

# SOUTHERN WESLEYAN UNIVERSITY P O L I C Y

<b>Policy Title:</b> Gender Non-Discrimination	<b>Policy Number:</b> 4.3
<b>Authority:</b> Title IX Coordinator, President’s Cabinet, President	<b>See Also:</b> 4.1 Protection of Minors 4.4 Personal Relationships
<b>Date Adopted:</b> 10/1/2014 <b>Revision Dates:</b> 08/14/2018; 08/06/2019  Replaced 8/14/20 with the Sexual misconduct policy	Student Handbook Faculty Handbook Staff Handbook

*Southern Wesleyan University is fully committed to the Biblical Standard of sexual integrity as defined and practiced by The Wesleyan Church. **At no time should the discussion of sexual behaviors cited within this policy be construed as endorsement of inappropriate sexual activity.***

## I. Policy Overview

Southern Wesleyan University endeavors to create an environment in which all members of the community are treated with the dignity and respect inherent in their position as creatures made in the image of God. Not only is gender discrimination a violation of federal law; it is contrary to principles of Christian conduct. Consequently, it is the policy of Southern Wesleyan University that discrimination against individuals on the basis of gender is unacceptable behavior and will not be tolerated. In compliance with Title IX of the Educational Amendments of 1972, Southern Wesleyan University does not discriminate in any of its practices, policies, or procedures on the basis of gender.

Gender discrimination is defined as unequal treatment of a student based on gender that limits a student’s participation in or receipt of benefits, services, or opportunities in the institution’s programs and/or activities.

## II. Statement on Sexual Violence

Allegations of sexual violence are a form of gender discrimination according to the Department of Education. In 2011, the Department of Education defined sexual violence as incidents of sexual assault and/or incidents of sexual harassment. In addition, the Campus Sexual Violence Elimination Act of 2013 (Campus SaVE Act), an amendment to the Violence Against Women Act of 1994 (VAWA), includes domestic violence, dating violence, and stalking as forms of gender discrimination.

Incidents of sexual violence are considered a serious public safety concern for both the victim and the larger community. All acts of sexual violence are prohibited at Southern Wesleyan University—whether the act takes place on or off campus, or within our online learning community. In addition, all students are subject to institutional and criminal investigation of sexual violence regardless if the incident occurred on campus or away from campus.

### III. Statement on Consent

***While Southern Wesleyan University (refer to the lifestyle statement and behavioral expectations for students and the standards of conduct for employees) requires all members of the community to abstain from intimate forms of sexual conduct outside of marriage, Title IX expects the University to define consent for the purposes of compliance with Federal law.***

**Consent** is defined as knowingly and voluntarily indicating willingness to engage in sexual activity by a person of legal age. Consent can be given via words and/or actions, as long as those words and actions create a clear and mutual understanding of one’s willingness to engage in sexual activity. Consent to one form of sexual activity does not imply consent to additional forms of sexual activity. Silence, in and of itself, cannot be interpreted as consent. Sexual activity with someone known to be, or a reasonable person should have known to be, mentally or physically incapacitated to provide consent constitutes a violation of this policy.

**Incapacitation** is defined as any state where a person cannot make rational, reasonable decisions because they lack the ability to provide consent to sexual activity. This includes individuals who are incapacitated by alcohol or other drugs, mental capacity, and physical restraints. Use of alcohol or other drugs is not a suitable defense for any behavior that violates this policy.

### IV. Violations

The following list provides examples of inappropriate behavior in the Southern Wesleyan University community. The listing is not exhaustive, but is intended to give students an idea of the types of actions that may result in disciplinary consequences. Sanctions may be imposed on a variety of levels, depending upon the severity of the violation and whether the student is found to be responsible. Sanctions range from warnings to expulsion as deemed necessary by the University disciplinary officials. Charges of violations and the sanctions generally imposed are reviewed on a case-by-case basis. For more information on disciplinary sanctions students should consult the Disciplinary Response and/or Sanctions section of the *Student Handbook*, and faculty and staff should consult the *Faculty Handbook* and the *Staff Handbook*, respectively.

#### A. Sexual Harassment

Any form of harassment is prohibited. Regardless of gender, personal affiliation and/or affiliation with the University, **sexual harassment** is defined as unwelcome and unsolicited sexual advances, requests for sexual favors or other verbal, visual or physical conduct or communication with sexual overtones that the victim deems offensive. Sexual harassment includes, but is not limited to unsolicited, deliberate or repeated sexual flirtation, advances or propositions; verbal abuse of a sexual nature; display of sexually suggestive pictures or objects; and/or offensive or abusive physical contact of a sexual nature. Depending upon the severity, at any level this could lead to suspension, dismissal and/or criminal charges.

