



## **OP 03.04: Sexual Misconduct**

### **Policy and Procedure:**

#### **I. Overview**

Mississippi State University (“the University” or “MSU”) does not permit discrimination on the basis of sex in its educational programs or activities. In order to foster an environment of respect for the dignity and worth of all members of the University community, the University is committed to maintaining an educational environment free from sex discrimination, which includes sexual misconduct of any type, including sexual assault, sexual harassment, sexual exploitation, stalking, or domestic violence.

It is the policy of the University that no member of its community, including students, employees, contractors, and visitors on its campuses, shall engage in sexual misconduct of any kind toward any other member of the University community or in connection with any University program. Reporting of sexual misconduct to the authorities listed in this policy is strongly encouraged and, in some circumstances, is required. Any person who violates this policy is subject to disciplinary action, which may include expulsion from the University or its programs or termination of employment.

The University’s policy is to investigate reports of sexual misconduct promptly, fairly, and thoroughly, in order to ensure the safety of all members of the community. To that end, retaliation of any kind against any person who brings a complaint under this policy will not be tolerated and will be independent grounds for disciplinary action.

#### **II. Application of this Policy**

This policy applies to all members of the University community, including without limitation students, faculty, staff, independent contractors and their employees, visitors on campus, and those participating in University programs. It applies regardless of a person’s sex, sexual orientation, or gender identity. Application of this policy is not limited to sexual misconduct that occurs on an MSU campus. It may also include sexual misconduct that occurs off-campus if it involves a University program or members of the University community.

#### **III. Sex Discrimination Prohibited**

The University does not permit discrimination on the basis of sex in its educational programs or activities. Specifically, University policy is to comply fully with the requirements of Title IX of the Education Amendments of 1972, as well as other applicable laws and their implementing regulations.

The focus of this policy is sex discrimination in the form of sexual harassment, sexual assault, and other forms of sexual misconduct as defined below. The University’s Non-Discrimination and Anti-Harassment Policy (OP 3.03) addresses sex discrimination generally, as well as other forms of prohibited discrimination that do not involve sexual misconduct.

#### IV. Definition of Sexual Misconduct

As used in this policy, the term “sexual misconduct” 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 includes but is not limited to sexual harassment, sexual assault, sexual exploitation, stalking, and domestic or dating violence.

- Sexual Harassment is unwelcome conduct of a sexual nature that 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.

Sexual Harassment can include verbal or non-verbal communication or physical conduct. Examples of prohibited sexual harassment include, but are not limited to (a) repeated sexual solicitations toward a person who has indicated they are unwelcome; (b) conditioning favorable treatment in connection with any University program upon sexual favors; (c) threats of a sexual nature that do not rise to the level of sexual assault or domestic violence; and (d) insults or derisive comments related to sex, gender, or sexual orientation directed at a specific individual that are sufficiently severe, pervasive, or persistent that they deny or limit a reasonable person’s ability to participate in or benefit from University programs.

Whether sexual harassment is sufficiently severe, pervasive or persistent to violate this policy may depend on multiple factors. Thus, a person should not be deterred from reporting unwelcome sexual conduct simply because they are not certain whether it is severe, pervasive or persistent enough to constitute a policy violation. That is a determination for the University to make, and a person reporting harassment will never be penalized or retaliated against for any report made in good faith.

- Sexual Assault refers to rape or other intentional physical sexual acts perpetrated against a person without their consent. Sexual assault includes sexual penetration or intercourse or any other physical contact of a sexual nature that occurs without consent. This includes but is not limited to deliberate physical touching as well as contact of a sexual nature with an object. Sexual assault also includes attempts to induce sexual activity via direct threats of physical violence, even where no physical contact ultimately occurs.
- Sexual Exploitation is taking sexual advantage of another person in a way that deliberately infringes on his or her reasonable expectation of privacy and/or security, but does not involve actual or attempted physical contact. Examples of sexual exploitation include, but are not limited to (a) recording images, video, or audio depicting another person engaged in sexual activity or in a state of undress without that person’s consent, even if the sexual activity itself is consensual; (b) distributing images, video, or audio depicting another person engaged in sexual activity or in a state of undress—or threatening to distribute the same—if the person distributing knew or reasonably should have known that the person depicted did not consent to the recording or the distribution; (c) intentionally viewing another person engaged in sexual activity or in a state of undress in a place where that person would have a reasonable expectation of privacy, without that person’s consent and for the purpose of gratifying sexual desire; (d) intentionally failing to notify a person with whom one is engaged in a sexual activity that another person is observing.

- Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or suffer substantial emotional distress. Examples of stalking include but are not limited to physically pursuing a person against their wishes, or sending repeated unwanted messages by electronic or other means. Stalking violates this policy when it is undertaken, at least in part, for a sexual purpose.
- Domestic/Dating Violence refers to acts of physical violence, or threats of physical violence, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The violent act itself may or may not be sexual in nature.

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. Definition of Consent**

Consent refers to words or actions that clearly show an active, knowing and voluntary agreement to engage in a particular sexual activity. Consent is determined objectively. This means that an individual is deemed to have given consent when a reasonable person, under the particular circumstances of the encounter, would understand the individual's words and/or actions as indicating the required agreement.

