

Southwestern College Title IX Policy and Procedures

1) Scope

A. This policy applies when Southwestern College has actual knowledge of allegations of Sexual Harassment in any of Southwestern College's educational programs or activities against persons present in the United States.

B. When a person alleges both sex discrimination and Sexual Harassment committed against a person while in the United States, Southwestern College will follow its rules, procedures, and processes for responding to a Formal Complaint of Sexual Harassment. If the Formal Complaint is dismissed at any point in the process, Southwestern College will follow its rules, procedures, and processes used for sex discrimination allegations.

C. Allegations of discrimination, Sexual Harassment, or other sexual misconduct outside the scope of this policy may be addressed under other Southwestern College policies.

2) Title IX Coordinator

A. Contact Information:

The Title IX Coordinator for Southwestern College is: Lonnie Boyd, Director of Human Resources- located in the Business Office in the Christy Administration Building.

Contact Information: Mailing Address- Lonnie Boyd, Director of Human Resources, Southwestern College, 100 College Street, Winfield KS 67156. Telephone- 620-229-6136 and email- Lonnie.boyd@sckans.edu

Campus Hotline for reporting safety and Title IX concerns: 866-943-5787

Safety and Security Concerns Form: <https://www.sckans.edu/student-services/safety-and-security/>

The Title IX Coordinator will ensure that applicants for admission and employment, students, employees, and any professional organizations holding professional agreements with Southwestern College are provided with the contact information for the Title IX Coordinator listed above.

B. Responsibilities. The Title IX Coordinator shall coordinate Southwestern College's efforts to comply with this policy and Title IX.

3) Definitions

A. Actual Knowledge. Notice of Sexual Harassment or allegations of Sexual Harassment to any of the following:

1. Title IX Coordinator: The Title IX coordinator's primary responsibility is to coordinate the College's compliance with Title IX, including the school's grievance procedures for resolving associated complaints. In addition, the following responsibilities apply:

- Understand Title IX to ensure that procedural requirements of the legislation are being met. This means developing a working knowledge of Title IX, having a copy of the law available and understanding its requirements. To meet this responsibility, coordinators need to keep informed of current research and legal and judicial decisions related to Title IX.
- Ensure Southwestern College is complying with Title IX. This involves reviewing the College's policies to ensure that it is not discriminating based on sex and that information about the College's practices, including counseling, are non-discriminatory.
- Coordinate the grievance procedure for Title IX complaints which includes assisting students in filing and investigating the concerns or issues.

2. Any official who has authority to institute corrective measures on behalf of Southwestern College. This includes the Dean of Students, Assistant Dean of Students, Director of Security, Assistant Director of Residence Life and the Wallingford Hall Director. The Actual Knowledge standard is not met when the only official of Southwestern College with actual knowledge is also the Respondent.

These individuals may become aware of Sexual Harassment if they witness Sexual Harassment; hear about Sexual Harassment or Sexual Harassment allegations from a Complainant (i.e., a person alleged to be the victim) or a third party (e.g., the Complainant's parent, friend, or peer); receive a written or verbal complaint about Sexual Harassment or Sexual Harassment allegations; or by any other means.

B. Complainant. An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment. Complainant does not mean the Title IX Coordinator when the Title IX Coordinator signs a Formal Complaint or is not otherwise an alleged victim of Sexual Harassment.

C. Conflict of Interest. Any individual designated by Southwestern College as the Title IX Coordinator, investigator, decision-maker, or any person designated by Southwestern to facilitate an informal resolution process will not have a conflict of interest or bias against complainants or respondents generally or individually.

D. Consent. An informed decision, freely given, made through mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. Consent cannot be given by an individual who is asleep, unconscious, or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or is under duress, threat, coercion, or force. Past consent does not imply future consent. Silence or an absence of resistance does not imply consent. Consent can be withdrawn at any time.

E. Deliberately Indifferent. A response that is clearly unreasonable in light of the known circumstances.

F. Education Program or Activity. Locations, events, or circumstances over which Southwestern College exercises substantial control over both the Respondent and the context in which the alleged Sexual Harassment occurred. Conduct that occurs outside of Southwestern College's Program or Activity as defined in this policy may be subject to other student conduct policies.

G. Formal Complaint. A document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that Southwestern College investigate the allegation of Sexual Harassment. The phrase "document filed by a Complainant" means a document or

electronic submission (such as by email that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party under these procedures and must comply with the requirements of this policy.

