



## **OP 03.03: DISCRIMINATION, HARASSMENT, AND RETALIATION**

### **POLICY**

Mississippi State University is committed to assuring that the University and its programs are free from unlawful discrimination and harassment based upon race, color, ethnicity, sex, pregnancy, religion, national origin, disability, age, sexual orientation, gender identity, genetic information, status as a U.S. veteran, or any other status protected by state or federal law. The University will not tolerate discrimination, harassment, or retaliation, as defined below, and is committed to preventing or stopping them whenever they may occur at the University or in its programs.

### **PROHIBITED CONDUCT**

Mississippi State University prohibits unlawful discrimination or harassment on the basis of a person's race, color, ethnicity, sex, pregnancy, religion, national origin, disability, age, sexual orientation, gender identity, genetic information, status as a U.S. veteran, or any other characteristic protected by applicable law.

This policy also prohibits retaliation against a person who has made a report or filed a complaint of discrimination or harassment, is a witness to discrimination or harassment, or has participated in an investigation of a complaint of discrimination or harassment. Further, in certain cases, this and other University policies mandate reporting discrimination or harassment to the University. It is a violation of this policy for a mandatory reporter to disregard or unreasonably delay reporting.

### **APPLICATION**

This policy applies to all Mississippi State employees, students, visitors, volunteers, applicants, vendors, contractors, or program participants. It prohibits discrimination and/or harassment on the basis of any of the protected characteristics listed below in any University program, service, opportunity, or activity, which includes without limitation all academic, educational, research, extracurricular, athletic, housing, and other programs, regardless of where they may occur. This policy also prohibits retaliation, which includes any adverse action that would deter a reasonable person from reporting, testifying, or otherwise cooperating with any investigation or proceeding.

This policy does not govern disputes over offensive conduct, employment decisions, or other matters in which the alleged conduct was not based on one or more protected characteristics. Such disputes may be covered by other applicable policies or procedures, such as the Guidelines for Employee Conduct (OP 60.401), the Code of Student Conduct (OP 91.100), or the Whistleblower Policy (OP 1.07).

Nothing in this policy shall be construed as granting any accused person who is not a University student or employee any procedural or substantive rights in relation to the University's response to alleged discrimination, harassment, retaliation, or sexual misconduct.

## **DEFINITIONS**

For purposes of this Policy, the following definitions apply:

- **Protected Characteristics**: This refers to race, color, ethnicity, sex, pregnancy, religion, national origin, disability, age, sexual orientation, gender identity, genetic information, status as a U.S. veteran, or any other characteristic protected by applicable law.
- **Discrimination**: As used in this policy, discrimination refers to intentional differential or negative treatment of an individual on the basis of a protected characteristic, where such treatment would deny or limit a reasonable person's ability to participate in or benefit from University programs, services, opportunities, or activities. With respect to membership in University organizations, the University Policy on Student and Other University Organizations (OP 91.200) shall control.
- **Harassment**: Harassment is conduct that is (1) unwelcome; (2) based on a protected status; and (3) directed at a specific individual or individuals. Sexual harassment is a type of harassment consisting of unwelcome conduct of a sexual nature. Harassment violates University policy when it is sufficiently severe, pervasive, or persistent that it denies or limits, or is likely to deny or limit, a reasonable person's ability to participate in or benefit from University programs, services, opportunities, or activities.

Harassment can include but is not limited to verbal or non-verbal communication, written or graphic communication, electronic communication, and/or physical conduct. Examples of prohibited harassment may include, but are not limited to (a) repeated and unwanted sexual or romantic solicitations, displaying sexual images in the workplace, or conditioning favorable treatment in connection with a University program upon sexual favors; (b) physical harassment, such as touching, pinching, grabbing, or brushing against another person without their consent; and (c) severe, pervasive, or persistent insults, jokes or derisive comments relating to a person's protected characteristic.

