

## STUDENT AFFAIRS OP 91.118: Sexual Misconduct

**Date: September 16, 2011**

### Purpose

To provide an educational environment free from sexual misconduct.

### Policy

Mississippi State University does not discriminate on the basis of sex in its educational programs and activities. The University, in an effort to foster an environment of respect for the dignity and worth of all members of the University community, is committed to maintaining an educational environment free of sexual harassment. It is the policy of the University that no member of its community shall engage in sexually harassing or sexually violent behavior toward another. Any student who violates this policy is subject to disciplinary action, which may include expulsion from the University. Sexual harassment, including sexually violent behavior, is illegal under both state and federal law. As a public institution of higher learning, the University also must provide due process to students accused of Sexual Misconduct. This policy is designed to provide proper due process for anyone accused of Sexual Misconduct as well as the complainant.

### Procedure

Sexual Misconduct comprises a broad range of behavior and is defined more specifically below. Individuals who would like to report an incident of Sexual Misconduct may submit a complaint against the accused to the following:

Thomas Bourgeois  
Dean of Students  
112 Lee Hall  
Mississippi State, MS 39762  
(662) 325-3611  
[Thomasb@saffairs.msstate.edu](mailto:Thomasb@saffairs.msstate.edu)

Brett Harvey  
Title IX Coordinator  
150 MacArthur Hall  
Mississippi State, MS 39762  
(662) 325-3713  
[titleix@msstate.edu](mailto:titleix@msstate.edu)

If a complaint is first made to any other employee of the University, that employee should refer the complaint to the Title IX Coordinator. There is no strict time limit for reporting Sexual Misconduct, but individuals are strongly encouraged to report suspected Sexual Misconduct immediately. Criminal charges also may be filed with the University Police Department or other local law enforcement agencies. A complaint also can be filed with the United States Department of Education at the following:

Office for Civil Rights (OCR)  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

For a list of resources available to students who are the complainants of, or have been accused of, Sexual Misconduct, please visit <http://www.sart.msstate.edu>

Sexual Assault Services, located within the Student Health Center, is charged with providing education programming to increase the awareness within the University community about sexual misconduct. Its vision is to create learning experiences and opportunities that instill in our students an increased knowledge about Sexual Misconduct, its prevention, and how to report sexual misconduct. The departmental website can be found at <http://www.health.msstate.edu/>.

## DEFINITIONS

As used in this policy, the University defines the terms below as follows:

1. Sexual Misconduct: broadly defines unwelcome behavior of a sexual nature committed without effective consent. Sexual Misconduct can vary in its nature and severity. As used in this policy, Sexual Misconduct includes without limitation “Sexual Exploitation,” “Sexual Harassment,” “Non-Consensual Sexual Contact,” and “Non-Consensual Sexual Intercourse.”
2. Sexual Exploitation: means taking sexual advantage of another person without effective consent. Some examples of Sexual Exploitation include, but are not limited to: (a) electronically recording, photographing or transmitting sexual activity without consent even if the sexual activity is consensual; (b) stalking if the content of the message or nature of the physical stalking is of a sexual nature or with a sexual motive; (c) voyeurism or secretive observation or electronically recording of another for sexual pleasure; (d) disrobing or exposing to another without effective consent; or (e) allowing third parties to observe sexual acts without effective consent.
3. Sexual Harassment: means unwelcome harassment of a sexual nature that is sufficiently severe or pervasive and objectively offensive that it unreasonably interferes with a complainant’s academic performance or equal opportunity to participate in or benefit from the University’s resources and opportunities, unreasonably interferes with the complainant’s work or living environment, or deprives the complainant of some other protected right.
4. Non-Consensual Sexual Contact: means sexual contact that occurs without effective consent. Sexual contact as used in this policy includes without limitation deliberate sexual touching, however slight, or using force to cause another to engage in sexual touching. Sexual contact also may include contact of a sexual nature with an object.
5. Non-Consensual Sexual Intercourse: means sexual intercourse or penetration, however slight, with any object or body part without effective consent.
6. Effective Consent: means words or actions that clearly show an active knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Silence, in and of itself, cannot be interpreted as effective consent. Effective consent cannot result from force, threat, coercion, fraud or intimidation. Also, an incapacitated person is incapable of giving effective consent. A person who is incapacitated and incapable of giving effective consent includes without limitation a person who is unconscious, unaware, or otherwise physically or mentally unable to give effective consent to sexual activity. It also includes a person who cannot understand who, what, when, where, why or how with respect to the sexual activity.

## APPLICATION

Any person may file a complaint of sexual misconduct against an individual who was registered or enrolled as a student at the University at the time the alleged sexual misconduct occurred. Application of this policy is not limited to activity that occurs on a MSU campus. It may also include sexual misconduct that occurs off-campus if the sexual misconduct involves a student.

## PROHIBITED CONDUCT

Any and all forms of actual or attempted sexual misconduct as defined in this policy are prohibited and will not be tolerated. There may be instances in which sexual misconduct may violate University policy, but does not rise to the level of a criminal offense. Even when there is not sufficient evidence to prosecute an individual accused of sexual misconduct criminally, there may still be a violation of this policy. The filing of a complaint under this policy is independent of any criminal investigation or proceedings, and the University, in its discretion, may not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation and may take interim measures, if necessary, for the safety and security of the University community.

Additionally, retaliation against individuals who initiate a sexual misconduct complaint or who cooperate with an investigation of alleged sexual misconduct is prohibited. For purposes of this policy, retaliation includes without limitation intimidation, threats, harassment and other adverse actions. Any such retaliation should be reported immediately to the Dean of Students or Title IX coordinator.