H. Decision Maker. The person who is the decision-maker with respect to the determination of responsibility after a live hearing. The Decision Maker cannot be the same person(s) as the Title IX Coordinator or the Investigator(s).

I. Party. Either Complainant or Respondent. References to the plural "parties" includes Complainant and Respondent.

J. Process Manager- Student Affairs staff member who is responsible for coordinating the Title IX process- including meeting days, hearing times,, investigations, evidence review, etc.

K. Respondent. An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

L. Sexual Harassment. Conduct on the basis of sex that satisfies one (1) or more of the following:

1. An employee conditioning the provision of an aid, benefit, or service of Southwestern College on an individual's participation in unwelcome sexual conduct (quid pro quo)

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Southwestern College's education program or activity; or

3. Any of the following offenses:

- a. Sexual Assault. An offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

- (1) **Forcible Sex Offenses.** Any sexual act directed against the Complainant, without the consent of the Complainant including instances where the Complainant is incapable of giving consent. Forcible sex offenses include:

- i. Rape. The carnal knowledge of the Complainant, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

- ii. Sodomy. Oral or anal sexual intercourse with the Complainant, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

- iii. Sexual Assault with an Object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of the Complainant, without the consent of the Complainant including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or

permanent mental or physical incapacity. An “object” or “instrument” as defined in this section is anything used by the offender other than the offender’s genitalia (e.g., a finger or bottle).

iv. Fondling. The touching of the private body parts of the Complainant for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(2) Non-forcible Sex Offenses. Non-forcible sex offenses include:

i. Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

ii. Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent.

b. Dating Violence. Violence committed by a person: (1) who is, or has been, in a social relationship of a romantic or intimate nature with the Complainant; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: i. The length of the relationship. ii. The type of relationship. iii. The frequency of interaction between the persons involved in the relationship.

c. Domestic Violence. Violence committed by a current or former spouse or intimate partner of the Complainant; by a person with whom the Complainant shares a child in common; by a person who is cohabitating with, or has cohabitated with; the Complainant as a spouse or intimate partner; by a person similarly situated to a spouse of the Complainant under the laws of the State of Kansas or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the State of Kansas; or

d. Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for their safety or the safety of others; or (2) suffer substantial emotional distress.

M. Supportive Measures. Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to Southwestern College’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties and/or the educational environment, or deter Sexual Harassment.

Supportive Measures may include counseling, extensions of deadlines or other course related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

N. Written Notice. Notice to a student to their official Southwestern College email account as well as a hard copy delivered by the Southwestern College Security Department. The notice is effective on the date that the notice is mailed. When notice is hand delivered to the student from the institution, notice is effective on the date that the notice is delivered to the student to whom the notice is addressed. When notice is sent by email, the notice is effective on the date that the email is sent to the student's institution-provided email account.

4. Reports and Formal Complaints of Sexual Harassment

A. Making a Report to the Title IX Coordinator. Any person may report sex discrimination, including Sexual Harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or Sexual Harassment), in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Such a report may be made at any time (including during non-business hours) by using the telephone number, online reporting portal, or email address, or by mail to the office address, listed for the Title IX Coordinator.

On-Line Reporting Form: <https://www.sckans.edu/student-services/safety-and-security/>

Campus Hotline: 866-943-5787

The following Southwestern College employees are expected to report sex discrimination, including Sexual Harassment, of which they are aware, to the Title IX Coordinator.

1. Security Personnel
2. Resident directors, and resident assistants;
3. President, Vice Presidents, Associate Vice Presidents, Assistant Vice Presidents;
4. Department Chairs/Heads;
5. Faculty;
6. Student Success Staff
7. Student Affairs Staff
8. Advisors for student organizations
9. Head Athletic Coaches, assistant coaches
10. Athletic Trainers
11. Athletic Director and Assistant/Associate Athletic Directors
12. Campus Security Authorities
13. All Graduate Assistants

B. Response to Actual Knowledge of Sexual Harassment.

If Southwestern College has actual knowledge of sexual harassment in an education program or activity committed against a person while in the United States, Southwestern College will respond promptly in a manner that is not deliberately indifferent and follow its Grievance Process.