Sexual Harassment includes the following behaviors:

1. Unwanted sexual advances;
2. Offering employment benefits in exchange for sexual favors;
3. Making or threatening reprisals after a negative response to sexual advances;
4. Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons, or posters;
5. Verbal conduct: making or using derogatory comments, epithets, slurs, and jokes;
6. Verbal sexual advances or propositions;
7. Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations; and
8. Physical conduct: touching, assault, impeding or blocking movement.

#### **B. Sexual Assault**

**Sexual assault** is defined as rape or any actual or attempted nonconsensual or forcible sexual touching, including kissing, touching the breasts, fondling, groping etc. Attempting to force another person, regardless of sexual gender, personal affiliation and/or affiliation with the University, to participate in sexual intercourse and/or other sexual activities such as touching the buttocks or genitalia against his/her will is prohibited. Such assaults include verbal coercion, threats, physical restraint or mental impairment or the inability to grant consent due to unconsciousness.

#### **C. Stalking**

**Stalking** is defined as any behavior or conduct directed at a specific person that has the potential to cause someone to fear for his or her safety, or the safety of others, and/or cause substantial emotional distress. Such conduct may include, but is not limited to, following another person, telephone communication, excessive emails, electronic communications, written notes and letters, and using scheduled appointments to force meetings.

#### **D. Dating Violence**

**Dating violence** is defined as any act of violence committed against someone with whom an established social, romantic, or intimate relationship exists. An established relationship shall be based on the following factors: the length of the relationship, the type of the relationship, and the frequency of interpersonal interactions. Dating violence can include the definitions for other forms of sexual violence including sexual harassment, sexual assault, and stalking.

#### **E. Domestic Violence**

**Domestic violence** is defined as any act of violence committed against someone who can be identified as a member of the household. This can include, but not limited to a former or current spouse, the other parent of a child in common, someone whom by actions demonstrate a spousal relationship, and/or against any other person considered a member of the household. Domestic violence can include the definitions for other forms of sexual violence including sexual harassment, sexual assault, and stalking.

### **V. Reporting and Support**

The primary concern of the University is student safety; and students are encouraged to report an incident of sexual violence. Any additional rule violations that come up during the report, investigation, or formal hearing of a sexual violence case will be addressed separately from the sexual violence allegation. Use of alcohol or other drugs does not make the victim at fault for sexual violence, and should not be a deterrence from reporting an incident.

If a sexual offense occurs, a complaint can be filed in writing with the University Title IX Coordinator. The Title IX Coordinator (or his/her designee) being responsible for oversight of all complaints can: provide assistance in filing a criminal complaint; explain the rights of a victim of sexual violence or a reporter of sexual violence; and explain the process for investigating and adjudicating complaints. If desired, the Title IX Coordinator can assist a complainant with notifying the appropriate jurisdictional authority. In addition, you can contact any Student Life Office staff member, university administrator, residence hall administrator, faculty member, site coordinator, site assistant, campus/learning center security, or the local police. Students or other University community members can also contact the national Rape Crisis Center toll free at 1-800-656-HOPE (4673) for assistance. Counseling, information, and support for sexual offense victims are available through the Student Life Offices and residence halls. The University will assist a victim in any reasonably available way to address emotional and physical needs, including changing academic, residential, transportation, and work situations.

Wellness Week workshops, Resident Assistant (RA) training, staff training, announcement of area programs, annual assembly, and a variety of small group seminars include information about acquaintance rape, rape, and other sexual offenses. In addition, brochures and posters are available that publicize information about these issues periodically during the year.

