

P-013.1 RESPONSE TO SEXUAL VIOLENCE AND TITLE IX SEXUAL HARASSMENT

Part 1: Purpose

This procedure provides a process through which individuals alleging sexual violence may pursue a complaint, consistent with Board Policy 1B.3 "Sexual Violence Policy."

This procedure is intended to protect the rights and privacy of both the complainant, respondent, and other involved individuals, as well as to prevent retaliation and reprisal.

Part 2. Definitions

The definitions in Board Policy 1B.1, "Equal Opportunity and Nondiscrimination in Employment and Education" and 1B.3, "Sexual Violence Policy" apply to this procedure.

Campus Security Authority

Campus security authority includes the following categories of individuals:

1. SMSU's security department;
2. Any individuals who have campus security responsibilities in addition to SMSU's security department;
3. Any individual or organization identified in SMSU's security policy as an individual or organization to which students and employees should report criminal offenses;
4. An official of SMSU who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings, advisors to recognized student organizations, and athletic coaches. Professional counselors, whose official responsibilities include providing mental health counseling and who are functioning within the scope of their license or certification are not included in this definition.

Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual harassment (as defined by Title IX).

Educational Program or Activity

Includes locations, events, or circumstances over which SMSU exercises substantial control over both the respondent and the context in which the sexual harassment (as defined by Title IX) occurs, and also includes any building owned or controlled by any officially recognized student organization of SMSU.

Formal Complaint

A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment (as defined by Title IX) against a respondent and requesting that SMSU investigate the allegation of sexual harassment. At the time of filing the formal complaint of sexual harassment (as defined by Title IX), a complainant must be participating

in or attempting to participate in the education program or activity of SMSU with which the formal complaint is filed.

Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment (as defined by Title IX).

Supportive Measures

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal Title IX complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Supportive measures may include, but are not limited to, 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. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Title IX Coordinator

Employee(s) designated by the president to coordinate SMSU's efforts to comply with its Title IX responsibilities and Board Policies 1B.1 and 1B.3. A campus can delegate Title IX responsibilities to a deputy or an investigator.

Title IX Sexual Harassment

For purposes of Title IX, sexual harassment means conduct on the basis of sex that occurs in SMSU's program or activity in the United States that satisfies one or more of the following:

1. An employee of SMSU conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.
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 SMSU's education program or activity; or
3. Sexual assault; dating, intimate partner, and relationship violence; and stalking as defined in Board Policy 1B.3.

Part 3. Reporting Incidents of Sexual Violence

Subpart A. Prompt Reporting Encouraged

Complainants of sexual violence and sexual harassment (as defined by Title IX) may report incidents at any time, but are strongly encouraged to make reports promptly in order to best preserve evidence for a potential legal or disciplinary proceeding.

Complainants are strongly encouraged to report incidents of sexual violence to law enforcement for the location where the incident occurred. Complainants are also encouraged to contact the local victim/survivor

services office, counseling and health care providers, SMSU Title IX coordinator, or SMSU campus security authorities for appropriate action.

Reporting options include, but are not limited to:

1. Emergency – 911
2. Marshall Police – 507-537-7000, 611 W. Main St., Marshall, MN
3. University Public Safety – 507-537-7252, First Floor of Founders Hall
4. Avera Marshall Regional Medical Center 532-9661, 300 S Bruce St., Marshall, MN
5. SMSU Title IX Coordinator – 507-537-6657, FH 216
6. Anonymous Online Sexual Violence and Sexual Harassment Report Form: <https://www.smsu.edu/administration/titleix/index.html>
7. Incidents of sexual violence can also be reported to any Campus Security Authority as described in Part 2, definitions, above.

Subpart B. Assistance in Reporting

When informed of an alleged incident of sexual violence and sexual harassment (as defined by Title IX), all SMSU students and employees are urged to encourage and assist complainants, as needed, to report the incident to local law enforcement, local victim/survivor services, SMSU Title IX coordinator, or campus security authorities.

SMSU campus security authorities, when informed of an alleged incident of sexual violence and sexual harassment (as defined by Title IX), shall promptly assist the complainant, as requested, including providing guidance in filing complaints with outside agencies, such as law enforcement; obtaining appropriate assistance from victim/survivor services or medical treatment professionals; and filing a complaint with the Title IX Coordinator.

