

# SOUTHWESTERN

## LAW SCHOOL Los Angeles, CA

### Policy to Prevent Discrimination, Harassment, and Retaliation

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### **A. Policy to Prevent Discrimination, Harassment, and Retaliation Overview**

#### **1. Policy statement**

Southwestern Law School prohibits discrimination and harassment based on any protected characteristic, including an individual's race (including hairstyle and hair texture), ethnicity, color, religion, creed, ancestry, national origin, sex, gender, gender identity or expression, reproductive health decision-making, pregnancy (including pregnancy, childbirth, breastfeeding, and medical conditions related to pregnancy, childbirth, or breastfeeding), sex stereotyping (including assumptions about a person's appearance or behavior, gender roles, gender expression, or gender identity), sexual orientation, parental status, marital status, age, disability (mental or physical), medical condition, citizenship status, military status or service, veteran status, genetic information, or any other classification protected by federal or California law, or any combination of any status protected by law in matters of admissions, employment, housing, or services, or in the educational programs (including retention of students) or activities the Law School operates. Such conduct violates the Law School's values and disrupts the living, learning, and working environment for students, faculty, staff, and other community members. The Law School will interpret and enforce this policy consistently with the requirements of the First Amendment and applicable federal law, including Titles VI, VII, and IX.

#### **2. Purpose**

The Law School is committed to fostering an environment in which students, admitted students, and employees are safe, secure, and free from prohibited discrimination, harassment, and retaliation. When learning of conduct or behavior that may not meet these standards, community members and the Law School are expected to take an active role in upholding this policy and promoting the dignity of all individuals by reporting the conduct to the Student Services Office (student conduct) or Human Resources (employee or other individuals' conduct).

#### **3. Scope of prohibited conduct**

This policy prohibits discrimination, harassment, and retaliation based on protected characteristics as defined under applicable federal, California, and local laws. While the Law School encourages respectful and professional conduct, this

policy is not intended to govern all interpersonal conflict or uncivil behavior. Conduct that is merely rude, uncourteous, or offensive—without more—does not necessarily constitute a policy violation.

To fall within the scope of this policy, conduct must be sufficiently severe, persistent, or pervasive that it interferes with an individual's access to education or work or otherwise creates a hostile or discriminatory environment based on a protected characteristic. Applicable laws do not prohibit general incivility or disagreements that are not tied to protected characteristics. Accordingly, this policy is not a general civility code.

Reports concerning conduct that does not fall within the scope of this policy may be addressed through other institutional policies or procedures, as appropriate.

#### **4. Jurisdiction**

All students, employees (whether full-time or part-time), and trustees must refrain from conduct prohibited by this policy. These definitions of prohibited conduct also apply to admitted students who have not yet matriculated, alums, business associates or guests, independent contractors or consultants, vendors, volunteers, individuals providing services pursuant to a contract, and any other persons with whom students or employees come into contact while conducting Law School business or participating in Law School programs and activities.

The procedures in **Appendices A** and **B** outline the process the Law School follows when it receives a report alleging a violation of this policy by a current faculty member (as defined by the Faculty Manual), a non-probationary current staff member, a trustee, or a student. Others (e.g., alums, guests, independent contractors, volunteers, etc.) who are accused of discrimination, harassment, or retaliation are not entitled to the resolution processes set forth in this policy. The Law School will exercise its discretion to review complaints involving these individuals.

Depending on the status of the parties, the Student Services Office (SSO) or the Human Resources Office (HR) oversees the Law School's response to reports of violations of this policy. The Civil Rights Investigator is the designated official in the SSO responsible for investigating complaints involving students (as the reporting or responding party) under this policy, and the Deputy Title IX Coordinator is the designated official responsible for complaints involving an employee reporting party and an employee responding party. All references to the SSO, Civil Rights Investigator, HR, or the Deputy Title IX Coordinator in this policy include their designee (e.g., administrators of a different Law School office, another investigator, or an outside investigator, etc.). The Law School may investigate any reported violation of this policy that occurs in the context of a Law School program or activity or that otherwise affects the Law School's working or learning environment, regardless of whether the reported conduct occurred on

or off campus or in a virtual space. For every report submitted, the Law School will review the circumstances of the reported conduct to determine whether this policy or any other institutional policy, such as the Sexual Misconduct Policy, applies and was violated.

If the Law School has jurisdiction over the parties involved (students, admitted students, and employees), it will take steps within its control to eliminate, prevent, and address the conduct that violates this policy or any other institutional policy. If the responding party is not a member of the Law School community or is no longer affiliated with the Law School as a student or employee at the time of the report or when the resolution process is initiated (including when the responding party has graduated or left the Law School), the Law School's ability to take disciplinary action may be limited.

## **5. Freedom of expression**

Nothing in this policy should be interpreted to restrict constitutionally protected speech, including speech that may be controversial or offensive, so long as it does not meet the legal threshold for harassment, threats, or other unprotected categories of expression (e.g., defamation, etc.) (see the Law School's Free Expression Policy for more information).

## **6. Support and resources**

Individuals impacted by discrimination, harassment, or retaliation may contact the SSO (students and admitted students) or HR (employees) for support, resources, and information, even if they choose not to pursue the resolution process described in this policy.

## **7. Sexual misconduct**

Conduct prohibited by this policy includes sexual misconduct (including sexual assault, non-consensual sexual contact, intimate partner violence, sexual exploitation, and stalking) that is not otherwise covered by the Sexual Misconduct Policy. Individuals impacted by sexual misconduct may contact the Law School's Title IX Coordinator or Deputy Title IX Coordinator to receive support, resources, and information, even if they do not wish to move forward with a resolution process. Please see the Sexual Misconduct Policy or contact the following individuals for additional information.

