMENT AND EDUCATION PROGRAMS

2.1. Prohibition of Title IX Harassment (Sexual Misconduct)

The policy of Southern Methodist University is to comply with Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106. SMU expressly prohibits sexual harassment, including sexual violence, and gender-based harassment against:

- a. its students, faculty, and staff;
- b. applicants who seek to join the SMU community in any capacity; and

- c. visitors participating in the educational activities or programs of the University.

Sexual harassment and gender-based harassment violate Title IX. University personnel must maintain an academic and work environment that is free of such harassment. The University will take immediate and appropriate corrective action where such harassment occurs, and in such cases, members of the University community are encouraged to consult immediately with the Title IX Coordinator or a Deputy Title IX Coordinator.

2.2. Prohibition of Retaliation

Retaliation is a separate violation of SMU's Title IX harassment policy. University policy prohibits any member of the University community -- staff, members of the faculty, students or visitors participating in the educational activities or programs of the University -- from retaliating in any way against a person because that person has raised allegations of harassment prohibited by Title IX. It is a violation of this policy to retaliate against any person who has exercised the right to file a complaint or report of Title IX harassment, used any of the processes provided by SMU, cooperated with an investigation, or testified or otherwise offered evidence connected to a complaint. A complaint's actual or perceived lack of merit does not excuse retaliatory conduct. Any person who observes retaliation should promptly notify the Title IX Coordinator.

Section 3. PURPOSE OF POLICY

The purpose of this policy is to promote an academic and work environment that is free of sexual harassment, including sexual violence, and gender-based harassment by providing a means for addressing complaints of such harassment. The University has designed this policy to ensure a safe, non-harassing environment for its students, faculty, staff, and other members of the University community. The University does not intend for this policy to infringe upon any First Amendment or academic freedom protections available to members of the University community.

Section 4. INQUIRIES CONCERNING TITLE IX COMPLIANCE

Inquiries concerning Title IX compliance should be referred to the Executive Director, Office of Institutional Access and Equity, who serves as SMU's Title IX Coordinator. The name of that official is as follows:

Ms. Samantha Thomas
Title IX Coordinator
Executive Director for Access and Equity and
Executive Assistant to the President
Office of Institutional Access and Equity
204 Perkins Administration Building
6425 Boaz Lane
P.O. Box 750200
Dallas, Texas 75275-0200
Phone: 214-768-3601
FAX: 214-768-2101
Email: thomassa@smu.edu
Web: <http://smu.edu.iae/>

Duties: In addition to the specific duties set forth in this policy, the Title IX Coordinator is charged with the responsibility of oversight of all Title IX claims.

Deputy Title IX Coordinators include:

Ms. Eve Shatteen Bell, JD
Director and ADA/504 Coordinator
Office of Institutional Access and Equity
204 Perkins Administration Building
6425 Boaz Lane
P.O. Box 750200
Dallas, Texas 75275-0200
Phone: 214-768-3601
FAX: 214-768-2101
Email: eshatteenbell@smu.edu
Web: <http://smu.edu.iae/>

Ms. Denise Gauthier
Assistant Director
Office of Institutional Access and Equity
204 Perkins Administration Building
6425 Boaz Lane
P.O. Box 750200
Dallas, Texas 75275-0200
Phone: 214-768-3601
FAX: 214-768-2101
Email: dgauthier@smu.edu
Web: <http://smu.edu.iae/>

Ms. Monique Holland
Executive Senior Associate Athletics Director for
Administration/Senior Woman Administrator
Department of Athletics
Lloyd All-Sports Center
5800 Ownby Drive
P.O. Box 750315
Dallas, Texas 75275-0315
Phone: 214-768-1650
FAX: 214-768-3871
Email: hollandm@smu.edu

Ms. Reva Pollack
Assistant Dean of Graduate Studies
Office of Research and Graduate Studies
101 Perkins Administration Building
6425 Boaz Lane
P.O. Box 750240
Dallas, Texas 75275-0240
Phone: 214-768-4202
FAX: 214-768-4235
Email: reva@smu.edu

Mr. Martin L. Camp
Assistant Dean for Graduate and International Programs and
Professor of Practice/Faculty in Residence in Crum Commons
Dedman School of Law
Storey Hall
3315 Daniel Avenue
P.O. Box 750116
Dallas, Texas 75275-0116
Tel. 214-768-2839
Fax: 214-768-2182
Email: mlcamp@smu.edu

Mr. Creston Lynch
Director, Multicultural Student Affairs
Student Affairs
Hughes-Trigg Student Center
3140 Dyer Street, Suite 207
P.O. Box 750436
Dallas, Texas 75275-0436
Phone: 214-768-4434
FAX: 214-768-4429
Email: cclynch@smu.edu

With the exception of Ms. Holland, each of the above named Deputy Title IX Coordinators has University-wide responsibility for investigating Title IX claims and reporting the results of their investigations to the Title IX Coordinator. Ms. Holland does not investigate Title IX complaints arising within the Athletics Department, but otherwise has responsibility for investigating Title IX claims and reporting the results of her investigations to the Title IX Coordinator.