C. With or without a Formal Complaint, after receiving actual knowledge of Sexual Harassment, the Title IX Coordinator will:

1. Will contact the Complainant to discuss the availability of Supportive Measures;
2. Consider the Complainant's wishes with respect to Supportive Measures;
3. Inform the Complainant of the availability of Supportive Measures, with or without the filing of a Formal Complaint; and
4. Explain to the Complainant the process for filing a Formal Complaint.
 - a. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by email, by using the Title IX Coordinator Contact Information
 - b. At the time of filing a Formal Complaint, a Complainant must be participating in, or attempting to participate in, the education program or activity of Southwestern.
 - c. In response to a Formal Complaint, Southwestern College will follow the Grievance Process.

D. Southwestern College's Response to a Report of Sexual Harassment. Southwestern College's response to receiving actual knowledge of Sexual Harassment will treat Complainants and Respondents equitably by offering Supportive Measures to a Complainant, and by following the Grievance Process before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures, against a Respondent.

E. No Contact Order: College administrators are authorized to issue a No Contact Order (NCO) prohibiting contact between students when there exists a reasonable concern that physical or psychological harm may result from such contact.

The College will consider all facts and circumstances that may be relevant to whether an NCO should be issued, including, but not limited to, the following factors:

- When there are allegations, threats, or evidence of physical violence by one student against another;
- When there are allegations, threats, or evidence of emotional abuse or harassment by one student of another;
- When there is a substantial risk of emotional harm from continued contact between students;
- When continued contact between students may have a material impact on campus disciplinary proceedings;
- When requested or agreed to in good faith by both students involved; and

- When there are of allegations of serious college policy violations.

All NCOs shall provide that neither student may have contact with the other. "Contact" includes, but is not necessarily limited to, in-person contact, telephone calls, email, texts and other forms of electronic communication, social media-based messages or postings, and third party communications including through proxies.

NCOs may include additional protective measures or other terms specific to the safety, well-being, or other needs of either or both students subject to the NCO, when deemed necessary by the college. Any additional terms shall be expressly stated in the NCO. Additional protective measures or other terms need not be reciprocal. They may include, but are not limited to, the following:

- Restricting a student from being in close proximity to the other student;
- Restricting a student's access to certain campus locations, including the other student's residence hall;
- Restricting the times a student may be present in on-campus dining facilities;
- Requiring that the students not be enrolled in the same academic course(s); and
- Requiring that the students not participate in the same co-curricular or extra-curricular activities.

Interim Suspension of Student. Southwestern College may remove a Respondent from its' education program or activity on an emergency basis, with or without a Grievance Process pending, or the status of a No Contact Order, provided that Southwestern College undertakes an individualized safety and risk analysis. The analysis needs to determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, and provides the Respondent with written notice and an opportunity to challenge the decision immediately following the removal. The procedure for the immediate removal of a student on an emergency basis is set forth in 7.8.4.2 Interim Suspension and 7.8.4.3 Procedure of the Student Code of Conduct.

5. Grievance Procedures

A. Purpose. The grievance procedures set forth below are intended to provide for the prompt and equitable resolution of a Formal Complaint by any student alleging any action that would be prohibited by this policy.

B. Notification of Grievance Procedures. Southwestern College will provide notice to applicants for admission and employment, students, employees, and any professional organizations holding professional agreements with Southwestern College of these grievance procedures and Grievance Process, including how to report or file a complaint of sex discrimination, how to report or file a Formal Complaint of Sexual Harassment, and how Southwestern College will respond.

C. Basic Requirements. The following shall be required during Southwestern College's Grievance Process:

1. **Equitable Treatment.** Southwestern College will apply its grievance procedures and requirements equally to both parties. During any proceeding under this policy, Southwestern College will treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent, and by following the Grievance Process set forth below before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent. Remedies must be designed to restore or preserve equal access to the education program or activity. Such remedies may be disciplinary or punitive in nature and need not avoid burdening the Respondent and may include the same individualized services set forth in Supportive Measures.

2. **Presumption of Non-Responsibility.** Throughout the Grievance Process set forth in this policy, the Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process.

3. **Objective Evaluation.** Any grievance pursuant to these procedures will include an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.

4. **Conflicts of Interest Prohibited.** The Title IX Coordinator, Investigator(s), Hearing Officer, decision-maker on appeal, or any person designated to facilitate an informal resolution process, shall be free from any conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The intent of this provision is to provide protections analogous to, and no less protective than, the conflict of interest provisions.