Title IX Coordinator, Sabrina Calica

Location: 675 Westmoreland Blvd., Suite 102, Los Angeles, California 90010

Phone: (213) 738-6788

Email: [titleix@swlaw.edu](mailto:titleix@swlaw.edu)

Deputy Title IX Coordinator, Max Holt  
Location: 675 S. Westmoreland Blvd., Suite 100, Los Angeles, California 90010  
Phone: (213) 738-6628  
Email: [titleix@swlaw.edu](mailto:titleix@swlaw.edu)

## **B. Implementation**

### **1. Definition of participants**

A "reporting party" is a person who has been impacted by an alleged policy violation.

A "responding party" is a person who is alleged to have violated a Law School policy.

The term "parties" refers to the reporting party and the responding party.

A "witness" is a person who has knowledge related to specific aspects of a case.

An "advisor" is a support person who may be present to provide support to a reporting party or responding party throughout a resolution process. In general, an advisor may not also serve as a witness in the same matter. Please see Section D.7. for more information regarding the role of an advisor and who may serve as an advisor.

### **2. Prohibited conduct**

#### **a. Discrimination**

Discrimination includes treating someone differently in matters of admissions, employment, housing, or services or participation in educational programs or activities operated by the Law School based on that individual's actual or perceived protected characteristic. In determining whether discrimination occurred, the Law School will evaluate whether a legally protected characteristic was a motivating factor in the adverse action.

Discrimination can also include policies or practices that are neutral on their face but disproportionately impact individuals based on a protected characteristic. When evaluating a complaint that alleges discrimination by disparate impact, the SSO or HR, as applicable, will evaluate whether the reported policies or practices are necessary to meet an important educational goal (for students) or are job-related and consistent with business necessity (for employees).

Examples of discrimination may include:

- Denying someone access to an educational program based on a protected characteristic;

- Denying someone access to a Law School facility based on a protected characteristic;
- Refusing to hire or promote someone based on a protected characteristic; and
- Reducing someone's job responsibilities or excluding them from professional development opportunities because of a protected characteristic.

**b. *Harassment in employment***

Harassment in employment is unwelcome conduct based on a protected characteristic that unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive working environment.

Examples of conduct that may constitute harassment based on a protected characteristic may include, but are not limited to:

- Making threats or engaging in conduct that a reasonable person in the targeted individual's position would find physically intimidating or threatening;
- Repeated and targeted verbal abuse that exceeds the bounds of protected expression and creates a hostile environment (as defined below in this policy);
- Displaying derogatory or obscene materials in a manner that is targeted, persistent, and interferes with an individual's ability to work, learn, or participate in institutional programs.

**c. *Sexual harassment in employment***

Sexual harassment is a specific type of unlawful harassment. It includes unwelcome conduct based on sex that meets one of the following criteria.

- Quid pro quo harassment: When submission to such conduct is made explicitly or implicitly a condition of employment or is used as the basis for an employment decision; or
- Hostile environment: When conduct is so severe, pervasive, or objectively offensive that it effectively denies a person equal access to employment opportunities.

The following types of conduct may constitute prohibited sexual harassment if they meet the legal standard described above:

- Unwanted physical touching;
- Telling sexually explicit jokes or stories;
- Making comments or gestures reasonably regarded as lewd or offensive;
- Displaying sexually suggestive objects, cartoons, or pictures;

- Sending sexually explicit messages by letter, notes, electronic mail, text, app, social media postings, or phone;
- Making unwelcome comments reasonably regarded as offensive about a person's body, physical appearance, or clothing;
- Frequently using unwelcome terms of endearment; or
- Repeatedly asking an individual for a date or meeting outside of working hours after they have indicated an unwillingness to go.

Certain types of sexual harassment may also be addressed by the Law School's Sexual Misconduct Policy.

Consistent with its obligations under the Jeanne Clery Campus Safety Act (Clery Act), the Law School also prohibits sexual assault, dating violence, domestic violence, and stalking based on sex by and against its employees. If this conduct does not fall under the jurisdiction of the Sexual Misconduct Policy, the Law School reserves the right to address the conduct under the procedures of this policy, using the same definitions of prohibited conduct as the Sexual Misconduct Policy and the definition of affirmative consent for cases of sexual assault involving students. In these cases, as required by the Violence Against Women Act (VAWA), the parties will be entitled to have an advisor at any meeting or proceeding and to receive simultaneous notice of the outcome, results, and the available appeal procedures.

**d. *Harassment of students***

Harassment of a student by an employee or another student includes conduct (e.g., physical, verbal, graphic, or written) based on a protected characteristic that is so severe, pervasive, or objectively offensive that it effectively denies the student equal access to the Law School's programs, activities, or services.

Employees are also prohibited from sexually harassing students, which is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

- Submitting to or rejecting the conduct is explicitly or implicitly made a term or a condition of a student's employment, academic status, or participation in a program or activity (quid pro quo);
- Submitting to or rejecting the conduct is used as the basis of academic decisions affecting the individual;
- The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of

creating an intimidating, hostile, or offensive work or educational environment.

Reports of sexual misconduct, including sexual harassment, between students will be governed by the Sexual Misconduct Policy.

**e. *Retaliation***

The Law School prohibits retaliation against any member of its community for reporting in good faith an incident of discrimination or harassment or for participating in an investigation or resolution process under this policy. Retaliation includes deliberate, materially adverse actions that would dissuade a reasonable person from engaging in protected activity under this policy, such as reporting misconduct or serving as a witness. Retaliatory conduct includes threats, coercion, intimidation, or harassment.