Section 5. DEFINITIONS AND EXAMPLES

5.1. Definitions

As used in this policy, the following terms have the meaning indicated:

- 5.1.1. “Appropriate University Officer” means the officer at SMU responsible for the office, school, college, or other administrative unit with direct supervisory authority over the faculty or staff employee and his or her designee and any successors.
- 5.1.2. “Complainant” means the person (including, in certain circumstances, the University) filing a complaint of Title IX harassment with the Title IX Coordinator or a Deputy Title IX Coordinator.
- 5.1.3. “Complaint” means a person is invoking the grievance process under this policy which is initiated when the person completes and submits a Title IX Harassment Complaint Form to the Title IX Coordinator or a Deputy Title IX Coordinator. A report of Title IX harassment can also be made to the Title IX Coordinator or Deputy Title IX Coordinator without filing a complaint and will be reasonably investigated to the extent possible.
- 5.1.4. “Conduct Officer” means the University staff member trained in the student conduct review process.

5.1.5. “Consent” means voluntary, clear, continuous, mutually understandable permission, given by words or actions, regarding one’s willingness to engage in sexual activity.

- A sexual interaction is considered consensual when individuals willingly and knowingly engage in the interaction.
- Someone who is incapacitated (by alcohol, drug use, unconsciousness, disability, or other forms of helplessness) cannot consent.
- Consent cannot be procured by the use of physical force, compulsion, threats, intimidating behavior, or coercion.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Previous relationships or previous consent for sexual activity is not consent to sexual activity on a different occasion.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.
- Silence or absence of resistance is not consent.
- Consent can be withdrawn at any time.
- Previous consent does not mean ongoing consent. (For example, consent to certain acts does not mean consent to the same act later.)
- How drugs and alcohol affect consent:
 - Individuals should be aware of, and carefully consider the potential consequences of the use of alcohol and drugs. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. If there is a question about whether someone consented to sexual activity after consuming drugs or alcohol, the University will examine the issue from the perspective of a reasonable person. Specifically, the University will consider whether the respondent reasonably should have known about the impact of the

alcohol and other drugs on the complainant's ability to give consent.

- The use of alcohol or drugs does not justify or excuse behavior that constitutes Title IX Harassment.

5.1.6. "Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- Violence includes, but is not limited to, sexual or physical abuse *or* the threat of such abuse.
- The existence of a *social relationship or a romantic or intimate nature with the victim* is determined based on:
 - The reporting party's statement;
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.

The term *dating violence* excludes acts covered under the definition of *domestic violence*.

5.1.7. "Day" means a calendar day, excluding when the University is officially closed.

5.1.8. "Dean of Student Life" means the person who holds the title of Dean of the Office of Student Life at SMU or his or her designee and any successors.

5.1.9. "Domestic violence" means a felony or misdemeanor crime of violence committed by a current or former spouse of the victim or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or anyone who is protected from the respondent's acts under the domestic or family violence laws of the jurisdiction.

5.1.10. "Gender-based harassment" means acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

5.1.11. "Incapacitation" means the inability to provide consent due to the use of drugs or alcohol, when a person is asleep or unconscious, or because of an

intellectual or other disability that prevents an individual from having the capacity to give consent.

- 5.1.12. “Intimidation” means to unlawfully place another person in a reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.
- 5.1.13. “Proceeding” means all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings or hearings. Proceeding does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.
- 5.1.14. “Rape” means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person without the consent of the person.
- 5.1.15. “Respondent” means the person who is alleged to have engaged in the discriminatory conduct as set forth in the report or complaint filed with the Title IX Coordinator.
- 5.1.16. “Result” means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result must include any sanctions imposed by the institution.
- 5.1.17. “Retaliation” means any adverse action, or attempted adverse action, against an individual (or group of individuals) because of their participation in any manner in an investigation, proceeding, or hearing under this policy, including individuals who file a third-person report. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation can take many forms, including sustained abuse or violence, threats, coercion, intimidation, and discrimination. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy. Any individual or group of individuals engaging in retaliation can be held responsible. Examples of conduct which may be retaliation include, but are not limited to:
- Threats of harm to an individual or the individual’s property;

- Forcing or pressuring an individual to take time off from school or work;
- Pressuring an individual to refrain from talking to the media;
- Removing an individual from sports teams or other extracurricular activities for reporting Title IX harassment;
- Unreasonably failing to accommodate an individual's housing or academic needs; or
- Terminating, demoting, reassigning, or denying benefits to an employee.

5.1.18. "Sex discrimination" means giving preferential treatment to one gender to the disadvantage of the other because of his or her gender. It may occur also when policies or practices are facially neutral, but have a disproportionately adverse impact on a particular gender when applied.

5.1.19. "Sexual assault (non-consensual sexual contact)" means any intentional sexual touching, however slight, with any object, by man or woman upon a man or woman that is without consent and/or by force. Sexual contact includes: intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, mouth or other orifice.