If any party believes that any of these individuals has a conflict of interest, that party must submit a written explanation of the reason for that belief to the Vice President for Business and Finance. The explanation must be submitted within three (3) business days, absent good cause, of the time when the party knew or should have known the facts that would give rise to the alleged conflict of interest. The Vice President for Business and Finance will determine if the facts warrant the appointment of a different Title IX Coordinator, Investigator, Hearing Officer, decision-maker on appeal, or informal resolution facilitator and will respond to the requesting party in writing within three (3) business days, absent good cause. The decision of the Vice President for Business and Finance shall be final.

5. Training.

a. Southwestern College will provide annual training that satisfies the requirements of Title IX and will be developed or conducted consistent with the requirements of the Department of Education. Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.

b. The Title IX Coordinator, Investigators, Hearing Officers, decision-makers on appeal will be trained on the following matters:

(1) The definition of Sexual Harassment;

(2) The scope of Southwestern College's education program or activity: Locations, events, or circumstances over which Southwestern College exercises substantial control over both the Respondent and the context in which the alleged Sexual Harassment occurred. Conduct that

occurs outside of Southwestern College's Program or Activity as defined in this policy may be subject to other student conduct policies.

(3) How to conduct an investigation and Grievance Process including hearings and appeals.

(4) How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;

(5) How to utilize a trauma informed approach

c. Hearing Officers will receive training on the matters listed above as well as:

(1) Any technology to be used at a live hearing; and

(2) Issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

d. Investigators will receive additional training on issues of relevance to create an Investigative Report that fairly summarizes relevant evidence.

e. All materials used to train Title IX Coordinators, Investigators, Hearing Officers, decision-makers on appeal, and any person who facilitates an informal resolution process will be publicly available on Southwestern College's website.

D. Time Frames. Southwestern College will endeavor to complete the Grievance Process set forth herein within 60 school days of the filing of the Formal Complaint. This time-frame and others set forth in this policy are guideposts and may be extended for good cause. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The Complainant and Respondent shall be promptly notified of the need for any delay.

E. Available Sanctions and Remedies. The possible disciplinary sanctions (Student Policies 7.8.6) and remedies that Southwestern College may implement following any determination of responsibility will vary based on the status of the Respondent:

F. Standard of Evidence. The standard of evidence to be used to determine responsibility is the preponderance of the evidence standard.

G. Privileged Materials. Neither the University nor any party will be required or allowed to rely upon, or otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.

7) Notice of Allegations

A. Upon receipt of a Formal Complaint, an Investigator or campus authority will provide the following written notices to the parties who are known:

1. Notice of Southwestern College's Grievance Process

2. Notice of the allegations of conduct potentially constituting Sexual Harassment, including sufficient details known at the time. This notice shall be provided with sufficient time to prepare a

response before any initial interview. Sufficient details include: a. The identities of the parties involved in the incident, if known. b. The conduct allegedly constituting Sexual Harassment. c. The date and location of the alleged incident, if known.

3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Grievance Process.

4. Notice to the parties that they may have an advisor of their choice; The advisor may be any person of the party's choosing, If the party does not choose an advisor, however, the institution may select an individual to serve in this role for the limited purpose of conducting the cross-examination.

5. Notice that the parties may inspect and review evidence as set forth.

6. Notice to the parties that knowingly making false statements or knowingly submitting false information during the Grievance Process is prohibited.

B. If, in the course of an investigation, Southwestern College decides to investigate allegations about the Complainant or Respondent that are not included in the original written notice discussed above, Southwestern College will provide written notice of the additional allegations to the parties whose identities are known.

8) Dismissal of a Formal Complaint

A. Mandatory Dismissal. Southwestern College must dismiss the Formal Complaint with regard to any alleged conduct that:

1. Would not constitute Sexual Harassment under this policy;
2. did not occur in Southwestern College's education program or activity; or
3. did not occur against a person present in the United States at the time of the alleged conduct.

If appropriate, the Title IX Coordinator will forward allegations of misconduct dismissed under this section to the Office of Student Affairs for review and, if appropriate, additional action under other College rules and procedures may be taken.

