

POLICY STATEMENT

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

Southwestern Adventist University is committed in providing an educational, employment, and business environment free of all forms of discrimination or harassment. Discrimination or harassment based upon one's race, color, gender, religion, national origin, age or disability is prohibited at the university. Sexual misconduct, including acts of sexual assault, sexual harassment, stalking and other adverse conduct of a sexual nature is a form of sex discrimination and is prohibited at the university. This policy applies to all university students, faculty, staff, and to contractors, consultants, and vendors doing business or providing services to the university.

In compliance with Title IX of the Higher Education Amendments Act of 1972, Southwestern Adventist University announces that the Assistant Vice President for Financial Administration is the Title IX Coordinator. The Title IX Coordinator is responsible for coordinating efforts to comply with the Title IX regulations and for investigating any Title IX complaint.

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PROCEDURES

These procedures apply to complaints filed by students or employees, 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 the Title IX Coordinator. Upon receiving the report the Title IX coordinator 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 respondent. Matters brought to the attention of university employees, not exempted from the obligation to report, are to be reported to the Title IX Coordinator.

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 respondent, the university will evaluate that request in context of its responsibility to provide a safe and nondiscriminatory environment for all students and employees. Confidentiality may be broken in matters that are deemed health and safety risks, multiple reports of prohibitive conduct, prohibitive conduct involving weapons and physical restraints and the age of the complainant. The complainant should be aware that the university's ability to maintain the complainant's identity confidential may be limited.

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 recordings
- 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.)
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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

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 sexual 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.

STEP 1: REPORT

An individual complainant should report an alleged incident of discrimination or sexual misconduct to the Title IX Coordinator by completing the [Title IX Complaint Form online](#).

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

The complainant 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 Title IX Coordinator will assign the case to the Title IX investigation team. The Title IX investigators will gather all incident reports, statements, text messages, emails, pictures, etc. and interview all parties involved. Both the complainant and the respondent will be given the opportunity to present witnesses and supporting documentation or information. Following the gathering of all information associated with the case, the investigators 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 occurred, the incident will be forwarded to the Title IX Committee for review. Based on the nature of the complaint, the Title IX Committee 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/work schedule, work assignments, living arrangements, limiting contact with the respondent 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 respondent in the process.

Interim measures 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 complainant's own safety and well being
- if the respondent poses an ongoing threat of, disruption of, or interference with, the normal operations of the university

During the interim suspension, the respondent may be denied access to university premises and activities as the university deems appropriate.

The respondent will be notified in writing of the university's decision. The respondent shall, if so requested, be granted an opportunity to a meeting to appeal the university's decision.

STEP 3: RESPONSE TO INVESTIGATION

The standard proof used for hearing cases of discrimination or sexual misconduct is based on the preponderance of evidence standard. 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, emails pictures, statements, etc.), interviews and summary of findings from the investigation, the Title IX Coordinator may choose not to take any further action. The Title IX Coordinator will issue a *no charge* decision outcome letter.

Formal Resolution

If the Title IX Coordinator concludes that findings based on the preponderance of evidence standard that the alleged prohibitive conduct occurred, the case will be forwarded to the Title IX Committee for appropriate resolutions. The Title IX Coordinator will notify both the complainant and respondent that the matter has been charged and referred to the Title IX Committee. The *charge* letter will consist of the summary of the investigation sufficient to support the referral to a hearing, the specific allegations of prohibitive conduct and applicable university policy.

STEP 4: HEARING AND SANCTIONS

The Title IX Committee hearings are confidential and closed to all but the complainant, respondent, witnesses, advocates, committee members and university administrative designee as deemed appropriate by the university.

- Complainant and respondent must appear in person.
- Complainant and respondent have the right to bring an advocate.
- Complainant and respondent need to notify the Title IX Coordinator 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.

Hearing Process

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

Possible Sanctions

Sanctions for violating university regulations could include: change of departmental employment/residence, citizenship probation, community service, counseling, counseling assessments, disciplinary warnings, expulsion, fines, intervention programs, loss of privileges, restitution, suspension, termination of employment withholding of degree 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, admission and readmission of any student who fails to meet any sanctions. All pending conduct matter must be resolved prior to a student's graduation, transfer from or continued education at Southwestern Adventist University.

Notification of Outcome

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

1. The outcome of the Title IX 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 respondent via university email.

STEP 5: APPEAL PROCESS

The complainant and respondent 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:

- The case was initiated or conducted according to improper procedure and the decision was materially influenced as a result of the improper procedure
- New and relevant information is available that was not available at the time of the investigation that could reasonably affect the investigation finding(s).
- The sanction(s) is/are inappropriate or disproportionate to the determined finding(s).

Procedure

The typewritten appeal shall be submitted within two business days after notification of a decision has been received by the complainant or respondent.

Appeal Decision

The Appellate Committee will normally refer a decision on the appeal within three business days 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 Title IX Committee.
- 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 Title IX Committee. If the appeal is granted, the Appellate Committee may:
 1. Alter or modify the sanctions imposed by the Title IX Committee – 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 Title IX Committee.

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

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