5.1.20. "Sexual assault (non-consensual sexual intercourse)" means any sexual intercourse, however slight, with any object, by a man or woman upon a man or woman that is without consent and/or by force. Intercourse includes: vaginal penetration by a penis, object, tongue, or finger, anal penetration by a penis, object, tongue, or finger, or oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

5.1.21. "Sexual exploitation" occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another student;
- Non-consensual video or audio-taping of sexual activity;

- Going beyond the boundaries of consent (such as letting a friend hide in the closet to watch you having consensual sex);
- Engaging in voyeurism;
- Knowingly transmitting an STI or HIV to another person;
- Exposing one's genitals in non-consensual circumstances or inducing another to expose their genitals; or
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

5.1.22. "Sexual harassment" is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when –

- A. submission to such conduct is made either an explicit or an implicit term or condition of an individual's employment, academic evaluation or advancement, or status in a course, program or activity of the University;
- b. submission to or rejection of such conduct by an individual is used as a basis for academic or employment decisions affecting such individual; or
- c. such conduct has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment or unduly interfering with an individual's work or academic performance. For purposes of this policy, "undue interference" is defined as improper, unreasonable or unjustifiable behavior going beyond what is appropriate, warranted or natural.

Sexual harassment includes two categories:

"Hostile environment sexual harassment" means verbal, physical or visual forms of harassment that are sexual in nature, "sufficiently severe, persistent, or pervasive" and unwelcome. A single, severe incident, such as a sexual assault, could create a hostile environment. A "hostile environment" is often created by a series of incidents.

"Quid pro quo sexual harassment" means "this for that." An example of this form of sexual harassment occurs if a member of the faculty (or staff member) stipulates that one's grade or performance rating (or participation on a team, in a play, etc.) will be based on whether

one submits to unwelcome sexual conduct. Whether one refuses a sexual demand or submits to it is not relevant; the conduct violates the law.

5.1.23. “Sexual misconduct” includes sexual harassment, gender-based harassment, sexual violence, sexual assault, dating violence, domestic violence, stalking, and sexual exploitation.

5.1.24. “Sexual violence” means a physical sexual act perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment prohibited by Title IX and this policy.

5.1.25. “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or the safety of others; or
- Suffer substantial emotional distress.

A course of conduct is 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, threatens, or communicates to or about, a person, or interferes with a person’s property.

Substantial emotional distress is significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

A reasonable person is one under similar circumstances and with similar identities to the victim.

5.1.26. “Title IX Coordinator” means the Executive Director, Office of Institutional Access and Equity, and his or her designees and any successors.

5.1.27. “Title IX harassment,” as used in this policy, includes sexual harassment, gender-based harassment, sexual violence, sexual assault, dating violence, domestic violence, stalking, and sexual exploitation.

5.1.28. “University” refers to Southern Methodist University (“SMU”).

5.2. Examples

If sufficiently severe or pervasive, the following types of actions serve as non-exhaustive examples of Title IX harassment prohibited by this policy:

5.2.1. physical sexual acts perpetrated:

- a. against a person’s will; or
- b. where a person is incapable of giving consent due to that person’s use of drugs or alcohol or due to an intellectual or other disability;

5.2.2. direct or implied statements, threats, or demands for sexual favors, sexual advances, accompanied by implied or actual promises of preferential treatment for submission to such demands; or implied or actual threats that failure to submit to such demands may result in adverse treatment concerning the person’s admission, enrollment, employment, work status, promotion, grades or recommendation;

5.2.3. persistent, unwelcome flirtation, requests for dates, repeated and unwanted staring, advances or propositions of a sexual nature;

5.2.4. gratuitous displays of sexually suggestive objects or pictures, including images displayed, transferred, forwarded or shared via the internet, text messaging or other electronic means;

5.2.5. a pattern of conduct unrelated to an academic course or the requirements of the workplace intended to cause discomfort or humiliation or both that includes one or more of the following:

- a. comments of a sexual nature;
- b. sexually explicit statements, questions, jokes, anecdotes or gestures;
- c. a pattern of conduct that would cause discomfort or humiliation, or both, to a reasonable person to whom the conduct is directed and that includes one or more of the following:
 - (1) unnecessary touching, such as patting, pinching, hugging or repeated brushing against a person's body;
 - (2) remarks of a sexual nature about a person's clothing or body;
or

- (3) remarks about sexual activity or speculations about previous sexual experience.
- 5.2.6. Treating individuals adversely because they do not conform to stereotypical norms of feminine or masculine gender behavior.
- 5.2.7. Acts of Title IX harassment may take many different forms. Examples include the following:
- a. direct threats and other verbal statements;
 - b. email or other electronic messages;
 - c. physical contact;
 - d. jokes;
 - e. gestures; and
 - f. pictures or other visuals.
- 5.2.8. Harassment that violates this policy goes beyond the mere expression of views or thoughts (spoken or written) that an individual may find offensive. The conduct must be sufficiently severe or pervasive as to limit unlawfully an individual's ability to participate in or benefit from the activities of SMU. Further, one must evaluate such conduct from the perspective of a reasonable person in the alleged victim's position, taking into account the totality of the circumstances involved in a particular matter.

Section 6. ISOLATED AND INADVERTENT OFFENSES

- 6.1. Members of the University community demonstrate insensitivity that necessitates remedial measures when, without establishing a pattern of doing so, they engage in isolated conduct that may give rise to acts of sexual harassment. When University officials become aware that such conduct has occurred or is occurring in their areas, they should direct those engaged in such conduct to undertake Title IX training and, in consultation with the Title IX Coordinator, document the incident and submit the documentation to the Title IX Coordinator.
- 6.2. After participating in the Title IX training or after failing or refusing to participate after being directed to do so, a person continues to engage in the conduct, the appropriate University official shall report the facts and circumstances to the Title IX Coordinator. The Title IX Coordinator shall act on the matter in accordance with Section 8 of this policy.

