

## **POLICY STATEMENT**

Southwestern Adventist University prohibits discrimination on the basis of sex or gender in its educational programs and activities. Consistent with its commitment in addressing discrimination and sexual misconduct, the university complies with Title VII, Title IX and the Campus Sexual Violence Elimination Act (SaVE Act). Southwestern Adventist University will take appropriate action in an effort to eliminate sexual misconduct from happening, prevent its recurrence and address its effects. Individuals reporting discrimination, reporting sexual misconduct and/or making inquiries concerning the application of Title IX at Southwestern Adventist University may contact:

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Title IX Coordinator  
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Southwestern Adventist University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff and visitors are free from discrimination and sexual misconduct.

## **PROCEDURES**

These procedures apply to complaints filed by students, or on their behalf, alleging sexual misconduct carried out by a university employee, a university student or a third party.

Southwestern Adventist University encourages complainants and witnesses to report the matter to an appropriate university official. Upon receiving the report the university will be able to open an investigation, address any violations and help ensure that appropriate care and resources are provided for both the complainant and the accused. Confidentiality may be broken in matters that are deemed health and safety risks, matters that involved minors and matters that are brought to the attention of university employees that are required to notify a designated university official of the reported incident.

The university will inform and obtain consent from the complainant before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, the university will take all reasonable steps to investigate and respond to the complaint consistent with these requests. If the complainant requests that his or her name or other information not be disclosed to the accused, the university will evaluate that request in context of its responsibility to provide a safe and nondiscriminatory environment for all students and the complainant should be aware that the university's ability may be limited.

### **STEP 1: REPORT**

An individual complainant reports an alleged incident of discrimination or sexual misconduct to a university employee. The employee must notify immediate supervisor and contact must be made with the Vice President for Student Services, for all student incidents, and the Director of Human Resources, for all employee incidents, or both if student and employee are involved.

The complainant will be advised to seek medical attention, offered counseling and provided an opportunity to file an official report with university official and local police entity.

A student has the option to pursue a criminal complaint with the appropriate law enforcement agency, to pursue a complaint through the university process, or to pursue both processes concurrently or consecutively.

### **STEP 2: INVESTIGATION/INTERIM MEASURES**

The university investigator will gather all incident reports, statements, text messages, email, pictures, etc. and interview all parties involved. Both the complainant and the accused will be given the opportunity to present witnesses and supporting documentation or information. Following the gathering of all information associated with the case, the investigator will complete a written

summary of findings along with supporting documentation. The report will be submitted to the Title IX Coordinator to review to determine whether any university discrimination or sexual misconduct policies have been violated. The Title IX Coordinator can interview those involved if deemed appropriate. If it is determined that a violation of university policies has likely occurred, the incident will be forwarded to the Discipline Committee for review. Based on the nature of the complaint, the university will take appropriate interim measures to minimize contact and/or potential retribution from a respondent and/or associated group related to the case to an individual or individuals making a complaint of alleged discrimination or sexual misconduct. These measures may include, but are not limited to the following: modification of class schedule, work assignments, living arrangements, limiting contact with the accused depending on the circumstance and interim suspension pending final outcome. These modifications will be made with due deference to provide balance and equity for the complainant and accused in the process.

Interim suspension may be imposed when the university determines that it is necessary

- to ensure the safety and well-being of members of the university community
- to ensure the student's own safety and well being
- if the student poses an ongoing threat of, disruption of, or interference with, the normal operations of the university

During the interim suspension, a student shall be denied access to premises and activities as the university deems appropriate.

The student should be notified in writing of the interim suspension, its terms and the reasons for the interim suspension. The student shall, if so requested, be granted an opportunity to a meeting to show cause why his/her continued presence on university premises and activities does not constitute a threat. The interim suspension and any review of this status does not replace the regular hearing process.

