



OP 03.03: DISCRIMINATION, HARASSMENT, AND RETALIATION

I. 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.

II. 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.

III. 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 intimidation, coercion, discrimination, threat, or other action against any individual that would deter a reasonable person from reporting, testifying, assisting, or cooperating with an 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) or the Code of Student Conduct (OP 91.100).

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.

IV. **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 unwelcome conduct based on a protected status that is sufficiently severe, pervasive, or persistent and objectively offensive 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. Sexual harassment is a type of harassment consisting of unwelcome conduct of a sexual nature.

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, persistent and objectively offensive 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. It also includes certain specific offenses defined by federal regulations, which the university refers to as "Title IX Sexual Harassment." For definitions of all these terms, please see the University's Operating Policy 3.04 on Sexual Misconduct.
- **Retaliation**: For purposes of this policy, retaliation includes any intimidation, coercion, discrimination, threat, or other action against any individual that would deter a reasonable person from reporting, testifying, assisting, or cooperating with an investigation or proceeding. Constitutionally protected speech, without more, does not constitute

retaliation under this policy. Sanctions imposed for making a deliberately false report or providing false information in bad faith in the course of an investigation or hearing do not constitute retaliation. 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.

V. **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 Director of Civil Rights Compliance in the Office of Civil Rights Compliance, who can be reached at 662-325-5839 or at titleix@msstate.edu, or to
- The Department of Human Resources Management, which is located at 150 McArthur Hall and can be reached at 662-325-3713.

Employees who wish to report directly to their supervisor may do so, but are never required to do so. As discussed below, when such a report is submitted to a supervisor, that supervisor is required to communicate it promptly to the Director of Civil Rights Compliance.

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 Director of Civil Rights Compliance, who can be reached at 662-325-5839 or at 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 Director of Civil Rights Compliance at 662-325-5839 or at 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 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 never required. Employees always are free to report directly to Human Resources Management or the Director of Civil Rights Compliance. 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 the Director of Civil Rights Compliance.

b. *Sexual misconduct reported to Mandatory Reporters*

Most University employees are considered "Mandatory Reporters" for purposes of university policy. Mandatory Reporters have a duty to report to the University any sexual misconduct about which they become aware. For additional information on the reporting requirements of Mandatory Reporters, please see the University's Sexual Misconduct Policy (OP 3.04).

When a Mandatory Reporter receives a complaint of sexual misconduct, he or she must report it only to the Director of Civil Rights Compliance, who can be reached at 662-325-5839 or at 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 Director of Civil Rights Compliance.

VI. 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.

VII. 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 Director of Civil Rights Compliance. 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 will make a determination as to whether the matter involves sexual misconduct as defined by Operating Policy 3.04. If so, the matter will be investigated pursuant to the procedures outlined in that policy. If not, the matter will be investigated pursuant to the procedures outlined in this policy. In either case, the Director and/or his or her designee will conduct the investigation. At any point during or after the investigation, 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 Director of Civil Rights Compliance will inform the Chief Human Resources Officer or his or her designee. Where appropriate, the matter may be investigated jointly by the Office of Civil Rights Compliance 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 Director of Civil Rights Compliance 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.

While any 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.

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). Where a matter is investigated pursuant to Operating Policy 3.04 but dismissed under the procedures outlined therein, the Director may nonetheless make recommendations to the appropriate supervisory personnel. For example, where an employee is charged with sexual harassment, and an investigation reveals that the conduct did not rise to the level of harassment but nonetheless potentially constituted inappropriate workplace conduct, the Director may make recommendations to the employee's

supervisor as to appropriate remedies or sanctions.

Where termination of employment is considered in response to violations of this policy, the University will follow the procedures in Operating Policy 60.113 (Termination of Employment) and/or 60.405 (Separation from Employment) to the extent they do not conflict with this policy or Operating Policy 3.04.

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 Director of Civil Rights Compliance.

Findings and Recommendations. Once an investigation is completed, the Director of Civil Rights Compliance 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 Director of Civil Rights Compliance 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 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 Director of Civil Rights Compliance. If the complainant requests informal resolution, the Director will review the request to ensure informal resolution is appropriate. Where informal resolution is sought in connection with an allegation of sexual misconduct, the provisions of Operating Policy 3.04 will govern.

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.

If at any point either party wishes to end informal resolution efforts, they should communicate that fact to the Director of Civil Rights Compliance and the process of formal investigation and recommendations will begin or resume. If after informal efforts have concluded, either party is not satisfied with the result, they should promptly communicate the same to the Director of Civil Rights Compliance 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 V.5 of the University's Sexual Misconduct Policy (OP 3.04) for additional information on reporting to law enforcement.

VIII. 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 intimidation, coercion, discrimination, threat, or other action against any individual that would deter a reasonable person from reporting, testifying, assisting, or cooperating with an investigation or proceeding. Any such retaliation should be reported immediately to the Director of Civil Rights Compliance.

IX. 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 disciplinary action of any kind by any individual, department, or organization, even where bad faith is found.

X. ACCOMMODATIONS

The University will make reasonable accommodations as required by applicable laws to ensure equal access to its programs, services, activities, and facilities. Accommodations based on disability are addressed by Operating Policy 60.123 for employment related matters, Operating Policy 91.122 for students with disabilities. All other requests for reasonable accommodations are addressed by Operating Policy 91.353. These policies describe the appropriate procedures for requesting disability-based accommodations.

The University also will make reasonable accommodations as required by applicable law for students or employees whose bona fide religious beliefs limit the ability to participate in University programs, activities, or employment, and for individuals with limited English proficiency, provided such accommodations do not impose an undue burden or fundamentally alter the nature of the program, activity, or employment. Individuals wishing to request an accommodation based on religious belief or limited English proficiency should contact the Office of Civil Rights Compliance at 662-325-5839 or at titleix@msstate.edu.

XI. 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. Where any provisions of this policy conflict with Operating Policy 3.04, the latter will control.

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.

XII. QUESTIONS ABOUT THIS POLICY

Anyone with questions about the provisions of this policy should contact the University's Director of Civil Rights Compliance, Brett Harvey, at titleix@msstate.edu or 662-325-5839.

XIII. 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/ Brett Harvey
Director, Civil Rights Compliance

7/26/21
Date

/s/ Leslie Corey
Chief Human Resources Officer

7/26/21
Date

/s/ David Shaw
Provost and Executive Vice President

7/26/21
Date

/s/ Tracey Baham
Assistant Vice President, Institutional Strategy & Effectiveness

7/26/21
Date

/s/ Joan Lucas
General Counsel

7/26/21
Date

APPROVED BY:

/s/ Mark Keenum
President

7/26/21
Date