



Title IX Sexual Harassment Policy

Investigating and Adjudicating Student
Complaints

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Coordinator

Office of Institutional Access and Equity
2022-2023

World Changers
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SMU®

Office of Institutional Access and Equity

- SMU's equal opportunity and affirmative action office
- Numerous responsibilities including investigating concerns and complaints of discrimination on a protected basis including:
 - Race, Color, Religion
 - National Origin, Sex, Age
 - Disability, Genetic Information, Veteran Status
 - Sexual Orientation, Gender Identity and Expression
- SMU Policy Manual: Section 3 – Access and Equity Policies
- Staff serve as Title IX Coordinator and Deputy Coordinators



Deputy IX Coordinators

IAE staff members who serve as lead investigators:

- Denise Gauthier, IAE Director and ADA/504 Coordinator
- Jasper Chieng, IAE Title IX/Equal Opportunity Investigator

University employees who serve as resource persons, take reports, serve on sanctioning panels, as advisors, and assist with investigations:

- Bonnie Hainline, Assistant Director of Intramurals and Sport Clubs
- Griffin Sharp, Assistant Director of Health Promotion
- Susan Vollmerhausen, Associate Athletic Director for Student Services/SWA
- Steve Yeager, Assistant Dean for Student Affairs, Dedman School of Law



Title IX of the Education Amendments of 1972

Federal law that prohibits discrimination and harassment on the basis of sex (includes gender equity & sexual misconduct)

“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 receiving Federal financial assistance.”



Title IX

- U.S. Department of Education, Office for Civil Rights (OCR) oversees/enforces Title IX
- OCR released new regulations in 2020 requiring universities to overhaul Title IX policies
- New regulations included:
 - New definition of sexual harassment
 - New Title IX jurisdiction – education programs or activities and in U.S.
 - Complainant must be participating in or attempting to participate in an education program or activity of the University to file a complaint
 - Requires a live hearing with cross-examination conducted by advisors
 - University must provide advisor at hearing if student does not have one
- Texas universities must also comply with State law that has a different definition of sexual harassment
- In June 2022, OCR released its Title IX Notice of Proposed Rulemaking to make changes to the 2020 regulations. The public may provide comments until September 12, 2022.



Sexual Harassment - Title IX Definition

Sexual harassment under Title IX means conduct on the basis of sex that satisfies one or more of the following:

- Quid Pro Quo: An employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- Sexual assault, dating violence, domestic violence, and stalking.

The conduct must occur in an education program or activity of the University against a person in the United States.



Sexual Harassment - Texas Definition

Sexual harassment under Texas law means unwelcome, sex-based verbal or physical conduct that:

- In the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
- 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 educational programs or activities at a postsecondary educational institution.

Sexual assault, dating violence, and stalking are also covered under Texas law.



Sexual Assault

Sexual Assault means an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation:

- **Sex Offenses, Forcible** means any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent:
 - Forcible Rape
 - Forcible Sodomy
 - Sexual Assault with an Object
 - Forcible Fondling
- **Sex Offenses, Non-forcible** (Except Prostitution Offenses) means unlawful, non-forcible sexual intercourse:
 - Incest
 - Statutory Rape



Consent and Incapacitation

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

- Past consent does not imply future consent.
 - You have to get consent at each step of sexual activity.
- Silence or an absence of resistance does not imply consent.
 - It's not consent just because the other party did not say NO.
- A person who is asleep or unconscious cannot give consent.
- Consent can be withdrawn at anytime.
- Consent cannot be procured by the use of physical force, compulsion, threats, intimidating behavior, or coercion.
- A person who is incapacitated cannot consent.

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.



Relationship Violence and Stalking

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 and where the existence of such a relationship shall 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.

Domestic Violence means felony or misdemeanor crimes of violence committed by a current or former spouse 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, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

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.