When appropriate, SMSU may pursue legal action against a respondent, including, but not limited to, trespass or restraining orders, in addition to disciplinary action under the applicable student or employee conduct standard. SMSU may take actions it deems necessary or appropriate in response to all protection, including restraining and no-contact orders.

SMSU Title IX Investigation Team

The SMSU Title IX investigation team consists of the following positions.

Title IX Coordinator: Coordinates response, manages complaints, conducts the in-take process, assigns investigators, tracks communication and case management, provides supportive measures, prepares and/or reviews final investigation reports to the Decision-maker.

Deputy Title IX Coordinators: In the event the Title IX Coordinator is unable to fulfill coordination of a case, the deputy(s) coordinates response, manages complaints, conducts the in-take process, can assign investigators, tracks communication and manages the case, provides supportive measures, prepares or reviews final investigation reports for submission to the Coordinator or Designated Officer.

Deputy Title IX Coordinator for Employee Cases: Where the complainant or the respondent are an employee, the Director of University Public Safety may investigate the case and work with other departments to coordinate the investigation process. (See Board Policy 1B.1 and System Procedure 1B.1.1.)

Deputy Title IX Coordinator for Student Cases: Where the complainant and the respondent are students, the Director of Student Conduct may investigate the case and work with other departments to coordinate the investigation process.

Designated Officers: The Title IX Coordinator for student cases and the Campus Human Resources Officer for employee cases.

Investigators: The Title IX Coordinator, Campus Human Resources Officer, Director of University Public Safety, and the Director of Student Conduct. All investigators complete Minnesota State investigation training annually.

Decision-makers: Administrators who have completed Minnesota State decision-maker training, assigned by the President, and serve a three-year term.

Other Areas of Community Collaboration

1. Director of Residence Life
2. Athletics
3. Mental Health Counseling Center
4. SMSU Health Services
5. LGBTQ+ Center and Women's Center
6. Marshall Police Department
7. Sexual Assault Multidisciplinary Action Response Team (SMART)
8. New Horizon's Crisis Center (NHCC)
9. WoMen's Rural Advocacy Program (WRAP)

Subpart C. Required Reports

Any campus security authority or any SMSU employee with supervisory or student-advising responsibility who has been informed of an alleged incident of sexual violence and sexual harassment (as defined by Title IX), shall follow SMSU procedures for making a report for the annual crime statistics report. In addition, the campus security authority or any SMSU employee with supervisory or student-advising responsibility who has been informed of an alleged incident of sexual violence and sexual harassment (as defined by Title IX) shall report to the Title IX Coordinator, in order to initiate any applicable investigative or other resolution procedures.

Campus security authorities may be obligated to report to law enforcement the fact that a sexual assault has occurred, but the name of or other personally identifiable information about the complainant will be provided only with the consent of the complainant, except as may be required or permitted by law.

Subpart D. Mandatory Reporting of Abuse or Neglect of Children or Vulnerable Adults

Minnesota law provides special protection for children under 18 and vulnerable adults. These laws, Minnesota Statutes sections 626.556 and 626.557, identify those who are mandated to report neglect or abuse of children under 18 and maltreatment of vulnerable adults. Faculty, student teachers or clinical participants, day-care personnel, and others involved in education or services to children or vulnerable adults may

be considered mandated reporters under both of these laws. Reports of abuse or neglect of a child or vulnerable adult must be made to law enforcement or state or county social service agencies.

Part 4. Confidentiality of Reporting

Because of laws concerning government data contained in Minnesota Statutes § Ch. 13, the Minnesota Government Data Practices, colleges and universities cannot guarantee confidentiality to those who report incidents of sexual violence except where those reports are privileged communications with licensed health care professions. Some off-campus reports also may be legally privileged by law, such as reports to clergy, private legal counsel, or health care professionals.

Part 5. Policy Notices

Subpart A. Distribution of Policy to Students

SMSU will at the time of registration make available to each student information about its sexual violence and sexual harassment (as defined by Title IX) policy and procedure), including its online reporting system that allows for anonymous reporting, and shall additionally post a copy of its policy and procedure at appropriate locations on campus and in appropriate handbooks at all times. SMSU may distribute its policy and procedure by posting on an Internet or Intranet website, provided all students are directly notified of how to access the policy by an exact address, and that they may request a paper copy.