Consent may be withdrawn at any time by words and/or actions that clearly show the individual no longer wishes to participate. Silence and/or the absence of resistance by themselves are not consent. Consent to engage in sexual activity in the past by itself is not consent to future sexual activity. Consent to engage in sexual activity with one person is not consent to engage in sexual activity with another person.

- Force or coercion. There is no consent when a person submits to sexual activity due to physical force or the threat of physical force. Likewise, there is no consent when a person intentionally uses coercion to cause another person to agree to sexual activity. Coercion is threatening an adverse consequence that is sufficiently severe as to prevent a reasonable person from exercising free will in the decision whether to consent. Examples of coercion may include but are not limited to threatening self-harm if a person does not agree to sexual activity, threatening to "out" another person's sexual orientation, or threatening an adverse employment action. Coercion is not merely words of persuasion one might reasonably use to seek voluntary consent to sexual activity.
- Incapacity or impairment. There is no consent if a person is mentally or physically incapacitated or impaired such that they cannot understand the fact, nature, or extent of the sexual situation. This includes impairment or incapacitation due to alcohol or drug consumption if it prevents the person from having such an understanding, as well as being asleep or unconscious. It also includes instances in which a person lacks the required understanding due to medical conditions, or cognitive or other disabilities.

In some instances, a person may give what appears to be consent, despite being incapacitated. For example, a person may speak despite having "blacked out." In such cases, the objective standard for consent applies, meaning that a policy violation occurs unless a reasonable individual under the particular circumstances would have believed that the incapacitated person's actions signaled active, knowing, and voluntary agreement to sexual activity. Even if this objective standard is satisfied, if the other individual was actually aware of the person's incapacity, there is no consent.

- Age. There is no consent for purposes of this policy where a person is too young to give effective consent under applicable law. Under Mississippi law, persons under fourteen cannot give effective consent to sexual activity with any older person, where the age difference is greater than twenty-four months. Persons between the ages of fourteen and sixteen cannot give consent to sexual activity with any older person where the age difference is greater than thirty-six months.

## **VI. Reporting Sexual Misconduct**

The University strongly encourages anyone who has experienced sexual misconduct to report the incident through the procedures in this policy. Properly reporting the incident allows the University to take steps to ensure the safety of the complainant and others and to provide support services. Any person may submit a report against any other person for sexual misconduct on a MSU campus, in connection with any MSU program or activity, and/or involving a member of the University community.

There are alternatives to reporting sexual misconduct to the University. For example, a person may choose to speak confidentially to a counselor, a victim advocate, a health care professional, or certain others on campus. Likewise, a person always retains the right and is encouraged to report misconduct to any law enforcement agency, regardless of whether they have reported to the University or not. In short, it is important for all members of the University community to familiarize themselves with all their options for seeking assistance.

### **1. Emergency Assistance**

***If you are in immediate physical danger or need emergency medical care, CALL 911.***

Your safety is the first priority. The options for assistance listed below can provide a quick response, but they cannot provide the immediate physical presence necessary to assist you if you are in danger. If you believe you are in immediate physical danger or if you need immediate medical assistance, **call 911**. Police and/or an ambulance will be dispatched to assist you as necessary. University officials, if not alerted by your 911 call, can be alerted once you are safe.

***If you are not in immediate physical danger, call the MSU Safeline at 662-325-3333.***

If there is no immediate threat and you do not need immediate medical care, the MSU Safeline is the quickest, most direct way of getting help. Calling the Safeline will notify one of MSU's Sexual Assault Advocates, who are trained to help you obtain support, which may include, as necessary, medical care, housing accommodations, academic accommodations, or counseling.

### **2. Reporting to the University**

***Who should I contact?***

The University's Title IX Coordinator is responsible for overseeing compliance with Title IX and other laws that address sexual misconduct and discrimination. The Coordinator oversees investigations and disciplinary proceedings in cases of sexual misconduct, as well as the interim accommodations and assistance for those who report such misconduct. The simplest and most direct route to submit a formal report to the University is to contact the Title IX Coordinator:

- **Brett Harvey, Title IX Coordinator.** Email: [titleix@msstate.edu](mailto:titleix@msstate.edu); Phone: 662-325-8124.

If a person does not wish to report directly to the Title IX Coordinator, they are encouraged to contact one of the following officials, who also can provide prompt assistance:

- **Lateshia Butler, Compliance Specialist.** 56 Morgan Street. Email: ldh76@msstate.edu; Phone: 662-325-5839.
- **Thomas Bourgeois, Dean of Students.** 1<sup>st</sup> Floor YMCA Building. Email: thomasb@saffairs.msstate.edu; Phone: 662-325-3611.
- **Ann Carr, Senior Associate Athletic Director.** Email: acarr@athletics.msstate.edu; Phone: 662-325-2532.
- **Jackie Mullen, Director of Student Activities, Office of Fraternity and Sorority Life.** Email: jmullen@saffairs.msstate.edu; Phone: 662-325-3917.
- **Joy Graves, University Compliance Officer.** Email: joy.graves@msstate.edu; Phone: 662-325-5839.
- **Judy Spencer, Chief Human Resources Officer.** 222 McArthur Hall; Email: jspencer@hrm.msstate.edu; Phone: 662-325-3717.
- **Stephanie Green, Senior Human Resources Generalist.** 226 McArthur Hall; Email: sgreen@hrm.msstate.edu; Phone: 662-325-3717.
- **Juli Rester, Senior Human Resources Generalist.** 226 McArthur Hall; Email: rester@hrm.msstate.edu; Phone: 662-325-3717.