- **Sexual Misconduct**: This term refers broadly to unwelcome behavior of a sexual nature committed without effective consent. Sexual misconduct can vary in its nature and severity. For purposes of this policy, sexual misconduct is a form of sex discrimination. It includes sexual harassment, sexual assault, sexual exploitation, stalking, and domestic or dating violence. For definitions of these terms, please see the University's Operating Policy 3.04 on Sexual Misconduct.
- **Retaliation**: Retaliation refers to any adverse action that would deter a reasonable person from reporting, testifying, or otherwise cooperating with an investigation or proceeding concerning alleged violation of this policy. Retaliation against individuals who report possible violations of this policy, or who cooperate with an investigation by the University or any law enforcement agency, is strictly prohibited. Retaliation is an independent basis for disciplinary action, regardless of the outcome of the underlying complaint.

These definitions and all other parts of this policy shall be interpreted in accordance with the rights to free expression held by members of the University community. Consequently, the mere expression of opinions, ideas, words, or symbols that another person finds objectionable will not, without more, constitute a violation of this policy.

## **REPORTING**

The University strongly encourages—and in some cases, mandates—reporting of discrimination, harassment, and/or retaliation. To that end, the University has adopted specific procedures through which an individual can make his or her complaint known.

The proper recipient of a report of discrimination, harassment, or retaliation depends on the nature of the incident and the parties involved.

1. **Workplace Discrimination, Harassment, or Retaliation:**

Where a University employee experiences discrimination, harassment, or retaliation in a University workplace or in connection with his or her employment, the report should be submitted to the Department of Human Resources Management, which is located at 150 McArthur Hall and can be reached at 662-325-3713 or to the Director of Title IX/EEO Programs (the “Title IX/EEO Director”) in the Office of Compliance and Integrity, who can be reached at 662-325-5839 or at [titleix@msstate.edu](mailto:titleix@msstate.edu).

2. **Non-employment-related Discrimination, Harassment, or Retaliation:**

Where a complaint of discrimination, harassment, or retaliation is not related to the complainant’s University employment, the report should be made to the Title IX/EEO Director in the Office of Compliance and Integrity, who can be reached at 662-325-5839 or at [titleix@msstate.edu](mailto:titleix@msstate.edu).

This category includes, but is not limited to, unlawful discrimination, harassment, or retaliation in connection with admissions, recruitment, financial aid, student services, counseling or guidance, student discipline, classroom assignments, grading, extracurricular or recreational activities, athletics, or university housing.

3. **Sexual Misconduct:**

Sexual misconduct is a form of sex discrimination that includes sexual assault, sexual harassment, sexual exploitation, stalking, and dating or domestic violence. These offenses are governed by the University’s Sexual Misconduct Policy (OP 3.04) and should be reported to the Title IX/EEO Director at 662-325-5839 or at [titleix@msstate.edu](mailto:titleix@msstate.edu).

Additionally, the University offers confidential options for assistance in cases of sexual misconduct. If you would prefer to speak to a confidential resource, please review Part VI of the Sexual Misconduct Policy (OP 3.04) for further information.

4. **Mandatory Reporting:**

In certain circumstances, a University employee who receives a complaint of discrimination, harassment, or retaliation is required to relay that complaint to the appropriate authority. In such instances, the employee must report the complaint, regardless of his or her opinion of its seriousness or its merits. Failure to report in these instances is grounds for disciplinary action.

a. *Workplace violations reported to supervisors*

In some instances, an employee experiencing discrimination, harassment, or retaliation may wish to report it to his or her supervisor. This is permissible, but is not required. Employees always are free to report directly to Human Resources Management or the Title IX/EEO Director. Where a supervisor or other superior receives a report of discrimination, harassment, or retaliation from a subordinate employee, he or she must report it promptly to Human Resources Management or to the Title IX/EEO Director.

b. *Sexual misconduct reported to Responsible Employees*

Most University employees are considered “Responsible Employees” for purposes of federal law and university policy. Responsible Employees have a mandatory duty to report to the University any sexual misconduct about which they become aware. For additional information on the reporting requirements of Responsible Employees, please see the University’s Sexual Misconduct Policy (OP 3.04).