B. Permissive Dismissal. Southwestern College may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:

1. Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
2. Respondent is no longer enrolled at Southwestern College; or
3. Specific circumstances prevent Southwestern College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

C. Following a mandatory or permissive dismissal set forth above, the Title IX Coordinator must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

9) Consolidation of Formal Complaints

Southwestern College may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances.

10) Investigation of a Formal Complaint

Southwestern College will investigate, to the extent necessary or possible, the allegations in a Formal Complaint. When investigating a Formal Complaint and throughout the Grievance Process, the investigator will observe the following requirements:

A. Burden of Proof. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on Southwestern College and not on the parties;

B. Prohibition on Use of Privileged Documents. Southwestern College may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Southwestern College obtains that party's voluntary, written consent to do so for a Grievance Process under this section.

C. Southwestern College will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

D. Southwestern College will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

E. Use of an Advisor. The parties are permitted to have an advisor present during any Grievance Proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. Southwestern College does not place any limits on the choice or presence of advisor for either the Complainant or Respondent in any meeting or Grievance Proceeding, except for participation in cross-examination; the advisor's role in any other meeting or proceeding shall be limited to an advisor role only and the advisor may not otherwise participate in the meeting or proceedings.

F. Notice to Parties. The Process Manager will provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare or participate.

G. Access to Evidence. Southwestern College will allow both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which Southwestern College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the Investigative Report, the College will send to each party and the party's advisor (if any), the evidence subject to inspection and review in an electronic format or a hard copy. The parties will have ten (10) school days to submit a

written response, which the Investigator will consider prior to completion of the Investigative Report. Southwestern College must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

H. Final Investigative Report. The Investigator will create an Investigative Report that fairly summarizes relevant evidence. At least ten (10) school days prior to a hearing or other time of determination regarding responsibility, the Investigator will send to each party and the party's advisor (if any), the Investigative Report in an electronic format or a hard copy, for their review and written response.

XI. Hearings

A. Hearing Procedures. At least ten (10) days after the completion of the Investigative Report and distribution to the parties and their advisors (if any), Southwestern College will convene a live hearing for any Formal Complaint not dismissed pursuant to this policy. The Hearing Officer maintains authority to set the procedures and control the conduct of the hearing provided that the Hearing Officer must observe the procedures required by this policy, Title IX, and other applicable Southwestern College rules or policies.

1. Location of Hearing. Live hearings pursuant to this section may be conducted with all parties physically present in the same geographic location or, at Southwestern College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

2. Availability of Evidence. The Hearing Officer will make all evidence that was subject to review and inspection during the investigation phase available to the parties during the hearing. The parties will have equal opportunity to refer to that evidence, including for purposes of cross-examination.

3. Extensions of Time. The Hearing Officer may allow a temporary delay of the Grievance Process or the limited extension of time-frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include but is not limited to considerations such as the absence of a party, a party's advisor, or a witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.

4. Separation of Parties. At the request of either party, the Hearing Officer will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Hearing Officer and parties to simultaneously see and hear the party or the witness answering questions.

5. At least seventy-two (72) hours prior to a live hearing, Southwestern College will provide both parties with written notice of the following:

- a. The time, place, and date of the hearing, and electronic access information, if applicable;
- b. The name of each witness Southwestern College expects to present at the hearing and those Southwestern College may present if the need arises;
- c. The right to request a copy of the investigative file; and

d. The right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that Southwestern College has in its possession, custody, or control and may use to support claims or defenses.

6. Cross-examination. Each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. If a party does not have an advisor present at the live hearing, Southwestern College will provide an advisor of its choice to conduct cross-examination on behalf of that party without fee or charge to that party.

7. Relevance. Only relevant questions may be asked of a party or witness on either direct or cross-examination. Before a Complainant, Respondent, or witness answers a question, the Hearing Officer must first determine whether the question is relevant. The Hearing Officer must explain any decision to exclude a question as not relevant.

8. Complainant's Prior Sexual Behavior. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, except as follows:

a. If such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or

b. If the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

9. Exclusion of all evidence not subject to cross-examination. If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility; the Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

10. Recording of Hearing. Southwestern College will create an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review.