This policy does not prohibit good-faith actions taken for legitimate reasons, including performance-related decisions, disciplinary measures unrelated to the underlying report, or exercising academic or managerial judgment.

Retaliation can be committed by or against any individual or group of individuals. Additionally, a person may not direct another to take retaliatory action on their behalf.

**3. *Making a report***

While there is no absolute time limit for reporting an incident of discrimination, harassment, or retaliation, the Law School strongly encourages individuals to file reports as soon as practicable after the alleged conduct occurs. Delays in reporting may impair the Law School's ability to investigate, gather evidence, and respond effectively. Memories may fade, witnesses may become unavailable, and records may be lost over time.

The Law School retains discretion to determine whether a report will be investigated or otherwise addressed, considering factors such as the passage of time, availability of evidence, and fairness to the parties involved. In appropriate cases, the matter may be resolved under the Sexual Misconduct Policy or another applicable policy.

The information below is for individuals who wish or are required to report violations of this policy. Anyone wishing to or required to report conduct prohibited by this policy to the SSO or HR may do so in person, by email, by regular mail, or by phone. Every report of an alleged violation of this policy will receive a written acknowledgment from the Law School if the reporter's identity is provided.

**While the Law School will review anonymous reports, the ability to address misconduct reported by anonymous sources is significantly limited.**

**To make a report, please contact the following:**

**Student Services Office** (Complaints Involving Students)

Location: 675 S. Westmoreland Avenue, Suite 102, Los Angeles, California 90010

Email: [studentservices@swlaw.edu](mailto:studentservices@swlaw.edu)

**Human Resources Office** (Complaints Involving an Employee Reporting Party and an Employee Responding Party)

Location: 675 S. Westmoreland Avenue, Suite 100, Los Angeles, California 90010

Email: [hr@swlaw.edu](mailto:hr@swlaw.edu)

After receiving a report, if the reporting party's identity is known, an office representative will contact the reporting party and the person who may have experienced the prohibited conduct, if different. The outreach will generally include information about the applicable policy, options for pursuing a complaint, and relevant resources. The outreach will also include an invitation to meet with or provide additional information to an appropriate staff member.

#### **4. Reporting obligations**

All Law School employees are obligated to promptly report conduct prohibited by this policy that they become aware of in the scope of their work for the Law School to the SSO or HR.

**The Law School encourages all individuals, including students, to report conduct prohibited by this policy to the Law School's SSO or HR.**

The Law School will promptly report any and all instances of child abuse or neglect toward a minor (person under the age of 18), including but not limited to inappropriate physical conduct, assault, unwanted touching, molestation, and any other sexual misconduct required to be reported by law to the appropriate local law enforcement agency and local child protective services agency as required by law.

All employees whose duties bring them into contact with minors on a regular basis or any employees who supervise those whose duties bring them into contact with minors on a regular basis and all HR employees are required to independently report to Child Protective Services and HR any allegations, reports or concerns of child abuse, child molestation, or neglect occurring on the Law School's premises or at an official activity of, or program conducted by the Law School.

All employees are required to report any possible concerns of unlawful sexual abuse or neglect of minors set forth in California Penal Code 11164 to HR immediately.

## **5. Responding party is no longer affiliated with the Law School**

If the individual accused of engaging in prohibited conduct is no longer affiliated with the Law School when the report is made or during the investigation, the Law School's ability to investigate or take corrective action may be limited.

In such circumstances, the Law School has the discretion to:

- Conduct a limited review to the extent practicable;
- Issue no-contact orders, campus access restrictions, or other measures as appropriate to protect the community;
- Document the report for future reference, should the individual seek reaffiliation with the Law School; or
- Notify appropriate external authorities where legally required.

In all cases, the Law School will balance the parties' interests, the integrity of its educational programs and activities, and the principles of fairness and equity in determining its response.

## **6. Free expression and academic freedom**

The Law School is committed to upholding this policy, its Academic Freedom Policy, and its Free Expression Policy. These commitments are essential to the health and integrity of the Law School's educational environment.

The Law School recognizes that protecting individuals from unlawful discrimination and harassment, safeguarding academic freedom, and promoting free expression are all vital goals. However, consistent with federal law and institutional values, the Law School affirms that lawful expression, debate, or academic inquiry—even when controversial or offensive to some—will not constitute discrimination or harassment unless it meets the applicable legal standards.

When a matter implicates multiple policies, the Law School will carefully consider the requirements of each but will not interpret or apply its policies in a manner that infringes on rights protected by law.

## **7. Religion**

The Law School prohibits discrimination, harassment, and retaliation based on religion. This policy includes protections for employees and students who express their religious beliefs respectfully or who decline participation in Law School activities that conflict with their sincerely held beliefs, provided such actions do not infringe on the rights of others or disrupt the educational or work environment. No employee or student will be subject to adverse action for expressing or refraining from expressing religious viewpoints.

## C. Resources

### 1. Confidential resources

The following confidential resources are available for individuals to discuss incidents and issues related to conduct prohibited by this policy. Confidential resources are not obligated to disclose reports of discrimination or harassment to the SSO but may be required to disclose certain information in the event of a threat to self or others. Please consult with the confidential resources about the scope of their obligations before disclosing any information.

Student Resource	Contact Information	Description
BisonCares	1-833-434-1217  The international number is +1-984-268-2016.	The BisonCares program offers Southwestern students a variety of free 24/7 mental health support options.