Section 7. CONSENSUAL RELATIONSHIPS

Relationships that begin as consensual have the potential to evolve into sexual harassment, particularly with regard to faculty-student and staff-student relationships, as well as in supervisor-subordinate relationships. SMU urges the University community to consult Policy 2.5 B, Consensual Sexual Relationships, before engaging in a consensual sexual relationship with another member of the SMU community.

Section 8. GRIEVANCE PROCEDURES FOR ALLEGED VIOLATIONS OF SMU'S POLICY AGAINST TITLE IX HARASSMENT

8.1. Relationship to Other SMU Policies

Any person -- staff, students, faculty, applicants, all other members of the SMU community, and visitors participating in the educational activities or programs of the University -- wishing to file a complaint of Title IX harassment must follow the procedures set forth in this policy. To the extent that Policy 2.8 (University Grievance and Policy Procedure), the Student Conduct Code, the University Conduct Review Process, or Policy 6.16 (Procedural Standards for Faculty Dismissals and Sanctions) conflict with this policy, the procedures set forth in this policy take precedence.

8.2. General Provisions

The following provisions apply to all complaints for Title IX harassment.

8.2.1. Applicability to Off-Campus University Activities and Programs

Academic and work relationships at SMU occasionally extend beyond the physical University site and beyond University work hours. Evidence of sexual harassment may thus include functions and events under the aegis of SMU occurring off-campus and after hours.

8.2.2. Confidentiality

8.2.2.1. SMU considers complaints of Title IX harassment, their investigation, and related proceedings to be confidential. SMU will use its best efforts not to disseminate information concerning an allegation of Title IX harassment beyond those necessary for its investigation and handling by the University. Release of confidential information to the public will be authorized only by the President or his or her designee.

8.2.2.2. SMU will investigate allegations of Title IX harassment and take corrective action, if appropriate, in those circumstances where the

complainant does not wish to pursue these procedures or corrective action. A complainant's desire for anonymity or inaction may hinder SMU's investigation of a Title IX harassment complaint.

8.2.2.3. Nothing in this confidentiality policy precludes or limits the responsibility and authority of the central administration and the SMU Board of Trustees to take actions that they deem necessary to protect students, faculty, and staff of SMU.

8.2.3. Sexual Violence

SMU encourages students subjected to sexual violence to promptly seek medical assistance and counseling and to report the incident to the SMU Police Department and the Title IX Coordinator as soon as possible.

8.2.4. Evidentiary Standard

A preponderance of evidence standard is the standard that must be used in any investigation, hearing, or appeal of a decision regarding a complaint of Title IX harassment. This standard requires a showing that it is more likely than not that Title IX harassment occurred.

8.2.5. Examination of Witnesses

The complainant and the respondent may not personally question or conduct a cross-examination of the other party during any investigation, hearing, or appeal.

8.2.6. Records

Except as otherwise stated in this policy, the Office of Institutional Access and Equity is the repository of all records of Title IX harassment complaints and their investigation and internal adjudication. The Office of Institutional Access and Equity shall receive and maintain all such records.

8.2.7. Sequencing of Criminal Investigations of Allegations of Sexual Violence

A complainant alleging sexual violence may simultaneously pursue a criminal complaint with the appropriate law enforcement agency and file a complaint for Title IX harassment with the Title IX Coordinator. In this circumstance, SMU will continue to process and investigate complaints alleging sexual assault, and in such a case, SMU will not delay its handling of a complaint of sexual violence until the commencement or conclusion of a criminal investigation or proceeding. Notwithstanding the foregoing, at the request of law enforcement authorities, SMU may temporarily delay its

processing of the complaint while law enforcement authorities gather evidence concerning the allegation of sexual assault.

8.2.8. Interim Protective Steps

8.2.8.1. Pending the investigation, hearing, or appeal of a complaint for Title IX harassment, SMU may take interim steps to protect the complainant, as well as other members of the SMU community.

8.2.8.2. By way of illustration, SMU:

- a. may issue a “no contact” order prohibiting one party from having contact with another;
- b. may direct the lateral transfer of Staff Member or move a student to another classroom setting;
- c. make arrangements for academic and employment evaluations;
- d. at any time during or after an investigation or hearing of a Title IX harassment complaint against a member of the faculty or teaching assistant (acting in a teaching capacity), the Provost (or his or her designee) may place the member of the faculty or teaching assistant on administrative leave from teaching responsibilities if the Provost reasonably believes that:
 - (1) the alleged harassment has occurred; and
 - (2) the respondent would be in a position to do harm to members of SMU community if the respondent continues to teach a class. Such leave may be with pay and all benefits in place.
- e. at any time during or after an investigation or hearing of a Title IX harassment complaint against a Staff Member, the appropriate University Officer responsible for the unit employing the respondent may place the Staff Member on administrative leave from employment responsibilities if the Vice President reasonably believes that:
 - (1) the alleged harassment has occurred; and

(2) the respondent would be in a position either to retaliate against, or in any way do harm to, members of SMU community if the respondent continues to work in that unit or department. Such leave may be with pay and all benefits in place.

f. at any time during or after an investigation or hearing of a Title IX harassment complaint against a student, the Vice President for Student Affairs or his or her designee may restrict a student-respondent from attendance in one or more classes or restrict the student-respondent from living in campus housing or otherwise prohibit the student-respondent's presence on the SMU campus, as deemed appropriate and necessary.