In addition to these officials, many MSU personnel are required to convey reports of sexual misconduct to the proper authorities on campus. These personnel are called “Responsible Employees” and their duties are discussed below. Whenever possible, however, incidents of sexual misconduct should be reported to one of the individuals listed above to provide the most prompt and direct response.

#### ***What should I do with any evidence of sexual assault?***

A person who experiences sexual assault should take steps to preserve evidence as soon as possible after the incident, even if he or she is unsure about reporting it. To better preserve evidence:

- Do not shower or douche.
- Try not to urinate. Urinating may reduce the ability to detect “date rape” drugs.
- If there was oral contact, do not smoke, eat, or brush your teeth.
- Do not change clothes. If you have already changed your clothes, place them in a paper bag, as plastic may destroy evidence. If you haven’t changed, keep the original clothes on and bring an extra set to wear home.
- A Physical Evidence Recovery Kit (PERK) will preserve help preserve forensic evidence of an assault. Inform your medical care provider that you wish to have a PERK performed as soon as possible.

***What if I am reporting workplace sexual harassment?***

Sexual harassment or other misconduct against University employees in the workplace may violate both this policy and/or the University’s policy on Discrimination, Harassment, and Retaliation (Operating Policy 03.03). When reporting workplace sexual harassment that does not involve sexual assault or other violence, employees are encouraged to follow the reporting procedures contained in Operating Policy 03.03.

If workplace misconduct does involve sexual assault or other violence, employees should never attempt to resolve the matter directly with the accused person. In such cases, employees should report the matter directly to the Title IX Coordinator or the Chief Human Resources Officer.

***What if I report sexual misconduct to someone else at MSU?***

If a report is made to an employee of the University other than those listed above, that employee may or may not have a duty to report the complaint to the Title IX Coordinator, depending on the employee’s position and job duties.

Certain University employees are deemed “Responsible Employees” for purposes of Title IX and this policy. When a Responsible Employee receives a report of sexual misconduct, he or she has a mandatory duty to report that allegation to the Title IX Coordinator. As discussed below, there is a single, narrow exception to this mandatory reporting requirement where the alleged misconduct involves nonviolent employee-on-employee workplace harassment.

***Who are MSU’s Responsible Employees?***

A Responsible Employee is any MSU employee (a) who has actual authority to redress sexual misconduct; (b) who has been given the duty of reporting incidents of sexual misconduct or any other misconduct to appropriate University authorities; or (c) who a student would reasonably but mistakenly believe has this authority or duty.

The Responsible Employee designation applies to professors and other faculty, deans and department heads, athletic coaches and administrators, personnel in the Dean of Students’ Office, University Police Department personnel, resident assistants and directors, and any other employee who meets any of the three elements above. If you are uncertain whether you or someone else is a Responsible Employee, the Title IX Coordinator can help you make that determination.

Confidential Employees. Certain employees are specifically exempted from Responsible Employee status. These include (1) licensed counselors, such as those at Student Counseling Services, and their staff members; (2) health care providers and staff, such as those at the Longest Student Health Center; and (3) pastoral counselors. These employees are not required to relay any information about reported sexual misconduct to the University. Faculty members with duties that meet the above descriptions are exempted from mandatory reporting for information received when acting in their counseling or clinical capacity, but not for information received in other settings, such as office hours with students.

Other Exempted Employees. The University may determine that other personnel, such as trained sexual assault advocates, should be exempted from mandatory reporting requirements, consistent with applicable law and legal guidance. Such a determination must be made in writing and approved by the Title IX Coordinator, University Counsel, and the Vice President for Student Affairs. Any employees so designated are not required to report identifying information about alleged sexual misconduct, but are required to report

non-identifying information including the nature, date, time, and general location of the incident for purposes of record keeping under the Clery Act.

***What happens when I inform a Responsible Employee of sexual misconduct?***

When a Responsible Employee receives a report of sexual misconduct, he or she has a mandatory duty to report that allegation to the Title IX Coordinator. This means that the Responsible Employee **must** inform the Title IX Coordinator, even if the person who experienced the alleged misconduct asks the employee not to do so.

University personnel who are not Responsible Employees are encouraged to report incidents of sexual misconduct to the University, but are not required to do so. Consequently, individuals who experience sexual misconduct should not presume that informing these employees will result in any remedial action by the University. They should instead report the matter to the Title IX Director or other personnel listed above.

Statements concerning sexual misconduct that are directed to groups generally do not constitute reporting for purposes of this policy, even if a Responsible Employee is present or learns of the statement. This includes without limitation statements made in the course of public events such as rallies, vigils, or speeches. If a person wishes to seek assistance from the University, they should speak directly to a Responsible Employee in a one-on-one setting.

***Are there any exceptions to a Responsible Employee's duty to report?***

There is one narrow exception to the mandatory reporting requirement for Responsible Employees. If the alleged sexual misconduct is harassment of an employee **and** there is no allegation of sexual assault or other violence **and** the person receiving the report is not the reporting party's supervisor **and** no student or minor allegedly was involved, then a Responsible Employee may, in his or her discretion, decide not to report the incident to the Title IX Coordinator.