Student and Employee Resource	Contact Information	Description
HELPNET	1-800-435-7638	A private consulting firm that can refer counseling services and community resources. This is a confidential resource that is available 24 hours a day, seven days a week.

### 2. Educational training, awareness, and educational programs

The Law School offers a variety of training programs to address discrimination, harassment, and retaliation within the Law School community. The Law School strives to ensure that such programming is developed to be culturally relevant; trauma-informed; inclusive of diverse communities and identities; sustainable; responsive to community needs; informed by research or assessed for value, effectiveness, and outcome; and considerate of environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

## **D. Complaint Resolution Process Overview**

### **1. General procedures**

The procedures in **Appendices A** and **B** outline the process the Law School follows when it receives a report alleging a violation of this policy by a current faculty member (as defined by the Faculty Manual), a non-probationary current staff member, a Board of Trustees member, or a student. Others who are accused of discrimination, harassment, or retaliation are not entitled to the processes set forth in this policy. The Law School will exercise its discretion to review complaints involving these individuals.

The SSO and HR are responsible for handling reports of violations of this policy. In addition, the Offices may address other potential policy violations related to the same complaint, either by making findings instead of using another Law School investigative process, or by referring the matter to the appropriate Law School office or unit. All reports will be handled in a prompt, fair, and impartial manner in accordance with relevant laws and regulations, applicable Law School policies, and this policy. The Law School will take appropriate action in response to complaints or knowledge of such behaviors while preserving the rights of those against whom allegations have been made to receive procedural protections in the fact-finding and decision-making process. All such investigations will be conducted by qualified, impartial personnel in a manner that is fair, equitable, and timely to the parties. The Law School maintains the privacy of investigations to the extent possible, documents, and tracks investigations to ensure reasonable progress, and closes investigations in a reasonably timely manner.

The processes described in **Appendices A** and **B** are the Law School's internal process to determine whether a Law School policy was violated; they are not intended to replicate or function as a court system. As such, the Law School's process does not use the same rules of procedure or evidence as those used by courts or law enforcement. For individuals who are both students and employees, the Law School will determine the appropriate process for addressing a complaint based on the nature of the allegations, the context in which the conduct occurred, and the primary role of each party involved at the time of the alleged incident.

Because allegations of discrimination, harassment, and retaliation may present complex or unforeseen issues, the Law School reserves the right to take reasonable steps to address them in a way that upholds the spirit of this policy, preserves fairness for both parties, and maintains the integrity of the resolution process.

## 2. **Participating in the resolution process**

The Law School encourages the parties and witnesses to participate fully in the complaint resolution process. For the Law School to respond fully to the allegations, most situations will require the reporting party's participation and that their identity be disclosed to the responding party.

If a reporting party decides not to participate but wants disciplinary action to be taken, the Law School will determine whether it is possible to proceed with the formal resolution process described in **Appendices A** and **B**. In some cases, it will not be possible for the Law School to proceed without the reporting party's participation. If a responding party elects not to participate in any part of the process, the Law School may proceed without the responding party's participation. Responding parties will be held accountable for any outcomes issued, even if they decline to participate.

When individuals report allegations of discrimination or harassment to the Law School but do not consent to the disclosure of their names or refuse to disclose the identity of or identifiable information about the alleged offender, the Law School's ability to respond to the reports may be limited. When a reporting party requests anonymity or does not wish to proceed with an investigation, the Law School will attempt to honor that request, but in some cases, the Law School may proceed with an investigation, particularly in cases involving employees or as otherwise required by law. In those situations, the Law School will not compel the reporting party to participate. The Law School will consider the following factors in reaching a determination about whether to proceed:

- The totality of the known circumstances;
- The nature and scope of the alleged conduct;
- The risk posed to any individual or to the campus community by not proceeding, including the risk of the reported behavior recurring;
- Whether there have been other reports of misconduct by the responding party;
- Whether the report reveals a pattern of misconduct at a given location or by a particular group;
- The reporting party's interest in the Law School not pursuing an investigation or disciplinary action, and the impact of an investigation on the reporting party;
- Whether the Law School possesses other means to obtain relevant evidence;
- Fairness considerations for both parties;
- The Law School's obligation to provide a safe and non-discriminatory environment; and
- Any other available and relevant information.

All participants must be completely truthful with the information they share at all stages of the process. Any individual who deliberately makes a material misrepresentation in bad faith during any stage of a report or investigation under this policy will be subject to disciplinary action in accordance with institutional policies and procedures. This provision does not apply to a good-faith report that is not substantiated (i.e., proven by a preponderance of the evidence).

### **3. Privacy and sharing of information**

The Law School considers reports and investigations of discrimination, harassment, and retaliation to be private matters for the parties involved. For that reason, the Law School will protect the identity of individuals involved in reports of discrimination, harassment, and retaliation to the best of its ability. The Law School will share personally identifiable information only with individuals who have a need to know for the Law School to investigate and respond, or to deliver resources or support services. The Law School does not publish names or post identifiable information about individuals involved in a report of discrimination, harassment, or retaliation. However, the Law School cannot promise confidentiality or complete privacy in handling discrimination and harassment reports or complaints.

All participants in an investigation of discrimination, harassment, or retaliation will be informed that privacy enhances the integrity of the investigation, protects the privacy interests of the parties, and protects the participants from statements that might be interpreted to be retaliatory or defamatory. For these reasons, all participants involved in the resolution process will be asked at the beginning of the investigation to exercise discretion, to the extent consistent with applicable law.