8.2.9. Support

8.2.9.1. Any person found to have been subjected to Title IX harassment may receive counseling and academic support services. Such services are available also to others affected by Title IX harassment, including the person alleged or found to have engaged in harassment. To obtain information about University counseling and academic support services, please contact the Title IX Coordinator.

8.2.9.2. Students affected by Title IX harassment may also arrange confidential crisis counseling with a counselor in the SMU Health Center. The SMU Chaplain's Office is also a confidential resource for students. Confidential crisis counseling for faculty and staff may be arranged through the University's Employee Assistance Program.

8.2.9.3. A counselor in the SMU Health Center is also available to accompany to the hospital students who report that they have been sexually assaulted, if desired. A medical examination will help preserve important evidence of sexual violence if the person who alleges sexual violence decides later to prosecute or to file a complaint for Title IX harassment.

8.2.9.4. The complainant and the respondent may have an advisor of their choice present throughout the proceeding. Advisors serve in a support role and may not act or speak on behalf of the parties.

8.2.10. Extensions of Time

At his or her discretion, the Title IX Coordinator may extend for a reasonable period any of the deadlines set forth in this policy.

8.2.11. False Accusations

A false complaint of Title IX harassment can place a permanent stigma on a member of the SMU community and other persons, regardless of the ultimate outcome of any investigation. Accordingly, SMU prohibits false accusations of Title IX harassment; false complaints of Title IX harassment are a violation of University policy. At the conclusion of SMU's Title IX harassment complaint procedures, and if it appears reasonably likely that a complainant and others acted in bad faith or deliberately and knowingly filed a false complaint or provided false testimony, the respondent, as well as the appropriate University officials, may seek redress against the complainant and others through appropriate University channels. False accusation charges shall be brought to the attention of the Title IX Coordinator.

8.3. General Procedures

The following procedures apply to all complaints filed under this policy.

8.3.1. Complaints and Reports of Title IX Harassment

8.3.1.1 Any person as defined in Section 8.1 of this policy who believes that he or she is being, or has been, subjected to Title IX harassment is encouraged to file a complaint of the alleged act of discrimination as promptly as possible by completing and submitting a Title IX Harassment Complaint Form to the Title IX Coordinator or a Deputy Title IX Coordinator. Filing a complaint will invoke the grievance procedures outlined in this policy including the right of both the complainant and the respondent to be notified in writing of the outcome (result) of the investigation and sanctions imposed, if any, and the right to request an appeal.

8.3.1.2 A report of Title IX harassment can also be made to the Title IX Coordinator or a Deputy Title IX Coordinator without filing a complaint and will be reasonably investigated to the extent possible. Reports may also be made by third parties who witness or become aware of Title IX harassment. With the exception of licensed physicians, psychologists, and pastoral counselors who have a legal

duty to maintain confidentiality, all other reports of Title IX harassment made to University employees or departments must be promptly reported to the Title IX Coordinator. Although reports will be reasonably investigated, they are not considered complaints and do not invoke the grievance procedures outlined in this policy.

8.3.2. Informal (Administrative) Resolution

8.3.2.1. The Title IX Coordinator may attempt an informal (administrative) resolution of the complaint and consult as necessary with the complainant, respondent, immediate supervisor, appropriate vice president, department chair, advisor or other members of the University community (or their designees). Informal resolution may be terminated by any party at any time, and the complaint may proceed to investigation.

8.3.2.2. Sexual violence complaints are not subject to mediation.

8.3.3. Investigation

8.3.3.1. A fact-finding investigation will commence upon the receipt of a completed Title IX Harassment Complaint Form. Both the complainant and the respondent will be given an equal opportunity to present relevant witnesses and other evidence. The investigation may include, but is not limited to, conducting interviews of the complainant, the respondent, and any witnesses; reviewing law enforcement investigation documents, if applicable; reviewing student and personnel files; and gathering and examining other relevant documents or evidence. A typical investigation including the determination of sanctions, if any, takes approximately 60 days following the receipt of a completed Title IX Harassment Complaint Form. The 60 days does not include appeals. Both the complainant and the respondent will be notified simultaneously in writing of the outcome (result) of the investigation. To the fullest extent possible within the requirements of conducting a complete investigation, each individual who is contacted or interviewed during the review and investigation of the complaint must maintain the confidentiality of the complaint and investigation.

8.3.3.2. At the conclusion of the investigation, the Title IX Coordinator shall prepare a written report of investigation for distribution as set forth below.