### **VI. Victim Bill of Rights**

These rights are extended to individuals who file a complaint of sexual harassment or sexual violence. These rights are in accordance with the Department of Education's Office of Civil Rights:

1. Complainants have the right to feel protected in Southern Wesleyan's educational programs and activities. These protections are extended to all manner of sanctioned school activities;
2. Complainants have the right to file a report of discrimination against any student, staff, or faculty member without fear of retribution or negative consequence;
3. Complainants have the right to file a separate police report with the appropriate police jurisdiction, where the alleged incident occurred;
4. Complainants have the right to expect Southern Wesleyan to process any complaint of sexual harassment, sexual assault or gender violence in accordance with established procedures;
5. Complainants have the right to expect that if a third party files a complaint under the grievance procedures on behalf of the student, that the University will provide a prompt, thorough, and impartial investigation of the complaint;
6. Complainants have the right to give consent before the University begins an investigation of allegations of gender discrimination (Please note that in certain circumstances the university may proceed regardless of the victim's wishes in order to stop the harassment; in these situations, the victim has a right to request their name and any personally identifiable information not be used);
7. Complainants that file a report of sexual harassment or sexual violence, have the right to request confidentiality. The student recognizes that a request of confidentiality may prevent the institution from taking disciplinary action;
8. Complainants have the right to request the University to not conduct an investigation. However, if the harassment includes violence, a threat of continued harassment, a pattern of harassment, predatory behavior, or use of a weapon, the university is obligated to investigate;
9. Complainants have the right to expect the University will take steps to prevent retaliation and will take strong responsive actions if it occurs;
10. Complainants have the right to be informed of every step of the investigative and disciplinary process; and
11. Complainants involved in a complaint of sexual harassment, sexual assault or gender violence have the right to appeal and be notified in writing the outcome of both the complaint and any associated appeal.

## **VII. Investigation Procedures**

Complaints of gender discrimination and/or sexual violence will be investigated promptly, fairly, and impartially by the Title IX Coordinator or his or her designee in accordance with the following procedures. Any complaint will need to be made in writing, signed, and agreed to by the complainant. The complainant will also be given a copy of the Victim Bill of Rights. In accordance with published federal guidelines, all complaints of sexual violence that have been investigated and deemed to have merit will be processed in accordance with formal hearing procedures.

#### **A. Complaints Against Students**

After the Title IX Coordinator receives a report or complaint regarding an alleged violation of the Gender Non-Discrimination Policy against a student, the Title IX Coordinator or his/her designee (collectively referred to as Title IX Coordinator) will conduct a preliminary investigation of the alleged violation to determine if a formal investigation is required. During the preliminary or formal investigation, the Title IX Coordinator may, in his/her sole discretion, interview witnesses and obtain statements concerning the complaint. Actions taken to investigate the complaint during the preliminary investigation are intended to be conducted confidentially to the extent it is practical, appropriate, and permitted by applicable law. The standard of evidence to be used during the investigation will be *preponderance of evidence*. The preponderance of evidence standard indicates that based on the totality of evidence uncovered it is more likely than not a violation of this policy occurred. At the conclusion of both phases of the investigation, the Title IX Coordinator will present the result of the investigation to the student accused of a policy violation and the complainant. Institutional discipline may include any of the disciplinary penalties outlined in the *Student Handbook* including expulsion, and other appropriate measures.

Complaints of gender discrimination will be dealt with promptly, according to the following timelines. The investigation will commence within five business days of receipt of the written complaint. The investigation will conclude in a timely manner with respect to the complexity, extent, and severity of the complaint.

If the Title IX Coordinator determines, in his/her sole discretion, that the complaint does not have merit, the matter is considered closed unless further information becomes available at a later date, or the complainant wishes to appeal the final outcome of the investigation.

If the Title IX Coordinator determines, in his/her sole discretion, that the complaint may have merit, the Title IX Coordinator will notify both the student accused of a policy violation and the complainant of the final outcome of the investigation and any recommended sanctions. A final report will be given to the Vice President for Student Life (herein referred to as VPSL).

If either party disagrees with the final outcome of the investigation or any of the recommended sanctions made by the Title IX Coordinator, that party may file an appeal with the VPSL. The appeal must be in writing and must be made within two (2) business days of being notified of the initial determination. Upon receipt of the written appeal, the VPSL will review the investigative report and meet with both parties individually. At his or her discretion, the VPSL may also interview the Title IX Coordinator. Investigation notes will be presented to the VPSL upon request. The VPSL will either uphold the Title IX Coordinator's

findings and recommendations, amend the recommendations, or institute a new outcome to the case.

If either party disagrees with the final outcome or recommendations of the appeal to the VPSL, that party may file an appeal with the Student Appeals Committee. Please read the *Student Appeals Committee* section in the SWU Student Handbook. The decision of the Student Appeals Committee is final.