### **4. Case resolution timeline**

Although the Law School strives to resolve all cases in a prompt and timely manner, the timeline varies based on the circumstances of the case. Additionally, the timeline for a case may be affected by breaks in the academic calendar, availability of the parties and witnesses (including leaves of absence), the scope of the investigation, the need for interim actions, and unforeseen or exigent circumstances. The Law School reserves the right to adapt or modify the process, including timelines, to ensure the equitable resolution of a report of prohibited conduct. In those instances, the Law School will notify both parties of the modified process and, if appropriate, the exceptional circumstances requiring the Law School to adapt or modify the process. The Law School will periodically update the parties on the case status.

### **5. Conflicts of interest**

The Law School reserves the right to use an adequately trained internal or external investigator, review panel member, or appeals board member as it

deems necessary. Review panel and appeals board members will not be students. No decision-maker will have a conflict of interest or bias in favor of or against reporting parties or responding parties generally, or in favor of or against the parties to the particular case. For purposes of this policy, a conflict of interest exists when a decision-maker has interests or relationships, including personal or business relationships, with any party that might reasonably be construed to affect the member's independent, unbiased judgment when making or participating in making decisions, or where those decisions will or could materially benefit them directly, or indirectly. Parties will have three business days to object to the selection of an investigator, review panel member, or appeals board member based on conflict of interest or bias. The SSO or HR will determine whether a conflict of interest or bias exists. No investigator, review panel member, or appeals board member will make findings or determinations in a case in which they have a conflict of interest.

#### **6. Standard of evidence**

The Law School uses the preponderance of the evidence standard in investigating complaints alleging violations of this policy. This standard means that the investigation determines whether it is more likely than not that a violation of this policy occurred. A preponderance of the evidence standard is also used for the review of appeals.

#### **7. Advisor**

Each party is permitted to bring an advisor of their own choosing, including a family member or attorney, to provide support. Law School employees and trustees may not serve as advisors. The advisor may accompany the reporting party or responding party to all portions of the resolution process. The advisor may not participate directly in, or interfere with, the proceedings. Although reasonable attempts will be made to schedule proceedings consistent with the advisor's availability, the process will not be delayed to schedule the proceedings at the convenience of the advisor. Advisors who do not abide by these guidelines may be excluded from the process.

### **E. Required Training**

Every employee, upon hire and annually thereafter, is required to review this policy and acknowledge that they have read and understand its content. All employees, including temporary employees and volunteers, must complete sexual harassment prevention training within six months of hire and every two years thereafter, with supervisors completing a course specifically designed for them. The California Department of Fair Employment and Housing offers sexual harassment training at <https://www.dfeh.ca.gov/shpt/>.

**F. Consequences of Violating this Policy**

Employees who violate this policy may be subject to discipline up to and including termination of employment. Students who violate this policy may be subject to discipline up to and including expulsion. If a matter involves conduct covered by this policy and another policy, the Law School may choose to proceed under either or both policies. With respect to full-time faculty, this policy and applicable policies in the Faculty Manual will be consulted in determining the outcome of a matter.

**G. Policy Revisions**

The Law School reserves the right to revise this policy at any time and for any reason. Revisions may be enforced on 15 days' notice to the student body. Notice may be made via the student listserv or in another manner deemed by the Dean to reach most students.

## **Appendix A**

### **Resolution Process for Complaints Involving a Current Student**

#### **A. Initial Inquiry**

The SSO will make an initial inquiry about whether the report falls within the scope of this policy or another institutional policy. Following an initial inquiry, possible next steps include:

- Close the case: The SSO may close a case when the alleged misconduct—even if substantiated—would not be a violation of this policy. The SSO may, at its discretion, reopen a case in the future if additional information becomes available. Each closure decision will be documented in writing.
- Informal action (see Section B below)
- Formal resolution (commonly referred to as an investigation) (see Section C below)

The scope and timing of further action will depend upon a number of factors, including but not limited to, whether the identity of the reporting party or responding party is known; whether the reporting party is willing to participate in an investigation; whether the reporting party requests anonymity; whether the reporting party or responding party is affiliated with the Law School; whether the matter is currently under review in another forum (local/state/federal agency or court); and whether the Law School has an obligation to proceed with an investigation based on the nature of the conduct alleged, regardless of the reporting party's wishes.

#### **B. Informal Action**

Informal action involves measures taken by the Law School in response to a situation or report of discrimination or harassment when formal resolution is not desired by the person who may have experienced the conduct or when there is not enough information to proceed with a formal resolution process against a known responding party. Informal action must be approved by the SSO and is not used when the SSO has determined that the Law School needs to proceed with an investigation. Informal action may include mediation or other informal action determined by the SSO to be appropriate.

Informal action does not result in findings related to responsibility or sanctions. Informal action does not preclude further steps, including formal resolution, if a complaint is later made or additional information is received by the SSO. Informal actions include, but are not limited to:

- An educational meeting with the subject of the report;
- Training for a group or unit; or
- An advisory letter.

## **C. Formal Resolution (Investigation)**

### **1. Notifying parties**

The formal complaint resolution process operates under a standard of fairness for the parties involved. If a case is referred for formal resolution, the Civil Rights Investigator will notify the reporting party and responding party simultaneously about the opening of the investigation in writing. The notification will include the allegations, identities of the parties involved in the particular matter, the section of this policy that was allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the incident (if known).

If additional Law School policies are being investigated concurrently with the alleged violations of this policy, the notice will specify those policies, and this process will be the sole process for investigating, adjudicating, and appealing determinations of violations of those policies.