8.4. Specific Procedures for Complaints Filed Against Students

For complaints against students, the Title IX Coordinator shall submit the complaint and a written report of investigation to a Sanctioning Panel if the respondent has been found responsible for violating this policy and the complaint has not been resolved administratively by the Title IX Coordinator. The Sanctioning Panel will be comprised of the Director of Student Conduct & Community Standards or his or her designee, a Deputy Title IX Coordinator, and an SMU student. The members of the Sanctioning Panel will have participated in Title IX training approved by the University. The Sanctioning Panel shall determine the appropriate sanctions as defined in the next section, and the complainant and the respondent will be notified simultaneously in writing of the sanction. The Sanctioning Panel's determination of sanctions shall fall within the approximate 60-day investigation period.

8.4.1. Sanctions

The Sanctioning Panel may impose one or more of the following sanctions in addition to educational sanctions including, but not limited to, training, reflection exercises, research papers, and community service:

8.4.1.1. **EXPULSION.** An individual or group will be separated from the University on a permanent basis. An individual's expulsion will be permanently recorded on his or her academic transcript. Before this sanction is enforced, the President of the University will review it. A student expelled from the University may not enter campus grounds for any reason without the express written permission from the Office of the Dean of Student Life. A student expelled from the University will not receive a refund of any monies paid, including tuition, fees, and room and board.

8.4.1.2. **SUSPENSION.** An individual or group will be dismissed from the University for an assigned time period and under the conditions deemed necessary by the Sanctioning Panel. A student suspended from the University may not enter campus grounds for any reason during the period of her/his suspension without the express written permission from the Office of the Dean of Student Life. A student suspended from the University before an academic semester ends will not receive a refund of any monies paid, including tuition, fees, and room and board. No academic credit earned during

the period of suspension at any other institution may be transferred to SMU. A disciplinary suspension and its effective dates are recorded on a student's academic transcript. The notation remains for the time the student is enrolled in the University and is removed three (3) years after graduation. If the student leaves the University before graduation, the notation is removed three (3) years after the anticipated date of graduation from the University.

8.4.1.3. DEFERRED SUSPENSION. Individual or group suspension may be deferred (not enforced). Deferred terms (i.e., conditions of the deferred suspension and its duration) will be set by the Sanctioning Panel. If the student is found responsible for violating the terms of the deferred suspension during the period established by the Sanctioning Panel, the student may be suspended.

8.4.1.4. CONDUCT PROBATION. A student or group is given a warning that further violations will result in consideration of suspension. The student or a group representative may be required to report to a Conduct Officer on a regular basis during the period of the probation.

8.4.1.5. FORMAL CONDUCT WARNING. The individual or group will be given formal notice by the Sanctioning Panel that they have violated this policy. If the individual or group is found in violation of a further charge, that case will be considered more seriously.

8.4.2. Appeals to the University Conduct Council

8.4.2.1. The University Conduct Council

The University Conduct Council is the basic unit responsible for student conduct appeals in response to Title IX harassment complaints. It is the recommending body to the Vice President for Student Affairs.

8.4.2.2. Composition

The composition of the University Conduct Council is set forth in the University Conduct Review Process.

8.4.2.3. Requesting an Appeal

Within five (5) days of receipt of notification of such findings and recommended sanctions, if any, the complainant or the respondent or both have the right to request in writing that the Dean of Student Life permit the requesting party to appeal to the University Conduct Council the findings and recommended sanctions, if any. The non-appealing party will receive a copy of the appeal and may provide a written response to the Dean of Student Life within five (5) days of receipt of the appeal. The Dean of Student Life has the discretion to grant or deny the request for an appeal.

8.4.2.4. Grounds for Requesting an Appeal

Within ten (10) days of receipt of a written request for an appeal, the Dean of Student Life may grant an appeal to the complainant or the respondent or both on finding that (i) any one or more of the following circumstances exist and (ii) the mere existence of the circumstance(s) would significantly change the findings and recommended sanction, if any:

- a. Procedural errors that substantially impacted the outcome of the investigation;
- b. New and relevant evidence not known at the time of the investigation that could substantially impact the finding or the sanction. A summary of the evidence and its potential impact must be included; or
- c. The sanctions imposed are substantially disproportionate to the severity of the violation.

8.4.2.5. University Conduct Council Procedures Regarding Appeals

8.4.2.5.1. An appeals packet will be provided to the University Conduct Council that will contain, at a minimum, the written request for the appeal and the written response, if any. The University Conduct Council will base its findings on the appeal packet.

8.4.2.5.2. Only those members of the University Conduct Council who have participated in the Title IX training approved by the University shall sit as the appellate body.

8.4.2.5.3. At its discretion, the University Conduct Council may consult with the investigators of the complaint as needed.

8.4.2.6. Determination of the Appeal

8.4.2.6.1. Within 14 days of the date of the receipt of the appeal packet, the University Conduct Council shall recommend to the Vice President for Student Affairs one of the following actions:

- a. If procedural errors occurred that substantially impacted the outcome of the investigation, return the case to the original investigators to correct the error and render a determination within 14 days or request a new investigation;
- b. If there is new and relevant evidence not known at the time of the investigation that could substantially impact the finding or the sanction, return the case back to the original investigators to consider the new evidence and render a determination within 14 days;
- c. If the sanctions imposed are substantially disproportionate to the severity of the violation, return the case back to the Sanctioning Panel to reconsider the sanction imposed and render a determination within 14 days; or
- d. Uphold the findings and recommended sanctions, if any.