Generally, while an appeal is pending to the next level, any disciplinary sanction is suspended pending the outcome of the appeal. However, the University reserves the right to continue or implement Temporary Protective Measures during the pending appeal. Both parties will be notified in writing about the result of the appeal.

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## **B. Complaints Against Faculty or Staff**

Complaints of gender discrimination will be dealt with promptly, according to the following timelines. The investigation will commence within five (5) business days of receipt of the written complaint. The investigation will conclude in a timely manner with respect to the complexity, extent, and severity of the complaint. With respect to the Office of Civil Rights 2011 “Dear Colleague” Letter, mediation will not be used to resolve complaints of gender discrimination.

After the Title IX Coordinator receives a report or complaint regarding an alleged violation of the Gender Non-Discrimination Policy by a faculty or staff member, the Title IX Coordinator or his/her designee (collectively referred to as Title IX Coordinator) will conduct a preliminary investigation of the alleged violation to determine if a formal investigation is required. During the preliminary or formal investigation, the Title IX Coordinator may, in his/her sole discretion, interview witnesses and obtain statements concerning the complaint. Actions taken to investigate the complaint during either phase of the investigation are intended to be conducted confidentially to the extent it is practical, appropriate, and permitted by applicable law. The standard of evidence to be used during the investigation will be *preponderance of evidence*. The preponderance of evidence standard indicates that based on the totality of evidence uncovered it is more likely than not a violation of this policy occurred. At the conclusion of both phases of the investigation, the Title IX Coordinator will present the result of the investigation to the faculty or staff member accused of a policy violation and the complainant. Institutional discipline may include any of the disciplinary penalties outlined in the *Handbook for Staff Employees* or *Handbook for Faculty Employees* at the University’s sole discretion, up to and including termination.

Any person contacted during the investigation should cooperate fully and keep any information about the investigation strictly confidential. Failure to do so may result in disciplinary action. Any faculty or staff member who provides false information in an investigation is subject to disciplinary action.

If the Title IX Coordinator determines, in his/her sole discretion, that the complaint does not have merit, the matter is considered closed unless further information becomes available at a later date, or the complainant wishes to appeal the final outcome of the investigation.

If the Title IX Coordinator determines, in his/her sole discretion, that the complaint may have merit, the Title IX Coordinator will notify both the employee accused of a policy violation and the complainant of the final outcome of the investigation and any recommended sanctions. A final report will be given to the Presidential Cabinet Member, or Vice President that has administrative authority over the employee's department (herein referred to as Vice President).

If either party disagrees with the final outcome of the investigation or any of the recommended sanctions made by the Title IX Coordinator, that party may file an appeal with the Vice President. The appeal must be in writing and must be made within two (2) business days of the party being notified of the initial determination. Upon receipt of the written appeal, the Vice President will review the investigative report and meet with both parties individually. At his or her discretion, the Vice President may also interview the Title IX Coordinator. Investigation notes will be presented to the Vice President upon request. The Vice President will either uphold the Title IX Coordinator's findings and recommendations, amend the recommendations, or institute a new outcome to the case.

If either party disagrees with the final outcome or recommendations of the appeal to the Vice President, that party may file an appeal with the University President. The appeal must be in writing and must be made within two (2) business days of the party being notified of the initial determination. Upon receipt of the written appeal, the President will review the investigative report and meet with both parties individually. At his or her discretion, the President may also interview the Title IX Coordinator. Investigation notes will be presented to the President upon request. The President will either uphold the Title IX Coordinator's findings and recommendations, amend the recommendations, or institute a new outcome to the case.

The Title IX Coordinator reserves the right to make exceptions to the appeal structure based on the level of the employee within the institution's organizational structure.

Generally, while an appeal is pending to the next level, any disciplinary sanction is suspended pending the outcome of the appeal. However, the University reserves the right to continue or implement Temporary Protective Measures during the pending appeal. Both parties will be notified in writing about the result of the appeal.

### **C. Advisors**

Both the complainant and person being accused are entitled to bring one advisor to be present when giving his or her testimony during an interview. While the advisor can be someone of each party's choosing, neither party is permitted to have an attorney present during the proceedings. The advisor's role is limited to communicating directly with the party he or she represents. The advisor may not directly participate in the interview.



**VIII. Additional Notifications**

Information about registered sex offenders who may be present in the vicinity of the Central campus or any other location of interest may be found at the following web site: <http://www.nsopw.gov>. Click on the national sex offender quick search and select search by location.