Examples of Sexual Harassment

(If behavior meets definition)

- Repetitive jokes, comments, and texts of a sexual nature
- Sending sexual pictures and videos without someone's consent
- Pressuring someone into a date or sexual activity
- Invasion of sexual privacy
- Aggressive or hostile behavior toward someone based on gender
- Non-consensual sexual contact
- Non-consensual sexual penetration
- Relationship violence
- Repetitively following someone causing fear or alarm



Confidentiality and Retaliation

- **Confidentiality** - The University considers complaints of Title IX sexual harassment, their investigation, and related proceedings to be confidential. The University will use its best efforts not to disseminate information concerning an allegation of Title IX sexual 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 their designee.
- **Retaliation** - No member of the University community may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.



Title IX Grievance Process



Retaliation, harassing or intimidating any party involved in a complaint, is a separate violation of University policy.



Hearing Process

- Hearing date: Thursday, August 4, 9:00 am – 1:00 pm
 - Attendees have been asked to place a hold on the day should the hearing last longer
 - A 15-minute break will be provided at 11:00 am or as needed
 - A lunch break may be taken if needed
- The hearing will be conducted via Zoom with assistance from SMU IT
- The hearing will be recorded via Zoom
- Access to the evidence and investigation report will be available during the hearing. New evidence and witnesses will not be allowed.
- Purpose: To allow the parties and the hearing panel to ask questions in a fair and respectful setting. Please remember that this is not a legal proceeding.



Attendees

- Complainant and Advisor
- Respondent and Advisor
- Hearing Panel (Chair and Three Decision-Makers)
- Two Witnesses (Will be in waiting room until called)
- SMU Title IX Coordinator
- SMU Legal Affairs Representative
- SMU IT Representative



Hearing Process

- Opening remarks by Hearing Chair
- Opening statements by complainant and respondent
- Complainant and respondent questioning by hearing panel
- Complainant questioning by respondent's advisor
- Respondent questioning by complainant's advisor
- Witness questioning by hearing panel and advisors
- Breakout Rooms: Parties and their advisors and the hearing panel will get 15 minutes to discuss if they have any follow-up questions
- Follow-up questions, if any, by hearing panel, complainant and respondent
- Closing statements by complainant and respondent
- Closing remarks by Hearing Chair
- Hearing Panel will deliberate and the parties will receive the determination simultaneously



Rules of Decorum

- The Chair is charged with overseeing the hearing and has authority and discretion to take appropriate action if the rules of decorum are not followed
- All participants will remain muted and only speak with and at the discretion of the Chair
- Advisors may only speak during the hearing during cross-examination to ask questions on behalf of the parties
- All participants are expected to be respectful – abusive or intimidating conduct will not be tolerated
- No party may record the hearing
- If the rules are not followed, the Chair may delay the hearing and/or expel the participant



Rules for Questioning

- The purpose of asking questions during the hearing is to clarify and/or solicit information pertinent to the allegations of the case
- Duplicative questions or questions that seek information already provided will be considered not relevant and will not be permitted
- Questions and evidence about the 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 by the complainant, 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



Rules for Questioning

- All questions should be designed to obtain direct observations or facts, not personal opinions
- The Chair may determine that a question is not relevant or appropriate and may offer the opportunity to rephrase the question in a manner that complies with the rules
- Before a participant answers a question, the Chair will rule as to whether the question is relevant to the alleged charges
- Parties and witnesses must respond to questions on their own behalf



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Hearing Panel Deliberation

- When the hearing concludes, the hearing panel will remain in the Zoom meeting to deliberate and make a determination. The panel can meet as often as needed to make a determination.
- Decision-Makers – The decision-makers are responsible for determining if the respondent violated the Title IX Sexual Harassment Policy, and, if so, the sanctions to impose. In cases where the respondent is found to have violated the Policy, the decision-makers will also determine if remedies designed to restore or preserve equal access to the University's education program or activity for the complainant will be provided.
- The Chair will write the determination that will include:
 - Allegations of sexual harassment
 - Procedural steps taken since the receipt of the formal complaint
 - Findings of fact supporting the determination
 - Application of the Student Code of Conduct to the facts
 - Determination of responsibility, sanctions, if any, and remedies
 - Appeal procedures