B. Determination Regarding Responsibility

1. The Hearing Officer must issue a written determination regarding responsibility under the standard of evidence

2. The written determination must include the following:

a. Identification of the allegations potentially constituting Sexual Harassment;

b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

c. Findings of fact supporting the determination;

d. Conclusions regarding the application of Southwestern College's rule, policy, and, if applicable, code of conduct to the facts;

e. A statement of, and rationale for, the result as to each allegation, including:

- (1) A determination regarding responsibility;
- (2) Any disciplinary sanctions Southwestern College imposes on the Respondent;
- (3) Whether remedies designed to restore or preserve equal access to Southwestern College's education program or activity will be provided by Southwestern College to the Complainant; and

f. The procedures and permissible bases for the Complainant and Respondent to appeal.

3. Southwestern College will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that Southwestern College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

4. If remedies were provided in the written determination, the Title IX Coordinator is responsible for effective implementation of any remedies.

12. Appeals

A. Availability of Appeal. Both parties may appeal the following:

1. A determination regarding responsibility; or
2. The dismissal of a Formal Complaint or any allegations therein.

B. Decision-maker on Appeal. The appeal will be decided by the Vice President for Finance or their designee.

C. Bases for Appeal. The bases of appeal shall be as follows:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
3. The Title IX Coordinator, Investigator(s), or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

D. Timeframe for Appeal. A party wishing to appeal a determination regarding responsibility or the dismissal of a Formal Complaint or any allegations therein must file a written appeal with the Title IX Coordinator within (3) school days of the date of the determination or the dismissal. The written appeal

must identify the basis or bases for the appeal and explain with specificity the facts supporting the basis or bases of the appeal.

E. In the event of an appeal filed by the other party, the non-appealing party will be permitted to submit a written statement in support of the outcome within three (3) school days after the Title IX Coordinator notifies the party of filing of the written appeal.

F. Appeal Procedure. For any appeal made under this policy, the Title IX Coordinator or designee will:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

2. Ensure that the decision-maker for the appeal is not the same person as any Investigator(s) or the Hearing Officer that reached the determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator;

3. Ensure that the decision-maker for the appeal meets the requirements of training, bias, and conflicts of interest; and

4. The decision-maker for appeal will:

a. Give both parties a reasonable, equal opportunity to submit a written appeal statement in support of, or challenging, the outcome; and

b. Issue a written decision describing the result of the appeal and the rationale for the result within ten (10) school days upon receipt of all appeal documents; and

c. Provide the written decision simultaneously to both parties.

13. Retaliation

A. The procedures set forth Policy 2.2.6 Anti-Retaliation statement, Retaliation of any kind against anyone filing a complaint of harassment or discrimination is prohibited. Initiating a complaint of harassment or discrimination will not affect students', grades, class selection, or any other matter pertaining to student status.

Distinguishing between harassing or discriminatory conduct and conduct that is purely personal or social without a harassing or discriminatory work or educational effect requires a determination based on all of the facts pertaining to the situation. False accusations of harassment or discrimination can seriously injure innocent people. Initiating a false harassment or discrimination complaint or initiating a harassment or discrimination complaint in bad faith may result in disciplinary action. However, a finding for the accused does not constitute a finding that the complaint was acting in bad faith.

B. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by this policy.

C. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation prohibited by this policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

15. Confidentiality

Southwestern College will maintain the confidentiality of the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the FERPA or as required by law, or to carry out the purposes of Title IX, including the conduct of any investigation, hearing, or judicial proceeding.

Southwestern College will keep confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality does not impair Southwestern College's ability to provide the Supportive Measures.

16.. Recordkeeping

A. The recordkeeping requirements in this policy supersede the record keeping requirements set forth in Policy 129 Records Retention and Disposal of Records.

B. Southwestern College will retain the following records for a period of seven (7) years:

1. Each Sexual Harassment investigation, including any determination regarding responsibility and any recording or transcript of any live hearing, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to Southwestern College's education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom;
4. All materials used to train Title IX Coordinators, Investigators, Hearing Officers, decision-makers on appeal, and any person who facilitates an informal resolution process, will be publicly available on Southwestern College at <https://www.sckans.edu/student-services/safety-and-security/>
5. For each response to actual knowledge of Sexual Harassment, Southwestern College must create, and maintain for a period of seven (7) years, records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment.
 - a. In each instance, Southwestern College must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to Southwestern College's education program or activity.
 - b. If Southwestern College does not provide a Complainant with Supportive Measures, then it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit Southwestern College in the future from providing additional explanations or detailing additional measures taken.