This exception recognizes that employees may wish to confer with co-workers about incidents of non-violent harassment without immediately triggering a university investigation. It applies solely to the reporting obligation addressed in this policy. It does not relieve any employee of any other reporting obligation he or she may have under any other policy or law. In all cases, all employees are strongly encouraged to inform their co-workers of their options for reporting workplace harassment or other sexual misconduct to the University.

***What are my duties as a Responsible Employee?***

Responsible Employees are required to notify the University's Title IX Coordinator when they learn of sexual misconduct against any member of the University community, guest on campus, or participant in any University program.

- ***Reporting should be prompt.*** A Responsible Employee should report an incident of sexual misconduct to the Title IX Coordinator as soon as is practical under the circumstances.
- ***Reporting is not discretionary.*** To be clear, aside from the single exception described above, the obligation to report sexual misconduct is not discretionary. A Responsible Employee may not, for example, decide not to report alleged misconduct because he or she believes it is not sufficiently serious, or because he or she does not believe it happened. These are decisions for the Title IX Coordinator and appropriate University officials to make.

- ***Independent responses are prohibited.*** Under no circumstances may any employee, department, organization, or division of the University attempt to resolve unilaterally any complaint of sexual misconduct that is required to be reported under this policy. In these cases, the Responsible Employee must always notify the Title IX Coordinator first, who will determine the appropriate response after consultation with appropriate officials.
- ***Inform students of your obligations.*** Many Responsible Employees can reasonably anticipate the possibility that students may report sexual misconduct to them. The University encourages these employees to inform students of their reporting obligations in advance. When sexual misconduct is actually reported, the employee should tell the reporting person as early in the conversation as possible that any information provided will have to be relayed to the Title IX Coordinator, and that if the reporting person prefers to keep the information confidential, the University has resources such as the Student Counseling Center and Longest Health Center that can provide confidential assistance.
- ***Tell the reporting person what will happen next.*** A Responsible Employees should tell the person reporting sexual misconduct (1) that they will be informing the Title IX Coordinator of the incident; (2) why they are sharing this information—i.e., their obligation to inform those on campus in a position to respond; and (3) that the University will contact them to provide additional information and support.
- ***Do not share the information with others.*** Once you have informed the Title IX Coordinator, your reporting duties are complete. You may not share the information with anyone else. If your supervisor or someone you report to expects to be notified of such reports, you may inform them that you have relayed a complaint to the Title IX Coordinator, and that they may contact the coordinator directly with questions or concerns.

***After I report misconduct, will the information be kept confidential?***

The University will endeavor to keep reported information about sexual misconduct private to the greatest extent possible, but cannot guarantee that all information it receives will be kept confidential. Once a report is submitted to a Responsible Employee, the University has a duty to investigate the matter and endeavor to protect the safety of members of the community. In some instances, this means that certain information must be provided to individuals involved in an investigation.

Upon receiving a report of sexual misconduct, the Title IX Coordinator will attempt to contact the person who made it (the “complainant”) to determine his or her wishes with respect to privacy. If the complainant requests that their identity or other information be kept private, or that no disciplinary action be pursued, the University will give careful consideration to that request. However, there may be instances in which such requests cannot be honored, as they would impair the University’s ability to ensure a safe and non-discriminatory environment for all students. Factors considered include, but are not limited to:

- The risk of the accused committing other acts of sexual misconduct, such as where other complaints have been made against the same person.
- The risk of sexual misconduct of a similar nature, such as where multiple assaults occurred at the same location or involving the same group.

- The use of physical violence and/or weapons.
- The involvement of multiple alleged perpetrators.
- Allegations of threats or retaliation by the accused against the complainant or others.
- The reporting party's age.
- The parties' rights and/or the University's obligations under the Family Educational Rights and Privacy Act (FERPA) and other applicable privacy laws.

If the University determines it can honor a request to keep information private, it will take steps consistent with that request to ensure the safety of the complainant and others. However, complainants should understand that honoring a request for privacy necessarily will impair the University's ability to investigate and normally will prevent any disciplinary action from being taken against the accused. If someone who initially requested privacy later requests an investigation, the University will honor that request. However, delays may impair the University's ability to conduct a thorough investigation or take appropriate remedial action.

If the University determines it cannot honor a request for privacy, it will inform the complainant before any disclosure is made. The University will take whatever steps it deems necessary to protect the complainant and to ensure that information is available only to those who have a legitimate need to know. The University will make it clear to the accused party and others receiving information that any act of retaliation against the complainant will not be tolerated.

***If my report of sexual misconduct involves alcohol use or other rule violations, will I be punished?***

While the University does not condone violations of its policies, reporting incidents of sexual misconduct is of paramount importance. Thus, the University will not pursue disciplinary action against any person for possession or consumption of alcohol or drugs, or for violations of the Code of Student Conduct that do not involve violence, threats, criminal activity, hazing, or sexual misconduct, when such violations are revealed in the course of a good faith report of sexual misconduct or other good faith statements made in connection with an investigation under this policy.

3. Confidential Assistance

Certain University personnel are able to provide assistance to victims of sexual misconduct on a confidential basis. These individuals are not required to convey information regarding sexual misconduct to the Title IX Coordinator or anyone else. Consequently, communications with these individuals **do not** put the University on notice of sexual misconduct. While these individuals may be able to provide assistance such as counseling or health care, notifying them will not trigger an investigation by the University or any disciplinary proceedings. Sources of confidential assistance include:

- Student Counseling Services (662-325-2091) allows students to meet confidentially with mental health counselors. Additionally, Counseling Services can provide a Sexual Assault Advocate, who can offer confidential assistance, including (1) explaining reporting options; (2) providing accompaniment and assistance in seeking medical care or police assistance; and (3) seeking other assistance without disclosing the victim's identity.