## CONFIDENTIALITY

The University will attempt to obtain consent from the complainant before beginning an investigation of sexual misconduct. If the complainant requests confidentiality or asks that the investigation not be pursued, the University may still be required to investigate and respond to the situation to ensure a reasonably safe and non-discriminatory environment for all students. The University will weigh the request for confidentiality against factors such as the seriousness of the alleged sexual misconduct, the complainant's age, any prior complaints of sexual misconduct against the accused, and the complainant's and accused's rights under the Family Educational Rights and Privacy Act (FERPA). When investigation and a response are warranted, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue investigation. The complainant is advised that the University's ability to effectively investigate and respond may be limited if the complainant insists on confidentiality. If confidentiality cannot be honored, the University will inform the complainant.

## COMPLAINT RESOLUTION

### Initial Actions:

After receiving notice of any allegations of sexual misconduct, the Title IX coordinator or her designee ("Title IX officer") will schedule an intake meeting with the complainant in order to provide the complainant a general understanding of this policy, advise the individual of his/her rights, and to identify forms of support or immediate intervention available to the complainant. At the intake meeting, the Title IX officer and the complainant will discuss alternatives for proceeding with the complaint, including whether the complainant wishes to pursue informal resolution or whether the complainant wishes to pursue a resolution of any kind. If appropriate, the Title IX officer will schedule a meeting with the accused in order to provide to him or her with a general overview of this policy, advise the individual of his/her rights, and identify forms of support or immediate intervention available to him or her. In all complaints of alleged sexual misconduct, the University will undertake an investigation, if appropriate, and take prompt action aimed at supporting and protecting the complainant, including taking appropriate interim action before the final outcome of the investigation and hearing, if any. This may include a "no contact" order or any further protective action the University deems appropriate such as a housing reassignment or a class reassignment. Violation of the University's interim protective actions by any student will constitute offenses that may lead to disciplinary action.

### Informal Dispute Resolution Efforts:

If the complainant wishes to pursue informal dispute resolution of his or her complaint of sexual misconduct and the complaint involves a type of sexual misconduct that can appropriately be resolved through informal dispute resolution, the University will make every reasonable effort to resolve the complaint through informal dispute resolution. Under no circumstances will informal dispute resolution mechanisms be used in cases involving sexual

assault. If appropriate and safe, the appropriate University official should first discuss the complaint with the individuals involved in the complaint. If a satisfactory resolution is not reached through informal discussions, the University may attempt to resolve the complaint through other appropriate informal resolution mechanisms. If a satisfactory resolution is not reached after informal resolution efforts have been exhausted, formal resolution of the complaint will commence. If at any time the complainant or the accused wishes to end the informal dispute resolution process, he/she should notify the Title IX officer and the formal resolution process will commence.

#### Formal Resolution:

If informal dispute resolution efforts are not successful or appropriate, resolution of a sexual misconduct complaint shall follow the process outlined in Sections 4 through 7 of "Procedures" of the University's Code of Student Conduct, OP 91.100, unless otherwise specified in this policy.

Absent extenuating circumstances, the University will strive to conduct a full investigation of a sexual misconduct complaint and adjudicate the complaint within 60 calendar days after receiving consent to proceed with an investigation from the complainant or within 60 calendar days of deciding to proceed with an investigation absent consent.

1. All parties to a sexual misconduct case 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.
2. Both the complainant and accused have the right to have a non-participating advisor present at any hearing. If this advisor is an attorney, please see procedure located in OP 91.100.
3. The complainant and accused will be advised of the charges, their rights and the hearing procedure at a pre-hearing conference.
4. The complainant has the right be present during the entire hearing or can choose to participate by remote means at an off-site location.
5. The standard of proof for any sexual misconduct complaint 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.
6. The complainant and the accused in a sexual misconduct complaint hearing will be allowed to question or provide information regarding any witness or other information presented during the hearing. However, the complainant and the accused in a sexual misconduct complaint hearing should not personally question or cross-examine each other during the hearing.
7. If a violation of this policy is found, the hearing board will reconvene and the complainant or accused may submit an impact statement to the hearing board either verbally or in writing.
8. The complainant and accused will be notified in writing of the hearing board's decision and recommended sanctions, if applicable, within 3 days of the hearing. Notice should be delivered concurrently to the complainant and accused.
9. Either the complainant or accused may file a written appeal of the hearing board's finding or recommended sanctions, if applicable, within 5 days for the reasons outlined in OP 91.100.

#### Sanctions

Any student found responsible for violating this policy may receive a sanction ranging from a warning to expulsion,

depending on the circumstances and severity of the incident and taking into account any previous student conduct code violations.

Review

The Vice President for Student Affairs is responsible for the review of this operating policy every four years or as needed.

**THIS POLICY HAS BEEN RESCINDED**

**DIVISION OF STUDENT AFFAIRS  
OPERATING POLICIES AND PROCEDURES**

**STUDENT AFFAIRS OP 91.118: Sexual Misconduct**

**REVIEWED BY:**

/s/ William Kibler  
Vice President for Student Affairs

10/4/2011  
Date

/s/ Lesia Bryant  
Internal Auditor

11/4/2011  
Date

/s/ Joan L. Lucas  
General Counsel

11/23/2011  
Date

**APPROVED BY:**

/s/ William Kibler  
Vice President for Student Affairs

12/1/2011  
Date

/s/ Mark E. Keenum  
President

12/1/2011  
Date

THIS POLICY HAS BEEN RESCINDED