This notice will be given to the responding party before any initial interview of the responding party.

The Law School may modify the notice based on additional information learned during the investigation.

#### ***a. Accepting responsibility***

Before an investigation is concluded, the responding party may elect to accept responsibility for the prohibited conduct by contacting the SSO in writing. When accepting responsibility is appropriate, the SSO will issue a brief outcome determination summarizing the allegations and stating the responding party has accepted responsibility and the matter will proceed to the review panel for sanctioning. Following the determination of sanctions, parties may appeal the sanctions but not any finding of responsibility.

#### ***b. Withdrawing a complaint***

Before an investigation is concluded, the reporting party may request to withdraw the complaint by contacting the SSO in writing. The SSO will determine whether to close the case or conclude the investigation without the reporting party's continued participation. The Civil Rights Investigator may be required to investigate even if the reporting party requests to withdraw the complaint.

### **2. Investigation**

The Civil Rights Investigator investigates complaints proceeding through formal resolution. Depending upon the circumstances, the SSO may assign additional investigators. In some cases, another Law School office may investigate under the direction of the SSO, or an outside investigator may be retained. All investigators

are educated about the Law School's policies and procedures. Depending on the circumstances and at its discretion, the Law School may consolidate for investigation and sanctioning multiple complaints involving the same responding party or complaints where the parties have made allegations against each other.

**a. *Preliminary investigative report***

During an investigation, the reporting party will have the opportunity to describe their allegations and present supporting evidence to the investigator. The responding party will have the opportunity to receive notice of the allegations and evidence being considered against them, respond to them, and present supporting evidence to the investigator. Investigation meetings are not audio or video recorded by the Law School and may not be recorded by any participant.

Parties and witnesses may take notes during investigation meetings. Generally, the investigator will meet with each party and each witness separately and may hold multiple meetings with a party to obtain all necessary information. Parties may submit additional materials or information to the investigator. In all cases, the parties will have equal opportunities to share information and have their information considered.

Each party may present names (with contact information, where available) of potential witnesses and questions the investigator might ask the other party. Each party should identify only factual witnesses, not character or expert witnesses. The investigator will consider the parties' lists when identifying whom they will interview and what questions they might ask, but these decisions are solely within the investigator's discretion. The investigator may also choose to interview witnesses not identified by either party.

After each party has had the opportunity to meet with the investigator, identify witnesses, and suggest questions, and the investigator has completed witness interviews and gathered evidence, the investigator will prepare a preliminary investigative report. The preliminary investigative report will include a summary of the information provided by each party and witness during the investigation (including relevant supporting evidence provided by either party or witnesses). The preliminary investigative report will not contain any factual findings. The parties will be provided with an opportunity to review the preliminary investigative report and respond in writing. Typically, the preliminary investigative report will be provided to each party electronically. Parties are expected to maintain the privacy of this document and may not distribute this document. However, each party may share the report with their advisor or legal counsel, with instructions to treat the document as confidential.

Unauthorized distribution of this document may result in referral to the appropriate office for disciplinary action.

Within five business days after the preliminary investigative report is made available for review, each party may submit to the investigator comments, feedback, additional documentary evidence, requests for additional steps in the investigation, names (and contact information, where available) of additional witnesses, or any other information they deem relevant. This may include concerns about perceived inaccuracies or how evidence is characterized. The investigator will consider all submissions, but retains discretion to determine what revisions, if any, are appropriate based on the full record. A party may request an extension in writing to the SSO. The SSO has the discretion to grant or deny the extension in accordance with fairness to both parties.

If a party provides or identifies new, relevant information, or if material revisions are made to the preliminary investigative report, the parties will have a final opportunity to review the revised preliminary investigative report and submit feedback limited to the new information or material revisions. Each party will have five business days to respond after the revised report is made available for review. Thereafter, the investigator will finalize the investigative report and make any factual findings based on the record.

***b. Investigation outcome/findings of policy violations***

Based on the status of the responding party, the appropriate Law School office or officer will review the final investigative report, and a decision-maker will issue a written final report that determines whether the preponderance of the evidence shows the responding party has violated this policy or other identified policies. For cases involving a student responding party, the appropriate office is the SSO. For cases involving a faculty responding party, the appropriate officer is a Vice Dean or another full-time faculty member, as determined by the Dean. For cases involving staff responding parties, the appropriate officer is the Chief Operating Officer or their designee. For cases involving a trustee responding party, the appropriate officer is the Board of Trustees Chair or their designee. Each party will be notified simultaneously of the outcome of the investigation.

**3. Sanctions**

If the report proceeds through formal resolution and the responding party accepts responsibility or is found responsible for violating this policy or other policies contained in the notice, the Law School will issue sanctions commensurate with the violation. The SSO will designate three trained individuals to serve on a panel ("Review Panel") to determine sanctions. The SSO will notify

the parties, in writing, of the names of each panelist within three business days upon receipt of the final report. Each party will have three business days to object to each review panelist based on bias or conflict of interest. If either party objects, the SSO will evaluate whether the objection is substantiated. The SSO will remove and replace any review panelist believed to have a bias or conflict of interest against either party.

The SSO will notify the parties that they may submit statements regarding the appropriateness of any sanctions to the Review Panel within five business days after the date to object to the review panelists has expired. The Review Panel will review all materials in the case, including the final report and any exhibits, in assessing the appropriate sanction. The Review Panel does not have the power or ability to alter the factual findings or the finding of responsibility in the final report; the Review Panel may only recommend the appropriate type or severity of sanction.