- The Longest Student Health Center (662-325-2431) provides medical care, including emergency care, to members of the University community. Information shared with Health Center staff, including information pertaining to sexual assault or other misconduct, is confidential.
- The Employee Assistance Program (1-866-219-1232) provides confidential assistance to employees covering a wide range of family, marital, and other issues. The EAP offers telephone counseling and can refer employees for in-person counseling sessions.

As discussed above, the University may elect to confer confidential status on other employees consistent with applicable laws and regulations. If you are not certain whether an employee is required to report sexual misconduct to the University, please inquire with the Title IX Coordinator.

#### 4. Anonymous Disclosure

Anonymous complaints of sexual misconduct or other unethical or unlawful behavior can be made through the MSU Ethics Line, a comprehensive and 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 MSU Ethics Line is not a 911 or emergency service.*** If your situation involves any immediate threat, call 911 or the MSU Police Department, not the Ethics Line. Further, the Ethics Line is not a substitute for reporting under this policy. While the University will take appropriate steps to address threats to safety or other ongoing problems identified by anonymous disclosures, its ability to respond, impose discipline, and/or accommodate the complainant normally will be significantly limited. Members of the community are therefore strongly encouraged to consider the other options for reporting listed in this policy.

#### 5. Reporting to Law Enforcement Agencies

The reporting procedures in this policy are not intended as a substitute for reporting sexual misconduct to law enforcement agencies. Sexual misconduct may involve violations of the law. Members of the University community always retain the right to report sexual misconduct to the police. However, reporting to law enforcement is never required under this policy.

In an emergency, the MSU and Starkville Police Departments can be reached by calling 911. Non-emergency contact information for these agencies is as follows:

MSU Police Department	662-325-2121
Starkville Police Department	662-323-4131
Oktibbeha County Sherriff’s Office	662-323-2421
U.S. Department of Education, Office of Civil Rights	800-421-3481

Reporting to the MSU Police Department will trigger the responses outlined in this policy. Reporting to other law enforcement agencies will not trigger these responses unless and until that agency elects to share the information with University officials or until you make a report as outlined in 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 or proceedings 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.

Individuals who bring reports of sexual misconduct to the University will be informed of their options for reporting to law enforcement agencies. If requested, the University will take reasonable steps to assist the individual in reporting to law enforcement.

While requests by reporting parties for non-disclosure of information to law enforcement will be carefully considered, there may be circumstances under which University officials must provide law enforcement with information, such as where disclosure is required by law or is necessary to ensure campus safety.

## **VII. Prohibition on Retaliation**

Retaliation against individuals who report 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 or threat that would deter a reasonable person from reporting, testifying, or otherwise cooperating with an investigation or proceeding. Any such retaliation should be reported immediately to the Title IX Coordinator.

## **VIII. False Reporting**

While the University recognizes the rarity of intentionally false reports of sexual misconduct, submitting a deliberately false report or providing false information in bad faith is prohibited under this policy 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 by the University. It does not authorize retaliation of any kind by any individual, department, or organization, even where bad faith is found.

## **IX. Investigation and Adjudication**

All investigations and disciplinary proceedings concerning alleged sexual misconduct will be conducted in a prompt, fair, and impartial manner by individuals who have received appropriate training.

### **1. Initial Investigation**

***The Timeframe.*** Absent extenuating circumstances, the University will strive to conduct a full investigation of a complaint of sexual misconduct and adjudicate the complaint within sixty calendar days after receiving consent to proceed with an investigation from the complainant or within sixty calendar days of deciding to proceed with an investigation absent the complainant's agreement.

***Interim Assistance.*** While an investigation is pending, the University will take reasonable interim steps to protect complainants. These steps may include, but are not limited to:

- Modifying class or work schedules as necessary;

- Making alternate housing or workplace arrangements;
- Addressing other academic or workplace concerns (e.g. assignments, leaves of absence, or withdrawal); and
- Providing additional and/or targeted educational programming and training.

The University may also issue orders prohibiting contact between the complainant, the accused, and/or any other member of the University community. While accommodations are most commonly provided to complainants, the University may also make accommodations for the accused or any other person, where it deems them necessary for a prompt, fair, and impartial resolution. A written description of available accommodations and assistance will be made available upon request.

***The Investigator.*** The Title IX Coordinator will select an appropriate person or persons to conduct the investigation. In exceptional cases, an external investigator may be used. In all cases, the investigator will have received proper training on issues relating sexual misconduct and Title IX. The investigator may regularly consult with the Title IX Coordinator on the progress of the investigation and potential issues that require additional follow-up.

***Initial Contact with the Parties.*** When an investigation begins, the Title IX Coordinator or a designee will schedule a meeting with the complainant. 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, and the possibility of informal resolution where appropriate. The Title IX Coordinator or a designee also will communicate to the accused party the relevant provisions of this policy, the nature of the investigation, and forms of support or assistance available to him or her.