When a Responsible Employee receives a complaint of sexual misconduct, he or she must report it only to the Title IX/EEO Director, who can be reached at 662-325-5839 or at [titleix@msstate.edu](mailto:titleix@msstate.edu). If your supervisor or department head expects to be informed of such matters, you should tell him or her that you have reported an incident of sexual misconduct to the University and that any questions about the matter should be directed to the Office of Compliance and Integrity.

## **ANONYMOUS REPORTING**

Anonymous complaints of harassment, discrimination, or retaliation can be made through the MSU Ethics Line, a confidential online reporting tool. An online report can be completed via the Ethics Line web page, a link to which is located on the University’s main home page. To submit a report by telephone, dial 877-310-0424.

The University will take appropriate steps to address problems identified by anonymous disclosures. However, the University’s ability to respond, impose discipline, and/or assist the complainant will be significantly limited if he or she chooses to remain anonymous. Members of the community are therefore strongly encouraged to consider the other options for reporting listed in this policy.

## **COMPLAINT RESOLUTION PROCEDURE**

1. **Initial Assessment**

Where a complaint references any protected status as a potential motivating factor in any conduct by a member of the University community, it will be referred first to the Title IX/EEO Director. The Director will make the initial determination whether there is cause to proceed with an investigation of potential discrimination, harassment, or retaliation.

If cause is found, the Director and/or his or her designee will conduct the investigation. If cause is not found, the Director may refer the matter to other appropriate university officials to determine whether other University policies may have been violated.

Where a complaint references potential discrimination, harassment, or retaliation in connection with University employment, the Title IX/EEO Director will inform the Chief Human Resources Officer or his or her designee. Where appropriate, the matter may be investigated jointly by the Title IX/EEO Director or his/her designee and the Department of Human Resources Management.

## 2. Applicable Procedures

The procedures for resolving complaints of discrimination, harassment, or sexual misconduct depend upon factors including the conduct alleged and the identity of the parties. The Title IX/EEO Director retains discretion to determine the University policies or procedures most appropriate for investigating, adjudicating, or otherwise resolving a complaint, and to vary procedures when circumstances require.

### a. *Sexual Misconduct*

Complaints of sexual misconduct are investigated and adjudicated pursuant to the procedures set forth in the Operating Policy 3.04 (Sexual Misconduct). In all such cases, the procedures for Initial Investigation and the General Rules for Investigation and Adjudication will govern. Where the accused party is a student or a visitor, the respective provisions for those groups will apply.

Where the party accused of sexual misconduct is a University employee, determinations concerning disciplinary and/or employment actions will be made by the appropriate supervisory personnel pursuant to applicable University policies following an investigation and report by the Title IX/EEO Director or his or her designee. While an investigation is pending, the University may take interim steps to ensure safety, which may include but are not limited to placing the accused party on administrative leave and/or placing other limitations on privileges or access to University facilities or resources.

Where termination of employment is considered, the University will follow the procedures in Operating Policy 60.113 (Termination of Employment) and/or 60.405 (Separation from Employment). Where a hearing is required under Operating Policy 60.113, or where any conflict arises between the procedural rules in OP 60.113 or 60.405 and the procedural rules in OP 3.04, the procedural rules of OP 3.04 will govern.

### b. *All Other Matters*

Where a complaint alleges any violation of this policy other than sexual misconduct, the following procedures are used.

***Investigation.*** Each investigation necessarily will be different depending on the facts, circumstances, and witnesses. Generally, an investigation will include interviews of the complainant, the accused party, and anyone else having

information deemed relevant, as well as a review of any evidence provided or identified by witnesses.

***Initial Contact with the Parties.*** When an investigation begins, the investigator generally will schedule a meeting with the complainant. In this meeting, the complainant will be informed about the relevant provisions of this policy, the nature of the investigation, the availability of interim accommodations and assistance, the prohibition on retaliation, the right to report to law enforcement agencies where applicable, and the possibility of informal resolution where appropriate. The investigator also will communicate to the accused party the allegations made against him or her, the relevant provisions of this policy, and forms of support or assistance available to him or her.

***Timeframe.*** The amount of time needed to conduct the investigation will depend in part on the nature of the allegations and the evidence to be investigated. However, absent extenuating circumstances, the investigator will endeavor to complete the investigation within sixty calendar days.