Subpart B. Distribution of Policy to Employees

SMSU shall make available to all employees a copy of the sexual violence and sexual harassment (as defined by Title IX) policy and procedure. Distribution may be accomplished by posting on an Internet or Intranet website, provided all employees are directly notified of the exact address of the policy and procedure as well as the option of receiving a paper copy upon request.

Subpart C. Required Notice

SMSU shall have a sexual violence and sexual harassment (as defined by Title IX) policy, which must include the notice provisions in this part.

Notice of Title IX Coordinator

SMSU will notify applicants for admission and employment, students, employees, and all unions hold collective bargaining agreements with the SMSU of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator or Deputy Title IX Coordinator.

Notice of Non-Discrimination

SMSU must notify applicants for admission and employment, students, employees and all unions holding collective bargaining agreements with SMSU that SMSU does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate in such a manner. Inquiries about the application of Title IX may be referred to the Title IX Coordinator and/or to the United States Department of Education.

Notice of Complainant Options

Following a report of sexual violence the complainant must be promptly notified of:

1. Where and how to obtain immediate medical assistance. Complainants should be informed that timely reporting and a medical examination within 72 hours are critical in preserving evidence of sexual assault and proving a criminal or civil case against a perpetrator. Complainants should be told, however, that they may report incidents of sexual violence at any time.
2. Where and how to report incidents of sexual violence to local law enforcement officials, and/or appropriate college, university, or system contacts for employees, students, and others. Such contacts should be identified by name, location, and phone number for 24-hour availability, as applicable.
3. Resources for where and how complainants may obtain on- or off-campus counseling, mental health, or other support services.

Notice of Complainant Rights

Complainants must be notified of the following:

1. Their right to make a report with local law enforcement officials in sexual assault cases.
2. Rights under the crime victims bill of rights, Minn. Stat. §§ 611A.01 – 611A.06, including the right to assistance from the Crime Victims Reparations Board and the commissioner of public safety
3. Availability of prompt assistance from campus officials, upon request, in notifying the appropriate campus investigating authorities and law enforcement officials, and, at the direction of law enforcement authorities, assistance in obtaining, securing, and maintaining evidence in connection with a sexual violence incident.
4. Assistance available from campus authorities in preserving for a sexual violence complainant materials relating to a campus disciplinary proceeding.
5. Complaints of incidents of sexual violence made to campus security authorities must be promptly and appropriately resolved.
6. Upon a sexual assault complainant's request, SMSU may take action and other supportive measures to prevent unwanted contact with the alleged assailant, including, but not limited to, transfer of the complainant and/or the respondent to alternative classes, or to a work site or to alternative college-owned housing, if such alternatives are available and feasible.
7. Upon request, students who reported sexual assaults to SMSU and subsequently chose to transfer to another college or university will be provided with information about resources for victims of sexual assault at the college or university to which the complainant is transferring.

Part 6. Investigation and Disciplinary Procedures

Subpart A. General Principles

SMSU's investigation and disciplinary procedures concerning allegations of sexual violence and sexual harassment (as defined by Title IX) against employees or students must:

1. Be respectful of the needs and rights of individuals involved and treat them with dignity;
2. Not suggest the complainant was at fault for the sexual assault or should have behaved differently to prevent the assault;
3. Proceed as promptly as possible;
4. Permit a student complainant and a student respondent to have the same opportunity to have an appropriate support person or advisor present at any interview or hearing, in a manner consistent with the governing procedures and applicable data practices law;
5. Afford employees the right to representation consistent with the appropriate collective bargaining agreement or personnel plan;
6. Be conducted in accordance with applicable due process standards and privacy laws;
7. Simultaneously inform both the complainant and respondent of the outcome in a timely manner, as permitted by applicable privacy law.
8. Be based on a preponderance of evidence standard, meaning that it is more likely than not that the policy, procedure, or code has been violated.

The past sexual history of the complainant and respondent must be deemed irrelevant except as that history may directly relate to the incident being considered.

A respondent's use of any drug, including alcohol, judged to be related to an offense may be considered to be an exacerbating rather than mitigating circumstance.

Subpart B. Relationship to Parallel Proceedings.