The parties will be notified in writing when the University Conduct Council has concluded its review and forwarded the recommendation to the Vice President for Student Affairs.

8.4.2.6.2. Within 14 days of receipt of the recommendation from the University Conduct Council, the Vice President for Student Affairs shall review the recommendation and the record of the complaint as a whole and shall render a final determination in the matter. The complainant, the respondent, and the Title IX Coordinator shall be notified in writing of the final determination of the Vice President for Student Affairs.

8.5. Specific Procedures for Complaints Filed Against Staff

For complaints filed against Staff Members, the Title IX Coordinator shall provide the complaint and a written report of the investigation to the Appropriate University Officer. The Appropriate University Officer shall decide what corrective action, if any, is necessary in response to the complaint in consultation with the Title IX Coordinator.

8.5.1. Corrective Action

8.5.1.1. Depending on the severity of the offense, corrective action may include one or more of the following non-exclusive list of actions:

- a. A documented verbal warning to the Staff Member that a repetition of the reported behavior will result in written action;
- b. Counseling;
- c. Training;
- d. The placement of a letter in the Staff Member's personnel file indicating the nature of the improper behavior. The letter may include a notation about required counseling and any action that will be taken in the future should reported conduct occur again;
- e. The removal of the Staff Member from the work unit and placement on a leave of absence to permit the Staff Member to receive appropriate counseling; and
- f. Initiation of formal action by the University to dismiss the Staff Member.

8.5.1.2. The Title IX Coordinator shall be copied on all disciplinary and other documents associated with the complaint and shall notify the complainant and the respondent in writing of the outcome of the investigation and, as applicable, the corrective action taken by the University. The Title IX Coordinator shall advise the complainant and the respondent of the right of each party to request in writing a grievance hearing concerning the decision of the Appropriate University Official, as set forth in Section 8.5.2.

8.5.2. Hearing Procedures

Within 14 days of the date of his or her receipt from the Title IX Coordinator of written notice of the Appropriate University Officer's decision, the complainant and the respondent each may make a written request for a grievance hearing concerning the decision of the Appropriate University Officer. Sections C.4 thru C.7 of SMU Policy 2.8, University Grievance Policy and Procedure, will govern the procedures for the grievance hearing requested by either party.

8.6. Specific Procedures for Complaints Filed Against Faculty

For complaints against faculty, the Title IX Coordinator shall submit the complaint and written report of investigation to the Provost or his or her designee. Within six (6) days of the date of receipt of the complaint and written report from the Title IX Coordinator, the Provost shall refer the complaint and written report to the Faculty Senate Committee on Ethics and Tenure.

8.6.1. Hearing Panel

8.6.1.1. Within 14 days of the date of receipt of the complaint and written report from the Provost, the Faculty Senate Committee on Ethics and Tenure shall establish a Hearing Panel to consider the allegations raised by the complaint against the member of the faculty and to make a written report and recommendations to the President. The Faculty Senate Committee on Ethics and Tenure may not appoint a person to the Hearing Committee who is in the same department as the respondent faculty member. The Faculty Senate shall make every attempt to ensure that the Hearing Committee reflects the full diversity of the University and that it includes at least one member of the gender opposite to the respondent and complainant.

8.6.1.2. Within 14 days of the date of its appointment by the Faculty Senate Committee on Ethics and Tenure, the Hearing Panel shall provide the respondent with written notice of the specific charges referenced in the complaint and shall conduct a pre-hearing. The Hearing Panel shall inform the Title IX Coordinator about the dates of any such meetings.

8.6.2. Pre-Hearing Meeting

8.6.2.1. The purpose of the pre-hearing meeting is to schedule a date for the hearing of the complaint and to:

- a. simplify the issues,
- b. agree to stipulations of facts,
- c. provide for the exchange of documents and other information, and
- d. achieve other appropriate pre-hearing objectives to ensure a fair, effective, and expeditious hearing.

8.6.2.2. At its discretion, the Hearing Panel may meet with the complainant and the respondent at separate pre-hearing meetings. For complaints alleging sexual assault or sexual violence, the Hearing Panel shall meet with the complainant and the respondent separately; in that circumstance, the complainant also may participate in the pre-hearing meeting through telephonic or electronic means (such as video conferencing, if available) or both.

8.6.2.3. If a party does not attend the pre-hearing meeting, the Hearing Panel shall proceed to schedule a hearing on the Title IX harassment complaint and inform the Title IX Coordinator. The Hearing Panel shall provide each party with at least 26 days' written notice of the hearing date. The respondent shall respond to the charges in writing at least five (5) days before the hearing.

8.6.2.4. The complainant and the respondent may waive a hearing.

8.6.2.5. If the respondent chooses to waive the hearing but denies the allegations of Title IX harassment, the Hearing Panel shall evaluate all available evidence and rest its recommendation to the President upon the evidence in the record. If the complainant waives the hearing but asserts the allegations of Title IX harassment as set forth in the complaint, the Hearing Panel shall evaluate all available evidence and rest its recommendation to the President upon the evidence in the record.

8.6.3. Hearing Procedures

8.6.3.1. A Faculty Ethics and Tenure Committee Hearing Panel hearing is confidential and closed to the public. The complainant and the

respondent may bring (i) an academic advisor, (ii) legal counsel and (iii) other person approved by the Hearing Panel to the hearing.

