

provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. Please contact the Title IX Coordinator to request supportive measures.

- b. Students affected by sexual 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.
- c. A counselor in the SMU Health Center is also available to accompany students who report that they have been sexually assaulted to the hospital, if desired. It is important for victims to go to the hospital for treatment and to preserve evidence, if applicable, as soon as practicable after the incident if the student decides later to prosecute or file a complaint. Victims of incidents that rise to the level of being a crime have a right to choose whether to report the crime to law enforcement, be assisted by the University in reporting the crime, or decline to report the crime.

4. Advisors

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

5. Informal Resolution

After a formal complaint is filed, the parties may wish to resolve the complaint through an informal resolution process that does not involve a full investigation and adjudication. The University may facilitate an informal resolution process at any time prior to reaching a determination regarding responsibility. Any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. The informal resolution process may typically take up to 30 days to conclude after the filing of a formal complaint.

6. Investigation

- a. A fact-finding investigation will commence upon the receipt of a completed Discrimination Complaint Form (Not Title IX). The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The parties will be given an equal opportunity to present relevant witnesses, including fact and expert witnesses, and other inculpatory and exculpatory 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. Prior to completion of the investigation report, the University will make the report and all relevant evidence available to each party, and the parties will have 10 days to submit a written response, which the investigator(s) will consider prior to completion of the investigation report.
- b. The investigation of a formal complaint may typically take up to 60 days to conclude after the filing of a formal complaint. At the conclusion of the investigation, the investigator(s) will determine whether the respondent is responsible or not responsible for the Policy violation(s) in question. The preponderance of the evidence standard of proof will be used. The investigators will prepare an investigation report that fairly summarizes all relevant evidence.
- c. The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is

filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

7. **Sanctioning Panel**

Provided that the complaint is not dismissed or resolved through informal resolution, the Title IX Coordinator shall submit the complaint and the investigation report to a Sanctioning Panel. The Sanctioning Panel will be comprised of the Direct

- f. An appeals packet will be provided to the University Conduct Council that will contain, at a minimum, the complaint, the investigation report, the determination, the request(s) for an appeal, and the other party's response, if any. The University Conduct Council will base its findings on the appeal packet.
- g. Only members of the University Conduct Council who have received sexual harassment training shall sit as the appellate body.
- h. Within 10 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 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.
- i. **Review and Final Determination**

Within 7 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 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. The final determination will also be sent to the Title IX Coordinator.

For questions about the Nondiscrimination, Affirmative Action and Equal Opportunity Policy or grievance procedure, please contact the Office of Institutional Access and Equity at 214-768-3601 or accessequity@smu.edu.

“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.

“Day” means a calendar day, excluding when the University is officially closed.

“Dean of Students” means the person who holds the title of Dean of Students at SMU or their designee and any successors.

“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.

“Education program or activity” means locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

“Exculpatory evidence” means evidence that supports that the respondent did not violate the Policy.

“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. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the University.

“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.

“Inculpatory evidence” means evidence that supports that the respondent violated the Policy.

“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.

“Party” means a complainant or a respondent.

“Parties” means complainant(s) and respondent(s).

“Proceedin

“Reasonable person” means one under similar circumstances and with similar identities to the victim.

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

“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, if any, imposed by the institution.

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f **Sexual Assault With An Object** means to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

f **Forcible Fondling** means the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

Sex Offenses, Non-forcible (Except Prostitution Offenses) means unlawful, non-forcible sexual intercourse:

f **Incest** means non-forcible sexual intercourse between persons who are related to each other within the

Appendix B: Examples of Sexual Harassment

If 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, the following are examples of sexual harassment prohibited by the Policy:

- a. Physical sexual acts perpetrated:
 against a person's will; or
 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;
- b. Direct or indirect threats of physical or sexual violence, including threats of physical or sexual violence against a person's family or friends, or threats of physical or sexual violence against a person's property.