***Interim Assistance.*** While an investigation is proceeding, the University will make available reasonable interim measures to protect complainants or other affected parties. This includes but is not limited to orders prohibiting contact between the complainant, the accused, and/or any other member of the University community. If you require interim assistance, you should make that request to the Title IX/EEO Director.

***Findings and Recommendations.*** Once an investigation is completed, the Title IX/EEO Director will provide findings and recommendations to the appropriate Vice Presidents, Deans and/or Department Heads, as well as to General Counsel and the Chief Human Resources Officer for matters involving employees.

***Adjudication or Resolution.*** The appropriate procedure for adjudication or resolution of a complaint of discrimination, harassment, or retaliation depends on the identity of the accused party.

Where the accused party is a student, disciplinary action will be pursuant to the procedures in Operating Policy 91.100 (Code of Student Conduct). Where the accused party is a University employee, determinations concerning disciplinary and/or employment actions will be made by the appropriate supervisory personnel pursuant to applicable University policies, after consultation with the Title IX/EEO Director and the Department of Human Resources Management. Where termination of employment is considered, the University will follow the procedures in Operating Policy 60.113 and/or 60.405, as applicable.

Where the accused party is neither a student nor an employee, the University may take appropriate steps to ensure the security of its campus and programs and to prevent further violations of its policies. These steps may include without limitation barring the accused from campus, exclusion from University programs or activities, and/or referral to appropriate law enforcement agencies. Nothing in this policy shall be construed as granting any accused person who is not a University student or employee any procedural or substantive rights in relation to such actions.

3. Review and Appeal

Where the accused party is a student, any appellate review of disciplinary action will be pursuant to the procedures in Operating Policy 91.100 (Code of Student Conduct) and, where applicable, the additional provisions in Operating Policy 3.04 (Sexual Misconduct).

Where the accused party is an employee and Operating Policy 60.113 confers a right to review and/or appeal, the procedures in that policy will govern said review and/or appeal.

Where the accused party is an employee and no other right of appeal is conferred by University policy, he or she may appeal to the Office of the President. A written appeal must be received by the Office of the President within ten working days after the date of the written notification of the decision being appealed. The President or designee should be given a copy of the investigator's report and may request additional information if it is believed such information would aid in consideration of the appeal. A decision by the President or designee will be made within a reasonable time and the complainant and accused will be notified in writing of the decision of the appeal. During the time of appeal and review, disciplinary action, if any, may be implemented and enforced.

4. Informal Resolution

In some instances, a complainant may prefer to address discrimination or harassment through informal means, such as mediation. Persons interested in informal resolution should communicate that request to the investigator or the Title IX/EEO Director. If the complainant requests informal resolution, the Director will review the request to ensure informal resolution is appropriate.

If the Director finds that informal resolution is appropriate, the University will make reasonable efforts to facilitate it. Informal resolution is strictly voluntary. No one, whether complainant or accused, will be compelled to participate in any mediation or other informal resolution. Further, informal resolution efforts always will be supervised by a properly-trained person. Informal resolution is never permitted in cases of sexual assault or physical violence.

If at any point either party wishes to end informal resolution efforts, they should communicate that fact to the Title IX/EEO Director and the process of formal investigation and recommendations will begin. If after informal efforts have concluded, either party is not satisfied with the result, they should promptly communicate the same to the Title IX/EEO Director and formal proceedings will resume.

5. Privacy

The University will endeavor to respect the privacy of parties and others involved in investigations to the greatest extent possible, but cannot guarantee that all information it receives will be kept confidential. Once a report of discrimination, harassment, or retaliation is received, the University has a duty to investigate. In some instances, this means that certain information must be provided to individuals involved or identified in an investigation.

In cases of alleged discrimination, harassment, or retaliation, the University reserves the right to investigate, resolve and/or report to the appropriate law enforcement authorities a

complaint regardless of whether the complainant ultimately desires the University to pursue the complaint. In cases of alleged sexual misconduct, the provisions of Operating Policy 3.04 (Sexual Misconduct) will govern matters of privacy, confidentiality and disclosure.