The Review Panel will issue a recommendation to the SSO regarding sanctions within five business days of receiving all materials in the case. The SSO will attempt to issue final sanctions within ten business days of receipt of the Review Panel recommendation. For conduct that meets the definition of dating violence, domestic violence, stalking, or sexual assault as defined by the Clery Act and that is not being processed under the Sexual Misconduct Policy, the SSO will notify the parties of the sanctions simultaneously in writing. Otherwise, the reporting party will be notified of sanctions about which they are entitled to know by law, which include sanctions that directly affect their educational or working environment (i.e., a no-contact order).

The SSO's final sanction decision will be based solely on the Review Panel's recommendation and the case record without reconsidering findings of responsibility or conducting a new factual inquiry.

#### **4. Appeals**

Each party has a limited right to appeal the findings in the final report. If the final report concludes that the responding party did not violate this policy (or any policy in the notice of allegations), the reporting party has five business days from receiving written notice of the investigation outcome to submit a written appeal. If the final report concludes that the responding party violated one or more policies, the responding party has five business days from receiving written notice of the sanction to submit a written appeal to the SSO. If the responding party has been found responsible for one or more violations but not others, either party may submit a written appeal within five business days of notice of the sanction.

The party who submits the written appeal will be the “Appellant,” and the other party will be the “Appellee.” The Appellant’s written appeal must be based on one of three grounds:

- **Significant procedural error:** A procedural error occurred that significantly impacted the outcome of the investigation as it applies to the Appellant (e.g., substantiated bias, material deviation from established procedures, etc.). A description of the error and its impact on the outcome of the case must be included in the written appeal.
- **New information:** New information has arisen that was not available and could not have been known to the Appellant during the investigation, and that could significantly impact the findings. Information that was known to the Appellant during the investigation or hearing but which they chose not to present is not new information. A summary of this new evidence and its potential impact on the investigation findings must be included in the written appeal.
- **Disproportionate sanctions:** Sanctions that are manifestly contrary to the weight of the information presented (i.e., unreasonable and unsupported by the findings).

Appellee will have five business days to submit a response. At the conclusion of these time periods, the SSO will refer the written appeal, any response thereto, and the final report with attached exhibits (the “Appeal Record”) to an Appeals Board of three trained individuals.

The SSO will notify both parties of the members of the Appeals Board within three business days of receiving the written appeal. Both parties will have three business days to object to members of the Appeals Board based on bias or conflict of interest. The SSO will consider any objection on the grounds of bias or conflict of interest. If the SSO determines that a member of the Appeals Board may have a bias or conflict of interest, the SSO will remove the individual and designate a new member.

The role of the Appeals Board is limited. The Appeals Board will not reassess credibility or reweigh evidence except to the extent necessary to evaluate whether new information or procedural error substantially impacted the findings. Appeals are confined to a review of the Appeal Record for the grounds stated above. The findings contained in the final report are presumed to have been decided reasonably and appropriately. The Appellant carries the burden of proof to demonstrate that either the alleged error or the proposed new evidence would significantly and materially impact the outcome of the proceeding.

The Appeals Board will determine whether any grounds for the appeal are substantiated. If the Appeals Board determines that the request for appeal does not meet the standards for an appeal under this policy, the Appeals Board will notify both parties of that outcome within ten business days of receiving both the

Appellant's appeal and the Appellee's response. If the Appeals Board determines that the request for appeal does meet the standards for an appeal under this policy, the Appeals Board will take appropriate action as indicated below, and the parties will have the opportunity to appeal a re-issued decision.

- **Significant procedural error:** If it is determined that a procedural error occurred that was substantially prejudicial to the outcome of the investigation, the Appeals Board may return the complaint to the investigator with instructions to correct the error and to reconsider the findings as appropriate. In rare cases, where the procedural error cannot be corrected by the original investigator (as in cases of bias), the Appeals Board may order a new investigation with a new investigator.
- **New information:** If the Appeals Board determines that new information should be considered, the complaint will be returned to the investigator to reconsider the complaint considering the new information only, and to reconsider the original findings as appropriate. The investigator will prepare an Addendum to the final report.
- **Disproportionate sanctions:** If the Appeals Board determines that the sanctions are manifestly contrary to the weight of the information presented, the SSO and the Review Panel will collaborate to issue appropriate sanctions.

The Law School will attempt to issue a notice in writing of the outcome of the appeal within ten business days of receipt of Appellee's response statement. The Appeals Board's decision is final and is not subject to appeal.

## **Appendix B:**

### **Resolution Process for Complaints Involving an Employee Reporting Party and an Employee Responding Party**

#### **A. Overview**

When Southwestern receives a report of prohibited conduct involving an employee reporting party and an employee responding party, and the reporting party wishes to proceed with a resolution process, the Law School will follow the procedures outlined below.

Southwestern will assign a trained investigator and a trained decision-maker to conduct a thorough and impartial investigation in a reasonably prompt timeframe. Southwestern reserves the right to use internal or external investigators and decision-makers.

Each party has the option to participate in the investigation, and each party has the same rights during the resolution process, including the right to an advisor, the right to submit relevant witness names and evidence, and the right to review the evidence gathered by the investigator before the decision-maker issues a final determination. Each party has the right to object to any individual assigned to this matter based on bias or a conflict of interest.