In general, SMSU investigation and disciplinary procedures for allegations of sexual violence will proceed independent of any action taken in criminal or civil courts. SMSU need not, and in most cases should not, delay its proceedings while a parallel legal action is ongoing. If SMSU is aware of a criminal proceeding involving the alleged incident, they may contact the prosecuting authority to coordinate when feasible. Criminal or civil court proceedings are not a substitute for SMSU procedures.

Subpart C. Memorandum of Understanding with Local Law Enforcement

SMSU shall enter into a memorandum of understanding with the primary law enforcement agencies that serve its campus. Prior to the start of each academic year, SMSU shall distribute an electronic copy of the MOU to all employees on the campus that are subject to the memorandum. However, SMSU can be exempt from the MOU requirement if SMSU and local or county law enforcement agencies maintain the sexual assault protocol team to facilitate effective cooperation and collaboration

between SMSU and law enforcement. This is known as the Sexual Assault Multidisciplinary Action Response Team or SMART team.

Subpart D. False Statements Prohibited

SMSU takes allegations of sexual violence and sexual harassment (as defined by Title IX) very seriously and recognizes the consequences such allegations may have on a respondent as well as the complainant. Any individual who knowingly provides false information regarding the filing of a complaint or report of sexual violence, or who provides false information during the investigation of such a complaint or report, may be subject to discipline or, under certain circumstances, legal action. Complaints of conduct that are found not to violate policy are not assumed to be false.

Subpart E. Sanctions

Sanctions that may be imposed if a finding is made that sexual violence and sexual harassment (as defined by Title IX) has occurred include, but are not limited to, discipline up to and including suspension, or expulsion of students, or discipline, up to and including termination from employment, as provided in the applicable bargaining agreement or compensation plan, for employees. The appropriate sanction will be determined on a case-by-case basis, taking into account the severity of the conduct, the student's or employee's previous disciplinary history, and other factors as appropriate.

Witnesses or victims who report in good faith an incident of sexual violence will not be sanctioned by SMSU for admitting in the report to a violation of the student conduct policy on the use of alcohol or drugs.

Subpart F. Retaliation prohibited

Actions by a student or employee intended as retaliation, reprisal or intimidation against an individual for making a complaint or participating in any way in a report or investigation under this policy are prohibited and are subject to appropriate disciplinary action.

Part 7. Investigation and Resolution

SMSU has a duty to take timely and appropriate action to stop behavior prohibited by Board Policy 1B.3, conduct investigations and take appropriate action to prevent recurring misconduct.

Subpart A. Informal Resolution

SMSU may offer an informal resolution process if a formal complaint is filed and after providing both parties a notice of allegations. The parties must voluntarily consent, in writing, to the informal resolution process. At any time before agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the process with respect to the formal complaint. This procedure neither prevents nor requires the use of informal resolution by individuals who believe they have been subject to conduct in violation of Board Policy 1B.3. Informal resolution shall not be used to resolve allegations that an employee sexually harassed a student.

Subpart B. Information Privacy

Confidentiality of information obtained during an investigation cannot be guaranteed; such information, however, will be handled in accordance with applicable federal and state data privacy laws.

Subpart C. Processing the Complaint

The Title IX Coordinator must be contacted in order to initiate a complaint under this procedure. The Title IX Coordinator shall determine the process used in each complaint based on the complexity of the allegations, the number and relationship of individuals involved, and other pertinent factors.

Jurisdiction

The Title IX Coordinator shall:

1. determine whether the complaint is one which should be processed through another university procedure available to the complainant;
2. if appropriate, direct the complainant to that procedure as soon as possible; and
3. for sexual harassment complaints, (as defined by Title IX), determine whether or not the complaint involves the education program or activity of SMSU and whether the incident occurred in the United States.

Conflicts

The Title IX Coordinator should identify to the president or chancellor/designee any real or perceived conflict of interest in proceeding as the Title IX Coordinator, for the decision-maker, and/or for any person designated to facilitate an informal resolution for a specific complaint. If the president or chancellor/designee determines that a conflict exists, another Title IX Coordinator, decision-maker, or person facilitating an informal resolution must be assigned.