6. Reporting to Law Enforcement

The reporting procedures in this policy are not intended to replace procedures for reporting discrimination, harassment, retaliation, or sexual misconduct to law enforcement agencies. Members of the University community always retain the right to report misconduct to the police or to agencies such as the Equal Employment Opportunity Commission or the U.S. Department of Education's Office of Civil Rights. However, reporting to law enforcement is never required under this policy.

Making a report under this policy is independent of any criminal investigation or proceedings. Thus, you may report to the University, a law enforcement agency, or both. The University, in its discretion, may not wait for the conclusion of any criminal investigation to commence its own investigation or disciplinary proceedings. The University may take interim measures, if necessary, for the safety and security of the University community.

In cases involving sexual misconduct, please refer to Part VI(5) of the University's Sexual Misconduct Policy (OP 3.04) for additional information on reporting to law enforcement.

**PROHIBITION ON RETALIATION**

Retaliation against individuals who report discrimination, harassment, retaliation, or sexual misconduct, or who cooperate with an investigation of alleged misconduct, whether conducted by the University or any law enforcement agency, is strictly prohibited.

Retaliation is an independent basis for disciplinary action, regardless of the outcome of the underlying complaint. For purposes of this policy, retaliation includes any adverse action that would deter a reasonable person from reporting, testifying, or otherwise cooperating with any investigation or proceeding. Any such retaliation should be reported immediately to the Title IX/EEO Director.

**FALSE REPORTING**

While the University recognizes the rarity of intentionally false reports, submitting (1) a deliberately false report of discrimination, harassment, retaliation, or sexual misconduct, or (2) other false information in bad faith and in connection with any proceeding under this policy, is prohibited and is grounds for disciplinary action. A report is made in bad faith when the person making it actually knew it was false or made it with reckless disregard for the truth. A report is not made in bad faith merely because an adjudicator finds an accused party not responsible.

Where a false report or statement has been made in bad faith, disciplinary action by the University against the person making it is not retaliation within the meaning of this policy. This exception applies solely to official disciplinary action following an investigation by the University. It does not authorize other retaliation of any kind by any individual, department, or organization, even where bad faith is found.



## **COORDINATION WITH OTHER POLICIES**

### **Sexual Misconduct (OP 03.04)**

Certain conduct such as workplace sexual harassment may violate both this policy and the Sexual Misconduct Policy. In such cases, Part VII of this policy will determine what procedures and other requirements govern the investigation and disposition of the matter.

### **Termination of Employment (OP 60.113) and Separation from Employment (OP 60.405)**

Where termination proceedings are based on a violation of this policy, the requirements of the Termination of Employment Policy (OP 60.113) and/or Separation from Employment Policy (OP 60.405) will apply. To the extent this policy and/or the Sexual Misconduct Policy (OP 3.04) contain additional or conflicting requirements, these policies will control.

### **Code of Student Conduct (91.100)**

To the extent the provisions of this policy differ from those of the Code of Student Conduct (OP 91.100), this policy will control in cases of discrimination, harassment or sexual misconduct.

## **QUESTIONS ABOUT THIS POLICY**

Anyone with questions about the provisions of this policy should contact the University's Director of Title IX/EEO Programs, Brett Harvey, at [titleix@msstate.edu](mailto:titleix@msstate.edu) or 662-325-5839.

## **REVIEW**

This policy will be reviewed by the Provost and Executive Vice President every two years or whenever circumstances require immediate review.

**REVIEWED BY:**

/s/ Judy Bonner  
Provost and Executive Vice President

10/17/2016  
Date

/s/ W. Brett Harvey  
Director, Title IX and EEO Programs

10/19/2016  
Date

/s/ Judy Spencer  
Chief Human Resources Officer

10/24/2016  
Date

/s/ Joan Lucas  
General Counsel

10/24/2016  
Date

/s/ Timothy N. Chamblee  
Assistant Vice President and Director,  
Office of Institutional Research and Effectiveness

10/25/2016  
Date

**APPROVED BY:**

/s/ Mark Keenum  
President

11/03/2016  
Date