8.6.3.2. The Hearing Panel may make an audio recording record of the hearing and, at its discretion, may also arrange for a certified court reporter to transcribe the hearing. The Title IX Coordinator shall store the recording and any transcript for as long as the file is kept and also provide copies to the President of the University and the Office of the Provost. A copy of the record shall be made available to the complainant and to the respondent without cost to any party. The deliberations of the Hearing Panel after any hearing may not be recorded or transcribed.

8.6.3.3. Upon notification to the Title IX Coordinator, the Hearing Panel shall grant an adjournment not to exceed 14 days when necessary to enable either party to investigate evidence as to which a valid claim of surprise is made. The complainant and the respondent shall have the opportunity to obtain necessary witnesses, documents, and other evidence.

8.6.3.4. The complainant and the respondent have the right to make an opening and a closing statement. The complainant may give the first opening statement. The respondent may give the last closing statement. The complainant and the respondent may each include a statement of the impact of the alleged offense as part of a closing statement.

8.6.3.5. The complainant and the respondent may present witnesses during the hearing. The Chair of the Hearing Panel shall require that the complainant and the respondent first submit questions to Chair, who will then direct the questions to the witness. Each member of the Hearing Panel may direct questions to all witnesses.

8.6.3.6. At its discretion, where witnesses cannot or will not appear but have made or will make a written statement relating to the complaint, the Hearing Panel may determine that the interests of justice require admission of such a statement. In such instances, the Hearing Panel will identify the witnesses, disclose their statements, and (if possible) provide for interrogatories to be submitted to the witnesses for response in order to clarify any remaining issues relating to the statements.

8.6.3.7. The Hearing Panel is not bound by strict rules of legal evidence and may admit evidence that is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

8.6.3.8. The Hearing Panel will base its findings of fact and any recommendation for sanctions solely on the hearing record.

8.6.4. Report and Recommendations to the President and Final Decision

8.6.4.1. Within 14 days of the last date of the hearing, the Hearing Panel shall deliver to the President a report containing written findings of fact and recommended corrective action, if any. The Hearing Panel shall provide a copy of this report to the Title IX Coordinator.

8.6.4.2. If the President rejects the report and recommendation, the President shall state the reasons for doing so in writing to the Hearing Panel, the complainant, and the respondent and provide each within seven (7) days to respond in writing to the President's action. The President shall also provide a copy of the decision to the Title IX Coordinator.

8.6.4.3. If the President sustains the report and recommendation, the President shall so state in writing to the Hearing Panel, the complainant, and the respondent and provide each within seven (7) days to respond in writing to the President's decision. The President shall also provide a copy of the decision to the Title IX Coordinator.

8.6.4.4. In considering responses from the participants to his or her decision to reject or sustain the report and recommendation from the Hearing Panel, the President may provide opportunity for oral and written argument by the complainant, the respondent or their representatives who participated in the hearing before the Hearing Panel.

8.6.4.5. If the President issues specific objections to the report and recommendation, the President will return the matter to the Hearing Panel with specific instructions on how to proceed. If the matter is returned to the Hearing Panel, it will reconsider the matter, taking into account the objections stated by the President and receiving any new evidence, as necessary. In this circumstance, the Hearing Panel will return to the President a written report of reconsideration with findings of fact and a recommendation. The President will then review the report of reconsideration and recommendation and a

render a final decision concerning the complaint, providing written notice of the decision to the complainant, the respondent, the Hearing Panel, and the Title IX Coordinator.

Section 9. ON-LINE TRAINING COURSE

All new faculty and staff employees of SMU must take SMU's online courses on Harassment & Discrimination and Eliminating Campus Sexual Violence.

CONTACTS

COMPLAINTS:

Complaints of Title IX harassment should be referred to SMU's Title IX Coordinator:

Ms. Samantha Thomas
Title IX Coordinator
Executive Director for Access and Equity and
Executive Assistant to the President
Office of Institutional Access and Equity
204 Perkins Administration Building
6425 Boaz Lane
P.O. Box 750200
Dallas, TX 75275-0200
Phone: 214-768-3601
FAX: 214-768-2101
Email: thomassa@smu.edu
Web: <http://smu.edu.iae/>

QUESTIONS:

Direct general questions about SMU University Policy 2.5.1, Title IX Harassment, to:

Office of Institutional Access and Equity
204 Perkins Administration Building
6425 Boaz Lane
P.O. Box 750200
Dallas, Texas 75275-0200
Phone: 214-768-3601
FAX: 214-768-2101
Email: accessequity@smu.edu
Web: <http://smu.edu.iae/>

Direct legal questions about Policy 2.5.1, Title IX Harassment, to:

Office of Legal Affairs
130 Perkins Administration Building
6425 Boaz Lane
P.O. Box 750132
Dallas, Texas 75275-132
Phone: 214-768-3233
FAX: 214-768-1281
Email: ola@smu.edu
Web: <http://www.smu.edu/ola>

POLICY CLARIFICATION AND GENERAL INFORMATION:

Policy Clarification and General Information on Policy-Making at SMU:

Office of the Secretary
Phone: (214) 768-3233
FAX: (214) 768-1208
Email: marogers@smu.edu