#### **B. Notice of Investigation**

Before the start of an investigation, the Deputy Title IX Coordinator will issue a written notice of investigation to the parties. The notice will include:

- The reporting party's name;
- The Law School's investigation procedures and a link to the relevant policies;
- Information about the informal resolution process;
- Nature of the report, including specific policy violations, and the date, time, and a brief description of the alleged violation;
- A statement that the responding party is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the formal resolution process;
- A statement that each party is entitled to an opportunity to access relevant and not otherwise impermissible evidence and an investigative report that accurately summarizes the relevant and not otherwise impermissible evidence;
- Information about the privacy of the process;
- Information on the right to have an advisor of choice (subject to the restrictions in Section D.7. of this policy);
- The name of the investigator and the process to identify, in advance of the interview process, any bias or conflict of interest that the investigator may have;
- An instruction to preserve any evidence that is relevant to the allegations;

- A statement addressing the prohibition against knowingly making false statements during the formal resolution process; and
- A statement explaining the Law School's prohibition against retaliation.

If additional allegations or information are brought forward, the Deputy Title IX Coordinator will issue an updated notice of investigation.

### **C. Interviews**

The investigator will hold individual interviews with the parties and witnesses to ask relevant and not otherwise impermissible questions, including questions exploring credibility. Generally, only the investigator and the party or witness may attend their respective individual interview. A party's advisor may attend these meetings, subject to the rules described in Section D.7. of this policy. Additional attendees may be permitted at the discretion of the Deputy Title IX Coordinator or in connection with an approved disability-related accommodation.

The individual interviews may be conducted with all participants physically present or, at Southwestern's discretion, with all participants joining virtually through a video conferencing option.

The Law School has the discretion to remove, with or without warning, from any meeting or proceeding a party, witness, or advisor who does not comply with this policy, including this Appendix.

### **D. Evidence Review and Investigation Report**

After all fact-gathering, the investigator will provide the parties and their advisors the opportunity to review all relevant and not otherwise impermissible evidence gathered.

The purpose of the evidence inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence before the conclusion of the investigation and to submit any additional relevant evidence or names of any additional witnesses with relevant information. Given the sensitive nature of the information provided, the Law School will facilitate the evidence review in a secure manner. Neither the parties nor their advisors may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any employee who fails to abide by the prohibition against duplicating or removing evidence may be subject to discipline. Any advisor who fails to abide by the prohibition against duplicating or removing evidence may be excluded from further participation in the resolution process.

Within five business days after the investigation report is made available for review, the parties may submit to the investigator comments, feedback, additional documentary evidence, requests for additional steps in the investigation, names (and contact information, where available) of additional witnesses, or any other information they deem relevant. This may include concerns about perceived inaccuracies or how evidence is characterized. The investigator will consider all submissions, but retains discretion to

determine what revisions, if any, are appropriate based on the full record. The Law School will provide access to copies of each party's written responses. The Deputy Title IX Coordinator will have the discretion to extend the evidence review period based on the volume and nature of the evidence.

At the conclusion of the evidence review, when deemed appropriate by the investigator, the investigator will conduct any additional fact-gathering as necessary. New, relevant evidence that was not previously known to exist and was not previously discoverable with the exercise of reasonable diligence is gathered during this second fact-gathering period and will be made available for review by the parties and their advisors. The parties will have five business days to respond in writing to the new evidence.

The investigator will consider the parties' written responses before finalizing the investigation report.

#### **E. Final Report**

The decision-maker will evaluate the relevant and not impermissible evidence and make factual determinations regarding each allegation. The decision-maker will determine whether a violation of the Policy occurred. The decision-maker may choose to place less or no weight upon statements by a party or witness who refused to respond to questions deemed relevant and not impermissible or declined to participate in the resolution process. The decision-maker will not draw an inference about whether prohibited conduct occurred based solely on a party's or witness's refusal to respond to questions.

The decision-maker will prepare a final report that includes:

- A description of the allegations of prohibited conduct;
- Information about the policies and procedures used to evaluate the allegations;
- A description of the procedural steps taken from the receipt of the complaint through the determination of responsibility, including any notifications to the parties, interviews with the parties and witnesses, and methods used to gather other evidence;
- An evaluation of the relevant and not otherwise impermissible evidence and the rationale for that evaluation;
- Findings of fact for each allegation, with rationale; and
- Conclusions regarding the section of this policy that responding party has violated with rationale.

The final report will be provided to the Deputy Title IX Coordinator. The Deputy Title IX Coordinator will share the final report with the parties and their advisors in the same or similar manner as the investigation report.

#### **F. Sanctions**

If the decision-maker determines that a violation of this policy has occurred, the Deputy Title IX Coordinator will provide the final report to the Vice Deans (faculty) or the Chief

Operating Officer (staff) to determine the appropriate sanctions. Each party may submit a written impact statement to the individual responsible for determining sanctions.

The Deputy Title IX Coordinator will provide the parties and their advisors with a notice of outcome. The notice of outcome will include:

- A statement of and rationale for any disciplinary sanctions imposed on the responding party;
- A statement on whether remedies will be provided to the reporting party;
- For the reporting party, a description of any remedies that apply to the reporting party;
- The Law School's procedures for the parties to appeal, including identifying the appeals officer; and
- The opportunity to object to the appeals officer for bias or conflict of interest.

#### **G. Appeals**

The parties may appeal the decision-maker's determination, and the sanctions imposed on the grounds of procedural error that affected the outcome of the case, new information that was not previously available or known to the party, actual conflict of interest, or demonstrated bias that affected the outcome of the case, and disproportionate sanctions. An appeals officer will review each party's appeal, if any, and issue determinations. The appeals officer's decision is final.

The determination regarding responsibility will be final either on the date the Law School provides the parties with the appeals officer's determination or, if no party appeals, the date on which an appeal would no longer be considered timely.