Information Provided to Complainant

At the time the complaint is made, the Title IX Coordinator shall:

1. inform the complainant of the provisions of the Board Policy 1B.3 and this procedure;
2. provide a copy of or Web address for Board Policy 1B.3 and this procedure to the complainant;
3. determine whether other individuals are permitted to accompany the complainant during investigative interviews and the extent of their involvement;
4. inform the complainant of the provisions of Board Policy 1B.3 prohibiting retaliation;
5. discuss the availability of supportive measures; and
6. explain the process for filing a formal Title IX complaint

Complaint Documentation

The Title IX Coordinator shall ensure that the complaint is documented in writing. The Title IX Coordinator may request, but not require the complainant to document the complaint in writing using the SMSU Sexual Violence and Harassment report form.

Information Provided to the Respondent

At the time initial contact is made with the respondent, the Title IX Coordinator shall inform the respondent in writing of the existence and general nature of the complaint and the provisions of the sexual violence

policy, including the name of the complainant. At the initial meeting with the respondent, the Title IX Coordinator shall:

1. provide a copy of or Web address for Board Policy 1B.3 and this procedure to the respondent;
2. provide sufficient information to the respondent consistent with federal and state data privacy laws to allow the respondent to respond to the substance of the complaint;
3. explain to the respondent that in addition to being interviewed by the Title IX Coordinator, the respondent may provide a written response to the allegations;
4. determine whether other individuals are permitted to accompany the respondent during investigative interviews and the extent of their involvement;
5. discuss the availability of supportive measures;
6. inform the respondent of the provisions of Board Policy 1B.3 prohibiting retaliation; and
7. utilize the template notice of allegations.

Investigatory Process

The Title IX Coordinator shall:

1. conduct a fact-finding inquiry or investigation into the complaint, including appropriate interviews and meetings;
2. inform the witnesses and other involved individuals of the prohibition against retaliation;
3. create, gather and maintain investigative documentation as appropriate;
4. disclose appropriate information to others only on a need to know basis consistent with state and federal law, and provide a data privacy notice in accordance with state law;
5. handle all data in accordance with applicable federal and state privacy laws
6. include an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence.
7. Presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the investigation process.
8. Not require, allow, 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.
9. For formal Title IX complaints, before completing the investigation report, send to both the complainant and the respondent and their advisors, if any, the evidence subject to inspection and review. Both the complainant and the respondent must have at least ten (10) calendar days to submit a written response to the evidence, which the Title IX Coordinator will consider before completing the investigative report. Both parties and their advisors may use the information solely for purposes of proceedings pursuant to this policy.

10. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) calendar days prior to a formal hearing, 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.

Interim Actions

1. **Employee reassignment or administrative leave.** Under appropriate circumstances, the president or chancellor may, in consultation with system legal counsel and labor relations, reassign or place an employee on administrative leave at any point in time during the report/complaint process. In determining whether to place an employee on administrative leave or reassignment, consideration shall be given to the nature of the alleged behavior, the relationships between the parties, the context in which the alleged incidents occurred and other relevant factors. Any action taken must be consistent with the applicable collective bargaining agreement or personnel plan.
2. **Student summary suspension or other action.** Under appropriate circumstances, the president or designee may summarily suspend a student at any point in time during the report/complaint process. A summary suspension may be imposed only in accordance with Board Policy 3.6 and associated system procedures. After the student has been summarily suspended, the report/complaint process should be completed within the shortest reasonable time period, not to exceed nine (9) class days. During the summary suspension, the student may not enter the campus or participate in any SMSU activities without obtaining prior permission from the president or designee. Other temporary measures may be taken in lieu of summary suspension where the president or designee determines such measures are appropriate.

No basis to Proceed

At any point during the processing of the complaint, the Title IX Coordinator may determine that there is no basis to proceed under Board Policy 1B.3. The Title IX Coordinator may refer the complaint as appropriate to other SMSU officials. If the conduct alleged in the formal Title IX complaint would not constitute Title IX sexual harassment even if proved, did not occur in SMSU's education program or activity, or did not occur against a person in the United States, then SMSU must dismiss the formal complaint. SMSU may dismiss a formal Title IX complaint or any allegations therein any time during the investigation or hearing if a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by SMSU or specific circumstances prevent SMSU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. SMSU must promptly notify both the complainant and the respondent of any dismissal.

Timely Completion

SMSU shall provide resources sufficient to complete the investigative process and issue a written response in a timely manner after a complaint is made, unless reasonable cause for delay exists. Reasonable cause may include considerations such as the absence of the party, a party's advisor or a witness; concurrent law enforcement activity or the need for language assistance or accommodation of disabilities. The Title IX Coordinator shall notify the complainant and respondent if the written

response is not expected to be issued within a timely manner. SMSU must meet any applicable shorter time periods, including those provided in the applicable collective bargaining agreement.