### **STEP 3: RESPONSE TO INVESTIGATION**

The standard proof used for hearing cases of discrimination or sexual misconduct will be preponderance of the evidence or "more likely than not." Findings of responsible and not responsible for such cases will be made based on this standard of proof in determining if a violation occurred. Based on the findings gathered from the investigation, the Title IX Coordinator will make a determination on the resolution of the allegations.

#### *No Further Action*

Based on the information received including incident reports, supporting documentation (text messages, email, pictures, statements, etc.), interviews and summary of findings from the investigation, the university may choose not to take any further action.

### *Formal Resolution*

The case is forwarded to the Discipline Committee for appropriate resolutions. The report will be given to the Discipline Committee Chairperson. The Chairperson will make a determination of charges and schedule a hearing with the Discipline Committee. The university will inform the complainant and the accused in writing of the investigation.

### **STEP 4: HEARING AND SANCTIONS**

The Discipline Committee is an adjudicating body drawn from faculty and staff to interview, evaluate and decide the degree of culpability for a reported incident. The terms of service are staggered for purposes of continuity and it functions under the supervision of the Vice President for Student Services, who is a non-voting member. Discipline Committee hearings are confidential and closed to all but the accused, complainant, witnesses, advocates, committee members and university administrative designee as deemed appropriate by the university.

- Student must appear in person.
- Student has the right to bring an advocate.
- Student needs to notify the Vice President for Student Services prior to the scheduled hearing if he/she wishes to bring an advocate to the hearing.
- Advocate cannot participate in the proceedings and has a non-speaking role.
- Witness(es) may be brought in to bring clarity to the reported incident.
- Discipline Committee will hear and/or act on a case even if the student fails to appear.

### *Hearing Process*

- Introductions
- Presentation of Investigative Report
- Questioning
- Witnesses (to be present for only a specified portion of the hearing)
- Statements – complainant and accused
- Dismissal of non-committee members
- Deliberation
- Sanctioning and added measures

### *Possible Sanctions*

Sanctions for violating university regulations could include: disciplinary warnings, community service, counseling, counseling assessments, restitution, fines, change of residence, citizenship probation, suspension, expulsion or a combination. Southwestern Adventist University reserves the right to amend, change and /or determine what sanctions are to be imposed.

The university reserves the right to place a hold on the transcript and/or registration 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 at Southwestern Adventist University.

#### *Notification of Outcome*

The complainant and the accused will be informed in writing of:

1. The outcome of the Discipline Committee hearing
2. The procedures for both parties to file a request for an appeal if needed

Notification will be emailed to the complainant and accused via university email.

### **STEP 5: APPEAL PROCESS**

Students have the right to appeal. However, there are certain conditions that must be met.

#### *Grounds for Appeal*

An appeal will be considered valid if it meets one of the following criteria:

- Information is available which was not available at the time of the decision, but which would have affected the decision
- The case was initiated or conducted according to improper procedure and the decision was materially influenced as a result of the improper procedure
- The decision embodies a sanction that is inconsistent with the nature of the offense (the degree of severity of the sanction is not reasonable in light of the offense)
- The facts were not sufficient to justify the findings

#### *Limitations on Appeals of Sanctions*

Appeals of sanctions and related specific restrictions/conditions, imposed at any given level of authority are as follows:

- Probation, social restrictions, monetary fines, community services work, hall and activity suspensions may be appealed one administrative level above the authority imposing the sanction
- Suspensions, expulsions and/or dismissals may be appealed to the university president or designee

#### *Procedure*

The typewritten appeal shall be submitted within 24 hours after notification of a decision that has been received by the student. The appeal should be addressed to the appropriate university official with a copy to the university official that rendered the decision being appealed. The appeal should delineate

- The specific charges
- The action or decision reached by the lower level authority
- The ground(s) and rationale upon which the appeal is based

All relevant materials pertaining to the case will be forwarded to the appropriate office within 48 hours after the appeal is filed.