Presumption of Innocence and Preponderance

- **Presumption of Innocence** - The respondent is presumed not responsible for the alleged sexual harassment until a determination regarding responsibility is made at the conclusion of the grievance process.
- **Evidentiary Standard** - A preponderance of the evidence standard is the standard that will be used in any investigation, hearing, or appeal of a decision regarding a complaint of Title IX sexual harassment. This standard requires a showing that it is more likely than not that Title IX sexual harassment occurred. There is a greater than 50% chance that the allegation is true.



Making Determinations

- Review all documentation including the investigation report, evidence, and testimony of the parties and witnesses
- Review all evidence for relevancy, but only consider relevant evidence when making a determination of responsibility:
 - It has any tendency to make a fact more or less probable than it would be without the evidence
 - The fact is of consequence in determining the action
- Use the Preponderance of the Evidence (50.1%) standard:
 - Consider the totality of the circumstances to determine whether it was more likely than not that the alleged incident(s) occurred
 - Consider the credibility of the parties taking into account the potential effect of trauma
 - Focus on the evidence that supports or negates a party's statements
 - Evaluate evidence from a reasonable person standard
 - Is the weight of evidence heavier on the side of the Complainant or the Respondent or was there not enough evidence to make a fair and impartial decision?



Making Determinations

Responsible – Policy Violation is Supported

- Witness corroboration
- Actions soon after the incident support the allegations
- Documentation and evidence that supports the claim

Not Responsible – Policy Violation is Unsupported

- No witnesses corroboration
- No documentation or evidence
- Only he said/she said/they said accounts provided with no other evidence

Remember the Presumption of Innocence



Sanctions

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 may be imposed upon students found responsible of violating the Title IX Sexual Harassment Policy and will be included in the student's formal conduct record:

- Expulsion - An individual or group will be separated from the University on a permanent basis.
- Suspension - An individual or group will be dismissed from the University for an assigned time period and under the conditions deemed necessary by the decision-makers.
- 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 decision-makers.
- Conduct Probation - An individual or group is given a warning that further violations will result in consideration of suspension.
- Formal Conduct Warning - The individual or group will be given formal notice by the decision-makers that they have violated the Title IX Policy.



Remedies

- The University will provide remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent. Remedies will be designed to restore or preserve equal access to the University's education program or activity. Such remedies may include the same individualized services described in the section on Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.



Appeals

The Complainant and/or Respondent have the right to request an appeal to the University Conduct Council if approved by the Dean of Students. The non-appealing party will receive a copy of the appeal and may provide a response.

Appeals may be requested on the following bases:

- i. Erroneous findings of fact;
- ii. Procedural irregularity that affected the outcome of the matter;
- iii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter;
- iv. Sanctions imposed are substantially disproportionate to the severity of the violation;
- v. Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.



Review and Final Determination

If the Dean of Students approves an appeal, the University Conduct Council shall review the case and recommend to the Vice President for Student Affairs one of the following actions and include a rationale for its determination:

- i. Uphold the findings and/or sanctions, if any; or
- ii. Render new findings and/or sanctions, if any.

After receiving 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 Vice President for Student Affairs shall provide simultaneously to both parties a written decision describing the result of the appeal and the rationale for the result.



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Staff: Samantha Thomas - Executive Director, Executive Assistant to the President, and Title IX Coordinator

Denise Gauthier - Director, Deputy Title IX Coordinator and ADA/504 Coordinator

Jasper Chieng - Title IX/Equal Opportunity Investigator and Deputy Title IX Coordinator

Annaliza Christie - Office Coordinator

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Phone: 214-768-3601

IAE Website: www.smu.edu/IAE

Sexual Misconduct: www.smu.edu/SexualHarassment