Subpart D. Decision Process

If the above methods, including the informal resolution process, have not resolved the complaint within a reasonable period of time to the satisfaction of the Title IX Coordinator, the procedures in this subpart must be followed.

1. **Title IX Coordinator.** The Title IX Coordinator shall:
 - a. Prepare an investigation report.
 - b. Refer the matter for a formal hearing.
2. **Formal Hearing.** Formal hearings for Title IX sexual harassment complaints will be conducted by the Office of Administrative Hearings pursuant to the rules for administrative hearings. If either the complainant or respondent does not have an advisor for the formal hearing, SMSU must provide an advisor without fee or charge to the complainant or respondent. SMSU shall maintain a roster of advisors for this purpose. The role of the advisor for the respondent is to conduct cross-examination on behalf of the respondent. At the conclusion of the formal hearing, the administrative law judge will issue a written recommendation for a final decision made by an SMSU decision-maker.
3. **Decision-maker.** After receiving the report and recommendation prepared by the administrative law judge, the decision-maker shall:
 - a. Decide whether the policy has been violated; and
 - b. On appropriate sanctions if the policy has been violated;
 - c. Issue a written determination that must include:
 - i. identification of the allegations potentially violating this policy;
 - ii. 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 hearing help;
 - iii. findings of fact supporting the determination;
 - iv. conclusions regarding application of the policy to the facts;
 - v. a statement of, and rationale, for the result as to each allegation, including determination regarding responsibility, any disciplinary sanctions SMSU imposes on the respondent, and whether remedies designed to restore or preserve equal access to SMSU's education program or activity will be provided by SMSU to the complainant; and
 - vi. SMSU's procedures and permissible bases for the complainant and respondent to appeal.

The written determination may satisfy these elements by adopting portions of the report and recommendation. The decision-maker must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that SMSU provides the parties with written determination of the result of the appeal; or if an appeal is filed; or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

SMSU shall take the appropriate corrective action based on results of the investigation, and the Title IX Coordinator shall make appropriate inquiries to ascertain the effectiveness of any corrective or disciplinary

action. Complainants are encouraged to report any subsequent conduct that violates Board Policy 1B.3, as well as allegations of retaliation. Disciplinary action for students may include any sanctions SMSU imposes for any student conduct matters, up to and including expulsion. Disciplinary action for employees may include any discipline allowed under the applicable collective bargaining agreement or personnel plan, up to and including termination.

Written notice to parties relating to discipline, resolutions, or final dispositions resulting from the report or complaint process is deemed to be official correspondence from SMSU. In accordance with state law, SMSU is responsible for filing the complaint disposition concerning complaints against employees with the Commissioner of Minnesota Management and Budget within 30 days of final disposition.

Part 8. Appeal

Subpart A. Filing an Appeal

The complainant or the respondent may appeal the decision of the decision-maker. An appeal must be filed in writing with the president or designee within ten (10) calendar days after notification of the decision. The appeal must state specific reasons why the complainant or respondent believes the decision or sentence were improper. In a complaint against a president or other official who reports directly to the chancellor, an appeal may be considered by the chancellor whether or not the chancellor served as the decision-maker. In addition, for a formal Title IX complaint, both the complainant and respondent may appeal a dismissal of a formal complaint.

Subpart B. Appeal Process

The president or designee shall review the record and determine whether to affirm or modify the decision. Grounds for appeal include procedural irregularity that affected the outcome, 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 a conflict of interest or bias by the Title IX Coordinator, or decision-maker that affected the outcome of the matter. The president or designee may receive additional information if the president or designee believes such information would aid in the consideration of the appeal. The decision on appeal must be made within a reasonable time and the complainant, respondent, and Title IX Coordinator must be notified in writing of the decision, consistent with applicable state and federal data privacy laws. The decision on appeal exhausts the complainant's and respondent's administrative remedies under this procedure except as provided herein.