### *Responsibility of the Appellate Authority*

The appellate authority will normally refer a decision on the appeal within 72 hours after it is received. The decision may be to:

- Reject the Appeal – a decision to reject an appeal should be based on and is indicated by a finding of no procedural and/or substantive discrepancies in the action(s) and/or decision(s) of the lower level authority.
- Grant an Appeal – a decision to grant an appeal should be based on and is indicated by a finding of procedural or substantive discrepancies in the action(s) and/or decision(s) of the lower level authority. If the appeal is granted, the appellate authority may:
  1. Alter or modify the sanctions imposed by the lower level authority – agreement with the findings and disagreement with the sanctions imposed
  2. Reverse the findings – disagreement with the findings and sanctions imposed. A review of the initial hearing is indicated and, depending on the circumstances, may be conducted by the appellate authority or ordered reheard by the lower level authority

If it is determined that grounds for a valid appeal exist, the appellate authority will notify all concerned parties of the action being taken. If a new hearing is ordered the case will be presented in its entirety.

Students who have been suspended/expelled/dismissed by the initial authority and choose to appeal the decision, may be required to leave campus or be subject to restrictions during the course of the appeal. Every effort will be made to expedite the appeal process. The university reserves the right to deny re-admission to any student who has been sanctioned. Once the appeal decision has been made, it is final and no further appeals will be granted.

## **DEFINITION AND GLOSSARY OF TERMS**

**Sexual Misconduct** incorporates a range of behaviors including sexual assault, sexual harassment, stalking and any other conduct of a sexual nature that has a purpose or effect of threatening, intimidating or coercing a person. Other examples of sexual misconduct may include, but are not limited to the following:

- threatening speech
- perverse conduct
- making photographs, video, visual or audio recordings
- sharing of such recording
- verbal harassment or abuse (degrading comments, propositions, jokes, etc.)
- subtle pressure or requests for sexual activity
- unnecessary touching of an individual (petting, pinching, hugging, repeated brushing against another person's body, etc.)

**Dating Violence** is the perpetration or threat of an act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

**Discrimination** is conduct that denies or limits a person's ability to benefit from or fully participate in educational programs, activities or employment opportunities based on a person's sex, race, color, national origin and religion.

**Sexual Assault** is the actual attempt, forceful or threatened sexual act without the other person's consent with the most common examples being that of "date rape" or "acquaintance rape".

**Sexual Harassment** consists of sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature on or off campus, when:

- submission to such is made either explicitly or implicitly a term or condition of an individual's status and/or employment
- submission to or rejection of such conduct by an individual is used as the basis of academic/employment decision affecting such individuals, or
- such conduct has the purpose or effect of unreasonably interfering with an individual's academic/work performance or creating an intimidating, hostile or offensive academic/work environment.

Unwelcomed conduct of a sexual nature may include, but is not limited to: unwelcomed sexual advances, requests for favors, or other verbal or nonverbal conduct of a sexual nature. This includes rape and sexual assault. In addition, depending on the facts, dating violence, domestic violence and stalking may also be forms of sexual harassment.

**Stalking** is repeated or obsessive unwanted attention directed toward an individual or group that is likely to cause alarm, fear or emotional distress. Stalking may take many forms including, but not limited to the following:

- lying in wait
- monitoring

- pursuing contact in person or through a medium of communication – letters, e-mails, text messages, phone calls, etc.

*Terms Associated with Sexual Misconduct:*

- **Coercion** – use of force, intimidation and/or manipulation to obtain compliance or control over another person. Perpetrators may also use threats of violence, 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 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. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature or extent of the sexual situation, there is no consent; that includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious.
- **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** – any state of being in which the individual who is incapacitated is unable to give consent to sexual activity. States of incapacitation include sleep, unconsciousness, intermittent consciousness or any state where the individual is unaware that sexual contact is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to consent to sexual contact.
- **Retaliation** – acts 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.