## 2. Procedures for Adjudication

The procedures for investigating and adjudicating complaints of sexual misconduct vary depending on the identity of the accused party. Where the accused party is a student, the procedures described below in part (b) will be used. Where the accused party is an employee, the procedures described below in part (c) will be used. In all cases where a student or employee is charged with sexual misconduct in violation of this policy, however, the following general rules in part (a) apply.

### a. **General Rules for Investigation and Adjudication**

- i. All parties to a sexual misconduct investigation will have equal rights throughout the resolution process and will have an equal opportunity to present relevant witnesses and other evidence if a hearing is necessary.

Both the complainant and accused have the right to have an advisor present at any hearing or any meeting related to the investigation or adjudication. If this advisor is an attorney, please see the procedure located in OP 91.100. Parties will be afforded reasonably sufficient time prior to any hearing, interview, or meeting to confer with any advisor or otherwise prepare to participate.

- ii. The standard of proof for adjudicating any sexual misconduct charge is a preponderance of the evidence standard. In other words, the evidence must show that it is more likely than not that the alleged sexual misconduct occurred.
  - iii. The Title IX Coordinator will oversee all investigations, hearings, and disciplinary proceedings under this policy to ensure such proceedings comply with University policy and applicable law. All persons assigned to investigate sexual misconduct charges will have received proper training on issues related to sexual assault, sexual harassment, domestic violence, and stalking as well as proper methods for ensuring a prompt, thorough, and fair investigation.
  - iv. If any party to a disciplinary hearing under this policy believes that any adjudicator or investigator has a conflict of interest that would prevent him or her from handling the matter fairly and impartially, they should communicate that belief to the Title IX Coordinator as early as possible, and in all events prior to any hearing. The Coordinator will review the matter and take remedial action where appropriate, which may include assigning an alternate investigator or adjudicator. In rare cases, the Coordinator may determine that potential conflicts of interest or other factors warrant the appointment of individuals from outside the University community to investigate and/or adjudicate a charge of sexual misconduct.
- b. Where the Accused Person is a Student**
- i. Where the accused person is a student, adjudication proceedings will be conducted according to the general rules of the Code of Student Conduct, as set forth in Operating Policy 91.100. Where this policy contains additional requirements or conflicts with the Code of Student Conduct, this policy will control.
  - ii. Cases involving alleged student-on-student sexual misconduct will be assigned to the Student Conduct Board, and where necessary, to an Empaneled Appeals Board. They will not be referred to organization-specific disciplinary bodies. All persons responsible for final adjudication of charges of sexual misconduct will have received proper annual training on relevant issues, as well as proper methods of conducting hearings.
  - iii. The complainant and accused will be advised of the charges and their rights in connection with the investigation. If a hearing is required, they will be advised of the hearing procedure at a pre-hearing conference.
  - iv. Both parties will be given reasonable advance notice as to who will hear and adjudicate the matter, as well as the identity of any witnesses, and any other evidence to be presented at any hearing.
  - v. The complainant has the right to be physically present during the entirety of any hearing or can choose to participate by remote means at an off-site location.
  - vi. The complainant and the accused in a sexual misconduct complaint hearing will be allowed to question or provide information responding to any witness's testimony or other evidence presented during any hearing. However, the complainant and the accused in a sexual misconduct complaint hearing should not directly question or cross-examine each other during the hearing. In lieu of direct

cross-examination, the university will provide an alternate means for the parties to question one another, such as the submission of written questions which may be asked by the hearing chair.

- vii. The rules concerning participation by advisors found in OP 91.100 will apply to hearings under this policy, with one exception: Attorneys or other advisors are permitted to speak directly to the hearing chair to raise questions or objections concerning procedure. At the discretion of the hearing chair, some or all such discussions may be held outside the presence of the panel members.
- viii. The decision of the panel as to responsibility or non-responsibility shall be determined by majority vote of the panel members. The recommendation of the panel as to sanctions may be unanimous, or individual panel members may submit their own recommendations for consideration.
- ix. The complainant and the accused will be simultaneously informed, in writing, of the outcome of any hearing, the procedures to appeal the results, any change in the results that occurs prior to the results becoming final, and the time at which the results become final.
- x. No student shall sit on any Student Conduct Board or other board assigned to hear any charge of sexual misconduct.
- xi. Prior to any student conduct hearing under this policy, the Title IX Coordinator will prepare a memorandum summarizing the relevant policy provisions, undisputed facts, and disputed factual questions, and listing all potential witnesses and exhibits to the proceeding. This memorandum will be provided to members of the panel prior to the hearing, and will not take any position or make any recommendation as to the ultimate outcome. At least three business days prior to the hearing, a draft copy of the memorandum will be provided to each party for their review and comment. The Title IX Coordinator will have discretion whether to incorporate any proposed revisions or additions from the parties into the final memorandum to the panel. No witness or exhibit not listed in the final memorandum will be admissible at any hearing under this policy.
- xii. In cases of alleged sexual misconduct, the right of appeal described in the Code of Student Conduct shall apply to both the complainant and the accused. Petitions for appeal will be reviewed by the Dean of Students Office in consultation with the Title IX Coordinator.

**c. Where the Accused Person is an Employee**

- i. Where the accused person is an employee, proceedings will be conducted according to the general rules of the Complaint Resolution Procedure set forth in the University's Non-Discrimination and Anti-Harassment Policy (OP 03.03).
- ii. In cases where the accused person is an employee and the complainant is a student and/or a minor, review by the President or his designee of the outcome and any disciplinary or other remedial action, as described in Paragraph 5 of Operating Policy 03.03, shall be automatic and mandatory.