Part 9. Education and Training

SMSU shall provide education and training programs to promote awareness and prevent discrimination/harassment, such as educational seminars, peer-to-peer counseling, operation of hotlines, self-defense courses, by-stander intervention, and informational resources. Education and training programs should include education about Board Policy 1B.3 and this procedure. SMSU shall promote awareness of Board Policy 1B.3 and this procedure, and shall publicly identify the Title IX Coordinator. SMSU must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution policy, received training on Title IX sexual harassment complaints. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process on handling formal Title IX complaints must be made publicly available on the SMSU website.

Sexual Violence Prevention and Education

Subpart A. Campus-wide Training

SMSU shall:

Include in their sexual violence policy a description of educational programs that they offer to students and employees to promote the awareness of sexual violence offenses, including sexual violence prevention measures and procedures for responding to incidents. SMSU conducts training and provides programs aimed at preventing sexual violence and making the SMSU community aware of the potential of such crimes.

1. These programs include nightly security patrols of the campus, providing escorts, inspecting the campus for potentially dangerous areas, and implementing programs to inspect campus lighting and shrubbery.
2. Title IX Coordinator, Residence Hall staff, University Public Safety, Health Center, and Counseling Offices provide educational programs concerning sexual assault awareness.
3. University Public Safety provides on-line training to Campus Security Authorities related to their requirements under the Cleary Act.
4. New Horizons provides training to all residence assistants on the protocol used when responding to individuals who have reported to have been a victim of sexual assault.
5. New Horizons provides sexual assault awareness training to all new incoming students.
6. A sexual violence awareness training program through D2L is provided to all new incoming students and new faculty and staff.
7. New Horizons sponsors several different activities and events to promote Sexual Assault Awareness during April of each year.
8. Provide training on awareness of sexual violence prevention measures and procedures for responding to incidents of sexual violence. At a minimum, all incoming students and all new employees must be provided with this training;
9. Emphasize in their educational programs the importance of preserving evidence for proof of a criminal offense, safe and positive options for bystander intervention, and information on risk reduction to recognize warning signs of abusive behavior and risk associated with the perpetration of sexual violence.

Subpart B. Other Training and Education

The SMSU Title IX Coordinator and University Public Safety partner to develop educational programs, brochures, posters, and other means of information to decrease the incidence of sexual violence and advise individuals of the legal and other options available if they are the complainants of an incident or if they learn of such an incident.

Subpart C. Training for Individuals Charged with Decision-Making Authority

Prior to serving as either an investigator or decision-maker for complaints under this procedure, SMSU administrators shall complete investigator or decision-maker training provided by the system office.

SMSU Investigators and decision-makers, campus security officers, and anyone else involved in the adjudication process must receive annual training on the issues related to domestic violence, dating violence,

sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

Part 10. Maintenance of Report/ Complaint Procedure Documentation

During and upon the completion of the complaint process, the complaint file must be maintained in a secure location in the office of the Title IX Coordinator at SMSU, for a period of seven (7) years, in accordance with the applicable records retention schedule. Access to data must be in accordance with the respective collective bargaining agreement or personnel plan, the Minnesota Government Data Practices Act, the Family Educational Rights and Privacy Act, and other applicable law. Information on reports of incidents of sexual violence that are made to campus security authorities must be documented in accordance with the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, codified at 20 U.S.C. § 1092 (f). The information will be used to report campus crime statistics on college and university campuses as required by the Clery Act.

SMSU shall annually report statistics on sexual assaults to the Minnesota Office of Higher Education. Additionally, the report must be published on the SMSU website in accordance with state law.

Part 11. Resources

A comprehensive list of campus and community resources, terms and definitions, information on formal and informal resolutions, and supportive measures are located on SMSU's website. [<https://www.smsu.edu/administration/titleix/index.html>]

Related Documents

Board Policy 1B.3, "Sexual Violence Policy (<https://www.minnstate.edu/board/policy/1b03.html>)"

System Procedure 1B.3.1, "Response to Sexual Violence and Title IX Sexual Harassment (<https://www.minnstate.edu/board/procedure/1b03p1.html>)"

Board Policy 3.6, "Student Conduct (<https://www.minnstate.edu/board/policy/306.html>)"

System Procedure 3.6.1, "Student Conduct (<https://www.minnstate.edu/board/procedure/306p1.html>)"

P-013, "Sexual Violence Policy (<https://catalog.smsu.edu/policies-procedures/sexual-violence/>)"

Policy History

Date of Adoption: August 19, 2024

Date of Last Review: August 19, 2024

Date and Subject of Amendments