**d. Where the Accused Person is neither a Student nor an Employee**

- i. In some cases, a person accused of sexual misconduct may be someone other than a University student or employee. In these cases, the University normally will not have the ability to impose

discipline directly under this policy. However, the University will take appropriate steps to ensure the safety of the complainant and others, which may include without limitation steps to bar the accused person from campus, exclusion from university programs or activities, and/or referral to appropriate law enforcement agencies.

- ii. 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 sexual misconduct.

#### 4. Possible Sanctions

Sanctions for violations of this policy must be determined based on the facts of each individual case. Sanctions are distinct from non-punitive interventions—such as no-contact orders or changes in housing assignments—which the University may impose to insure the safety of community members. Sanctions may include, but are not limited to, one or more of the following:

- Expulsion: Separation of the student from the University whereby the student is never eligible for readmission to this university.
- Termination of Employment: Removal of an employee from his or her position with the University whereby the employee is not eligible for re-employment.
- Suspension: Separation of the student from the University, or temporary removal of an employee with or without pay, for a period of time.
- Conduct Probation: An official warning that the student's conduct is in violation of the Code of Student Conduct, but is not sufficiently serious to warrant expulsion or suspension. A student on conduct probation may face expulsion or suspension if found responsible for another violation. A student may also be ineligible to represent the university, and additional restrictions or conditions may be imposed depending on the nature and seriousness of the misconduct as specified in the sanction.
- Loss of campus housing: Removal from University housing for disciplinary reasons.
- Community service: An individual may have to complete a specified number of community service hours.
- Restrictions: The withdrawal of specified privileges for a defined period of time.
- Reassignment: Alteration of an employee's duties, work schedule, work location, or other terms of employment, which may or may not involve demotion or reduction of compensation.
- Restitution: A payment for financial reimbursement in cases involving loss of or destruction of property or deception.
- Warning: Formal reprimand of a student for actions violating the Code of Student Conduct, or a formal warning of an employee to be maintained in his or her employee records.

- **Educational Requirements:** A stipulation to complete a specific educational or training requirement related to the specific infraction. The provision will be clearly defined. Educational requirements may include, but are not limited to, completion of an alcohol or drug education course, an integrity course, remedial training on sexual misconduct issues, essays, reports, etc.
- **Withholding or Revocation of Degree or Certification:** The withholding or revocation of a degree or other certification from the University or a program thereof, based on a finding that an individual is responsible for conduct under this policy while enrolled at the university that would have resulted in expulsion or removal from the relevant program, which was reported with reasonable promptness but could not have been adjudicated until after the program's completion.

## 5. **Informal Resolution**

In some instances, a complainant may prefer to address sexual misconduct through informal means, such as mediation. Persons interested in informal resolution should communicate that request to the Title IX Coordinator.

If the complainant requests informal resolution, 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, such as an administrator or counselor.

Informal resolution normally is not appropriate in cases of alleged sexual assault or physical violence, and will be considered only in exceptional cases in which both parties affirmatively request it. In addition, the University may determine that other claims are sufficiently serious that informal resolution would be inappropriate. In such cases, the matter will be resolved through formal adjudication. If at any point either party wishes to end informal resolution efforts, they should communicate that fact to the Title IX Coordinator and formal adjudication proceedings 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 Coordinator and formal adjudication proceedings will begin.

## **X. Assistance and Support**

The University is committed to ensuring that those who report sexual misconduct receive appropriate assistance. The Title IX Coordinator or a designee will inform complainants of their options during the initial investigation of a report, as outlined earlier in this policy, and will work with complainants to identify appropriate assistance and contact persons.

Additionally, to the extent feasible, the University will endeavor to provide reasonable accommodations to those who seek confidential assistance through the resources outlined in this policy. Options for assistance and support include:

### ***Student Counseling Services***

Students who have experienced sexual assault or other misconduct can receive both immediate assistance and longer-term counseling through Student Counseling Services. Information shared with Student Counseling Services staff is confidential, and will be relayed to University officials only with the express permission of the student. Counselors are trained to help students experiencing trauma related to sexual assault, domestic violence, harassment, and other misconduct.

To contact Student Counseling Services between 8:00 a.m. and 5:00 p.m., Monday through Friday, call 662-325-2091 or come by in person to 115C Hathorn Hall. After hours or on weekends, call the Campus Safe Line at 662-325-3333.

### ***Sexual Assault Advocate***

Student Counseling Services employs Sexual Assault Advocates (SAAs) to guide victims through the process of receiving assistance following sexual misconduct. When a person reports sexual assault or other sexual violence to the University via this policy, the SAA will be alerted promptly and placed in contact. The SAA can provide assistance on a wide range of issues, from seeking immediate medical attention and/or a Physical Evidence Recovery Kit (PERK) to seeking housing or academic accommodations.

### ***University Health Services***

The Longest Student Health Center provides medical care, including emergency care, to members of the University community. Information shared with Health Center staff, including information pertaining to sexual assault or other misconduct, is confidential. To contact the Student Health Center between 8:00 a.m. and 5:00 p.m. on Monday through Friday, call 662-325-2431. For after-hours medical advice, contact Nurselink at 800-882-6274. For medical emergencies, call 911.

## **XI. Training, Education and Awareness**

The University's policy is to provide ongoing training and education to all students and employees on the provisions of this policy and their duties under it. Training and education programs will include, without limitation:

- A clear statement of the University's prohibition of sexual misconduct, including sexual assault, dating violence, and stalking.
- Information designed to enhance awareness of rape, acquaintance rape, domestic violence, dating violence, and stalking.
- Information on the definition of consent.
- Information on bystander intervention strategies to safely prevent harm where a threat of sexual misconduct exists.
- Information on risk reduction, recognizing signs of abusive behavior, and avoiding potential attacks.

The Title IX Coordinator will oversee and monitor the University's training and education efforts to ensure their adequacy for these purposes and their compliance with applicable laws. For information on training, education, and awareness programs available at MSU, please contact the Title IX Coordinator.

## **XII. Recordkeeping, Disclosures and Confidentiality**

No information derived from proceedings under this policy shall be released except as permitted or required by law and University policy. As discussed above, in the context of an investigation under this policy, information will be disclosed only to those individuals with a genuine need to know.

### ***Clery Act Records and Notifications***

Under the Clery Act, the University is required to maintain records and report annually on certain offenses occurring on campus. Clery reports do not, however, include the names or any other identifying information about the persons involved in any incident.

If a report of sexual misconduct discloses an immediate threat, the University may issue a notification to protect the health or safety of the community. The University may also share non-identifying information about reports received in aggregate form, including data about outcomes and sanctions. At no time will the University release the name of the complainant to the general public without the express consent of the complainant or as otherwise permitted or required by law.

### ***FERPA Privacy Protections***

Under the Family Educational Rights and Privacy Act (FERPA), identifying information about a complainant, respondent, or reporter who is a student will not be disclosed to third parties unaffiliated with the University, except in response to a lawfully issued subpoena or court order, or as otherwise required or allowed by law.

However, if in connection with a University investigation of alleged sexual misconduct, an accused party requests to view records relating specifically to the accused party, the University may be required to grant the request. In such cases, the University will redact all personally identifying information to the extent permitted or required by law.

### ***Mississippi Public Records Act***

Incident reports prepared by the University Police Department may be considered public records under the Mississippi Public Records Act (MPRA) and may not be protected by FERPA. This means the University may be required to make them available for inspection upon request. All such requests must be made pursuant to the University's Public Records Request Procedure (OP 6.04) and reviewed by the Office of General Counsel. To the extent any incident report is subject to disclosure, the University will redact the victim's personally identifying information to the extent permitted by law.

## **XIII. Coordination with Other Policies**

### **Amorous Relationships (OP 01.28)**

- University policy prohibits employees and students from entering into any amorous and/or sexual relationship in which one person is in a position of power over the other, as this creates an inherent conflict of interest. If such a relationship develops, the participant in the position of authority is required to inform his or her immediate supervisor or Human Resources Management of the relationship, so that the positional conflict can be eliminated.
- The University's amorous relationship policy is violated even if an unreported power differential relationship and any accompanying sexual activity are consensual. Conversely, a person's authority over another in an employment, academic, or other setting may be relevant to whether sexual activity involved coercion, which would render any consent ineffective.

### **Non-Discrimination and Anti-Harassment (OP 03.03)**

- As discussed above in Part VI, harassing conduct in the workplace may violate both this policy and the Non-Discrimination and Anti-Harassment Policy.
- When reporting workplace harassment that does not involve sexual assault or other violence, employees should follow the reporting procedures contained in Operating Policy 03.03. Alternatively, if workplace conduct does involve sexual assault or other violence, employees should follow the procedures in this policy. To simplify matters, in either case, reporting to the Title IX Coordinator or the Chief Human Resources Officer is both sufficient and recommended.
- Where this policy differs from Operating Policy 3.03, or imposes additional requirements, this policy will control.

#### Termination of Employment (OP 60.113)

- Where termination proceedings are based on a violation of this policy, both the procedures herein and in Operating Policy 60.113 will apply. Where the two policies differ, this policy will control.
- Nothing in this policy limits the grounds upon which a person's employment with the University may be terminated. Under certain circumstances, sexual behavior that does not meet the definition of sexual misconduct under this policy may nonetheless provide cause for termination or other discipline. The procedural steps outlined herein apply only where an employee is charged with a violation of this policy.

#### Code of Student Conduct (91.100)

- To the extent the provisions of this policy differ from those of the Code of Student Conduct, this policy will control in cases of alleged sexual misconduct.

#### **XIV. Questions About This Policy**

Anyone with questions about the provisions of this policy should contact the University's Title IX Coordinator, Brett Harvey, at [titleix@msstate.edu](mailto:titleix@msstate.edu) or 662-325-8124.

#### **XV. 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, Title IX and EEO Programs

12/17/2018  
Date

/s/ Judy A. Spencer  
Chief Human Resources Officer

12/18/2018  
Date

/s/ Judy Bonner  
Provost and Executive Vice President

01/02/2019  
Date

/s/ Regina Hyatt  
Vice President for Student Affairs

01/03/2019  
Date

/s/ Joan Lucas  
General Counsel

01/08/2019  
Date

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

01/10/2019  
Date

**APPROVED BY:**

/s/ Mark Keenum  
President

01/24/2019  
Date